

CHAPTER 392
FORMERLY
HOUSE BILL NO. 194
AS AMENDED BY HOUSE AMENDMENT NO. 2 AS AMENDED BY HOUSE AMENDMENT NO. 2
TO HOUSE AMENDMENT NO. 2 AND SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO LINEAR WATER AND WASTEWATER UTILITY PROJECTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 40, Title 7 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4004 Applicability.

(a) The provisions of this chapter shall not apply to agricultural land management practices unless the conservation district or the Department determines that the land requires a new or updated soil and water conservation plan, and the owner or operator of the land has refused either to apply to a conservation district for the development of such a plan, or to implement a plan developed by a conservation district.

(b) Unless a waiver is granted the construction of agricultural structures such as broiler houses, machine sheds, repair shops, and other major buildings shall require approval of a sediment and stormwater management plan, by the appropriate plan approval agency, prior to the initiation of construction.

(c) Utility projects disturbing less than 5,000 square feet of land are not subject to the provisions of this chapter.

(d) Linear water and wastewater utility projects that have a maximum width of disturbance of 30 feet or less and with a maximum total disturbance of 1 acre or less are (i) subject to Erosion and Sediment Control regulations adopted by the Department, and (ii) exempt from Stormwater Management regulation adopted by the Department. For the purposes of this section 'Erosion and Sediment Control' means the control of solid material, both mineral and organic, during a land disturbing activity, to prevent its transport out of the disturbed area by means of wind, water, gravity, or ice. For the purposes of this section 'Stormwater Management' means

(a) For water quantity control, a system of vegetative, structural, and other measures that controls the volume and rate of Stormwater runoff which may be caused by land disturbing activities upon the land, and

(b) For water quality control, a system of vegetative, structural, and other measures that controls adverse effects on water quality that may be caused by land disturbing activities upon the land.

Section 2. Amend Chapter 60, Title 7 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 6029 Limitations on scope of chapter.

This chapter shall not apply to or change the existing law in respect to:

(1) The landowner's right to place a dam across a gully on his or her property or across a stream that originates on that landowner's property where provision is made for continued established average minimum flow occurring for 7 consecutive days within the lowest flow year of record; or

(2) The right to build and maintain a dam or construct a pond and divert water from any stream on any stream having a minimum flow of not more than 1/2 million gallons of water per day, and utilize up to 360 acre inches of the impounded water per year so long as such action does not affect the established average minimum flow in the stream below the dam at any time; or

(3) Ponds not larger than 60,000 square feet constructed for purposes of conservation, recreation, propagation and protection of fish and wildlife, watering of stock or fire protection.

(4) Linear water and wastewater utility projects that have a maximum width of disturbance of 30 feet or less and with a maximum total disturbance of 1 acre or less are (i) subject to Erosion and Sediment Control regulations adopted by the Department, and (ii) exempt from Stormwater Management regulation adopted by the Department. For the purposes of this section 'Erosion and Sediment Control' means the control of solid material,

both mineral and organic, during a land disturbing activity, to prevent its transport out of the disturbed area by means of wind, water, gravity, or ice. For the purposes of this section 'Stormwater Management' means

(a) For water quantity control, a system of vegetative, structural, and other measures that controls the volume and rate of Stormwater runoff which may be caused by land disturbing activities upon the land, and

(b) For water quality control, a system of vegetative, structural, and other measures that controls adverse effects on water quality that may be caused by land disturbing activities upon the land.

Approved August 10, 2016