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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 204

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO STORMWATER MANAGEMENT.

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

1 Section 1. Amend § 4002, Title 7 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 4002. Definitions.

4 (13) “Redevelopment” and “brownfield development,” means a construction, alteration, or improvement,
5 including but not limited to the demolition or building of structures, filling, grading, paving, or excavating, where existing
6 land use is residential, commercial, industrial, or institutional. “Redevelopment” and “brownfield development” does not
7 mean ordinary maintenance activities, remodeling of existing buildings, resurfacing of paved areas, and exterior changes or
8 improvements.

9 Section 2. Amend § 4004, Title 7 of the Delaware Code by making deletions as shown by strike through and
10 insertions as shown by underline as follows:

11 § 4004. Applicability.

12 (h) Redevelopment projects are governed by the criteria under this Chapter, until such time as the Department
13 adopts regulations under § 4006(d) of this title, at which time the regulatory provisions as to redevelopment control and
14 supersede this subsection.

15 Section 3. Amend § 4006, Title 7 of the Delaware Code by making deletions as shown by strike through and
16 insertions as shown by underline as follows:

17 § 4006. State management program.

18 (d)(1) The Department may adopt, amend, modify or repeal rules and regulations after public hearing to effectuate
19 the policy and purposes of this chapter. The conduct of all hearings conducted pursuant to this chapter and the promulgation
20 process shall be in accordance with the relevant provisions of Chapter 60 of this title, and all other provisions of Delaware
21 law. Notwithstanding the foregoing or any other provision of Delaware law, the Department and any other approval
22 authority shall, for purposes of approval, after June 24, 2016, review required applications for land disturbing activities

using the guidelines set forth herein until such time that the Department adopts new regulations which become final pursuant to the requirements of this chapter. The guidelines to be used are as follows:

a. The Resource Protections Event Volume (RPv) is equal to a runoff volume generated by a 2.7" storm event. Treatment of a 1-inch runoff from a RPv event with best management practices (BMPs) as set forth in the April 2016 Post Construction Stormwater Management BMP Standards and Specifications or functional equivalents is required. If additional measures are necessary to manage the remainder of runoff from the RPv to achieve the predevelopment runoff rate from the RPv, then additional BMPs shall be utilized to achieve the predevelopment runoff rate and shall be considered sufficient for purposes of obtaining plan approval.

~~b. Runoff rates for the 10-year and 100-year storm events shall be managed in accordance with the referenced BMPs, exclusive of volume requirements.~~ RPV compliance for redevelopment projects as defined herein must employ the same BMPs set forth above to reduce the existing effective imperviousness by 15%.

c. Runoff rates for the 10-year and 100-year storm events must be managed in accordance with the referenced BMPs, exclusive of volume requirements.

Section 4. Amend § 4007, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4007. Local sediment and stormwater programs.

(c) Delegation, once applied for, shall become effective on July 1 and shall not exceed 35 years, at which time delegation renewal is required.

Section 5. Amend § 4017, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4017. Redevelopment Criteria.

(a) Offset Provisions.

(1) The Department may require an offset as an alternative to full or partial compliance with the Resource Protection Event requirements as provided in subsection (e) of this section and § 4006(d)(1)a. of this title.

(2) Offset requirements are subject to Departmental review and approval and to the public notice requirements of §6004 of this title.

(3) The Department may develop and publish procedures for determining offset options in a technical document supplement to this section.

(b) Standard Plans.

(1) The Department may develop criteria for standard plans when a detailed plan is deemed not necessary. Project types that may qualify for a standard plan include, individual parcel construction or improvements, tax ditch maintenance, minor linear disturbances, stormwater facility maintenance, agricultural structure construction, or other activities approved by the Department.

(2) All standard plans must contain standard conditions for construction site stormwater management and may contain standard conditions for post construction stormwater management.

(3) The inclusion of an activity in the standard plan classification does not exclude that activity from the requirements of this Chapter. Rather, the standard plan precludes that activity from the necessity of a detailed plan review for a qualifying project.

(4) Failure to implement control practices under conditions included in the standard plan may necessitate appropriate enforcement action under this Chapter.

(5) A detailed plan may be required for a site that would otherwise meet standard plan criteria as deemed appropriate by the Department or delegated agency on a case-by-case basis.

(c) The Department recognizes the benefits of redevelopment. The requirements under this section are intended to encourage redevelopment while establishing compliance criteria that meet the overall goals and intent of this Chapter.

(d) In the case of development of a contaminated or Brownfield site, a remediation plan approved by the Department will meet the stormwater management goals and the intent of these regulations with prior consent and subsequent approval by the Department. Compliance with the Resource Protection Event criteria under § 4006(d)(1)a. of this title must be accomplished to the maximum extent practicable for development of a contaminated or Brownfield site in instances where the Site Investigation and Remediation Section (SIRS) does not apply infiltration restrictions.

(1) Redevelopment of a contaminated or Brownfield site resulting in a reduction of impervious surface where no known drainage issues exist or will be created must be considered in compliance with this section.

(2) Redevelopment of a contaminated or Brownfield site resulting in an increase in impervious surface where no known drainage issues exist or will be created must employ runoff reduction practices to achieve compliance with the RPe with a 30% reduction in the required volume of runoff to be treated.

(e) Compliance with the Resource Protection Event criteria under § 4006(d)(1)a. of this title must be accomplished to the maximum extent practicable for redevelopment projects through one of the following:

(1) Redevelopment resulting in less than 1 acre of disturbed area must adhere to subsection (b) of this section. Projects that cannot adhere to subsection (b) of this section must comply with paragraph of (e)(2) or (e)(3) of this section, as applicable.

(2) Redevelopment on sites with stormwater management systems designed and functioning in accordance with the Delaware Sediment and Stormwater Regulations first promulgated on January 23, 1991:

a. Redevelopment resulting in a reduction of impervious surface where no known drainage issues exist or will be created and there are no outstanding stormwater-related maintenance issues to be resolved or addressed must be considered in compliance with this section.

b. Redevelopment resulting in an increase in impervious surface where no known drainage issues exist or will be created must employ runoff reduction practices to achieve an equivalent open space in good condition for the increased impervious surface.

(3) Redevelopment on sites without stormwater management systems designed and functioning in accordance with the Delaware Sediment and Stormwater Regulations first promulgated on January 23, 1991:

a. Redevelopment resulting in a reduction of 15% or greater in impervious surface must be considered in compliance with these Regulations.

b. Redevelopment resulting in a reduction of less than 15% impervious surface where no known drainage issues exist or will be created must employ runoff reduction practices to achieve an equivalent 15% reduction in effective imperviousness.

c. Redevelopment resulting in an increase in impervious surface shall employ runoff reduction practices to achieve an equivalent 15% reduction in effective imperviousness for existing impervious areas and an equivalent open space in good condition for an area equivalent to the increase in impervious surface.

(f) If the minimum runoff reduction requirements are not met, an offset under subsection (a) of this section must be provided for the portion of the RPv that does not meet the minimum runoff reduction requirements under § 4006(d)(1)a, of this title.

(1) Any redevelopment project that increases the rate, volume, or duration of flow to a new or existing point of discharge during the Conveyance Event must be managed in accordance with reference BMP's, exclusive of volume requirements.

(2) Any redevelopment project that increases the rate, volume, or duration of flow to a new or existing point of discharge during the Flooding Event must comply be managed in accordance with reference BMP's, exclusive of volume requirements.

Section 6. Amend § 4006, Title 7 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4006. State management program.

(h) The provisions of Chapter 60 of this Title and of Chapter 101 and Chapter 104 of Title 29 with respect to the adoption of rules and regulations shall not apply to regulatory guidance documents, interpretive rules, or general statements of policy adopted by the Department to support the regulations promulgated under this Chapter. A regulatory guidance document, interpretive rule, or general statement of policy shall not:

1. impose any new or additional requirements beyond those set forth in this Chapter and the regulations promulgated by authority of this Chapter: or

2. be used by the Department as a substitute for the provisions of this Chapter or the Stormwater Regulations for enforcement purposes.

(i) As used in this section, a "regulatory guidance document" means any technical manual, checklist, policy memorandum, form, BMP standards and specifications, Delaware Sediment and Erosion Control Handbook or other similar document, used by the Department to facilitate compliance with the provisions of this Chapter and the regulations promulgated by authority of this Chapter. Any changes to regulatory guidance documents, as defined in this section, shall be adopted following public notice requirements in accordance with 7 Del. C. §6004 and shall be filed in the Register of Regulations pursuant to 29 Del. C. §10113.

Section 7. Sections 1, 2, and 5 of this Act shall sunset on June 1, 2019, or upon the promulgation of new Sediment and Stormwater Regulations, whichever comes first, unless otherwise provided by a subsequent act of the General Assembly.

SYNOPSIS

Section 1 through 4 of this Act establish interim standards and criteria in order to permit redevelopment projects to move forward while revised regulations are being drafted. The interim standards set forth in this Act would effectively "sunset" upon the adoption of regulations governing redevelopment. The redevelopment regulations, upon formal adoption, would supersede the provisions of the Bill.

Section 4 corrects an oversight in prior legislation, which extended the time frame for Department review of delegated projects from 3 to 5 years, but failed to extend the effective date of delegation from 3 to 5 years.

Section 5 codifies current and proposed regulations as they pertain to stormwater management to ensure consistency.

Section 6 is intended to clarify the procedural status of supporting materials published by DNREC to facilitate compliance with the Regulations, in light of the Order of the Delaware Supreme Court in *Baker v. DNREC*, No. 552, 2015 (April 15, 2016), affirming the Memorandum Opinion of the Honorable T. Henley Graves of the Superior Court, dated October 7, 2015.

Consistent with the Delaware Administrative Procedures Act, regulatory guidance documents, interpretive rules, and general statements of policy adopted pursuant to this exception must still be published in the Delaware Register of Regulations, in order to provide notice of the changes. The language confirming the exemption is drawn from federal administrative law, 5 U.S.C.A. §553, and equivalent provisions of the New Jersey Code, 52:14B-3a, governing such supporting materials.

The regulatory guidance documents, interpretive rules, and general statements of policy may not be used by DNREC to impose new or additional requirements on regulated parties, and may not be used, instead of the Code provisions and the Stormwater Regulations, as a basis for enforcement. Such materials are therefore not regulations, and not are not subject to the notice, hearing, or comment procedures of the Administrative Procedures Act or Title 7, or the Regulatory Flexibility Act. Rather, DNREC is free to publish periodic updates and revisions of its technical manuals, checklists, forms, and policy memos, to assist regulated parties in compliance with the Regulations.

Section 7 creates a sunset date for sections 1, 2, and 5 to give the Department additional time to fully enact regulations. It is the intent that sections 1, 2, and 5 will sunset upon having a finalized version of Sediment and Stormwater Regulations.

Author: Senator Hocker