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Simpson; Reps. Briggs King, Carson, Gray, Hudson, Jaques,
Kenton, Mitchell, Paradee, Schwartzkopf, Spiegelman, Wilson,
Yearick

DELAWARE STATE SENATE

148th GENERAL ASSEMBLY

SENATE BILL NO. 253
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO EROSION AND SEDIMENT CONTROL.

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

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

§ 4002. Definitions.

The following words, ~~terms~~ terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) “Agricultural structure” means a structure, which is located on a farm, used exclusively in connection with producing, harvesting, storing, drying, or raising agricultural commodities, including the raising of livestock. “Agricultural structure” does not include structures used for human habitation, public use, or a place of employment where agricultural products are processed, treated, or packaged.

(~~3~~) (4) “Land disturbing activity” or “land disturbance” means any land change or construction activity for residential, commercial, industrial and , or institutional land use which may result in soil erosion from water or wind or movement of sediments or pollutants into state waters or onto lands in the State, or which may result in accelerated stormwater runoff, including, but not limited to, clearing, grading, excavating, ~~transporting~~ transporting, and filling of land. This paragraph does not apply to commercial forestry practices.

(8) “Standard plan” means a set of predefined standards or specification for minor land disturbing activities that preclude the need for the preparation of a detailed sediment and stormwater management plan under specific conditions established by regulation by the Department under this chapter.

Section 2. Amend § 4004, Title 7 of the Delaware Code by making deletions as shown by strike through 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 initiation of construction.~~ The Department shall adopt standard plans for the construction of agriculture structures and it shall not be necessary for any person seeking approval to submit a sediment and stormwater management plan.

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

(d) Subject to sediment and erosion controls, land disturbing activities of 1 acre or less, excluding non-residential properties, are not subject to the provisions of this chapter.

(e) Land disturbing activities not subject to the land management practices set forth in subsection (a) of this section which are conducted on 10 acres or less of agricultural lands for agricultural purposes shall be subject to standard plans adopted by the Department, and it shall not be necessary for any person seeking approval to submit a detailed sediment and stormwater management plan.

(f) Subject to water quality management and sediment and erosion controls, non-erosive conveyances of stormwater discharges from land disturbing activities which drain into tidal areas and tidal waters are not subject to the quantity management provisions of this chapter.

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

§ 4006. State management program.

(c) The Department shall develop such regulations in conjunction with and with substantial concurrence of a regulatory advisory committee, appointed by the Secretary, which shall include representatives of the regulated community and others affected by this chapter. The Secretary shall appoint only one (1) representative of the Department to the regulatory advisory committee and no legal representatives of any of those serving on the committee shall be entitled to be a member of the committee. The recommendations of this committee shall be presented at all public workshops and hearings related to the adoption of the regulations implementing this chapter. Prior to final promulgation of regulations under this chapter, the Secretary shall explain, in writing, any differences between the advisory committee recommendations and the final regulations. The regulations may include, but are not limited to, the following items:

- (1) Criteria for the delegation of program elements;
- (2) Types of activities consistent with the provisions of this Chapter that require a sediment and stormwater management permit;
- (3) Waivers, exemptions and variances;
- (4) Sediment and stormwater plan approval fees and performance bonds;
- (5) Criteria for distribution of funds collected by sediment and stormwater plan approval fees;
- (6) Criteria for implementation of a stormwater runoff utility;
- (7) Specific design criteria and minimum standards, and specifications, provided that any design criteria, standards and specifications adopted shall be technologically feasible and uniformly capable of being satisfied;
- (8) Permit application and approval requirements;
- (9) Criteria for approval of designated watersheds;
- (10) Criteria regarding attendance and completion of departmental sponsored or approved training courses in sediment and stormwater control that will be required of certified construction reviewers and responsible personnel;
- (11) Construction review; and
- (12) Maintenance requirements for sediment control during construction and stormwater management structures after construction is completed.

(d)(1) The Department may adopt, amend, modify or repeal rules and regulations after public hearing to effectuate the policy and purposes of this chapter. The conduct of all hearings conducted pursuant to this chapter and the promulgation process shall be in accordance with the relevant provisions of Chapter 60 of this title, and all other provisions of Delaware law. Notwithstanding the foregoing or any other provision of Delaware law, the

Department and any other approval authority shall, for purposes of approval, after the effective date of this Act, 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 one 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 pre-development runoff rate from the RPv, then additional BMPs shall be utilized to achieve the pre-development runoff rate and shall be considered sufficient for purposes of obtaining plan approval.

b. Runoff rates for the 10 year and 100 years storm events shall be managed in accordance with the referenced BMPs, exclusive of volume requirements.

(2) In lieu of satisfying the guidelines in paragraphs (d)(1)a. and (d)(1)b. of this section, nothing shall preclude an applicant from utilizing in whole or in part the 2016 emergency regulations and guidelines prior to the adoption of the referenced new regulations.

(3) The guidelines cited in (d)(1)a. and (d)(1)b. of this section shall be included in the new regulations which are to be adopted.

(e) A regulation promulgated by the Department under this chapter that provides for the use of a standard plan in lieu of a detailed sediment and stormwater management plan shall provide that an agricultural structure construction project with a total land disturbance of 10 acres or less is entitled to a standard plan.

(f) Notwithstanding subsections (a) through (c) of this section, in developing a state stormwater management program the Department may not promulgate a regulation that relies on a stormwater runoff volume reduction approach.

(g) A regulation promulgated by the Department under this chapter shall comply with the Regulatory Flexibility Act, Chapter 104 of Title 29, and shall include both a regulatory impact statement under § 10404A of Title 29 and a regulatory flexibility analysis under § 10404B of Title 29, even if such a statement or analysis would otherwise not be required by § 10404A(b)(1) or § 10404B(b)(1) of Title 29.

Section 4. Amend §4006(b), Title 7, Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4006 State management program.

(b) In carrying out this chapter, the Department shall have the authority to:

(3) Review the implementation of all components of the statewide sediment and stormwater program that have been delegated to either the conservation districts, counties, municipalities or other state agencies in reviews to be accomplished at least once every ~~3 years~~ 5 years;

(10) Establish a maximum life of ~~3 years~~ 5 years for the validation of approved plans. The regulations shall specify variances which expand this time limitation in specific situation; and