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DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 253

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:

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 and by redesignating accordingly:

3 § 4002. Definitions.

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

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

10 (3) (4) “Land disturbing activity” or “land disturbance” means any land change or construction activity for
11 residential, commercial, industrial and , or institutional land use which may result in soil erosion from water or wind or
12 movement of sediments or pollutants into state waters or onto lands in the State, or which may result in accelerated
13 stormwater runoff, including, but not limited to, clearing, grading, excavating, ~~transporting~~ transporting, and filling of
14 land. This paragraph does not apply to commercial forestry practices.

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

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

20 § 4004. Applicability.

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

25 (b) ~~Unless a waiver is granted the construction of agricultural structures such as broiler houses, machine sheds,~~
26 ~~repair shops, and other major buildings shall require~~ Unless a waiver is granted for the construction of an agricultural
27 structure or the construction of an agricultural structure is subject to a standard plan, the construction of an agricultural
28 structure requires approval of a sediment and stormwater management ~~plan, plan~~ by the appropriate plan approval ~~agency,~~
29 agency prior to the initiation of construction.

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

31 (d) Land disturbing activities of 1 acre or less are not subject to the provisions of this chapter.

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

34 § 4006. State management program.

35 (d) The Department may adopt, amend, modify or repeal rules or regulations ~~after public hearing to effectuate the~~
36 ~~policy and purposes of this chapter~~ to effectuate the policy and purposes of this chapter only after a public hearing on the
37 rule or regulation. The conduct of all hearings conducted pursuant to this chapter and the promulgation process shall be in
38 accordance with the relevant provisions of Chapter 60 of this title.

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

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

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

SYNOPSIS

This Act adds provisions to § 4004 of Title 7 to exclude from Chapter 40 of Title 7 land disturbing activities of 1 acre or less of land and to exclude from the requirement for a sediment and stormwater management plan the construction of an agricultural structure construction project subject to a standard plan.

If the Department provides for the use of a standard plan in lieu of a detailed sediment and stormwater plan, this Act requires the Department to provide that an agricultural structure construction project with a total land disturbance of 10 acres or less is entitled to a standard plan.

Notwithstanding the regulatory power granted to the Department by § 4006(a) through (c) of Title 7, this Act creates § 4006(e) of Title 7 to prohibit the Department of Natural Resources and Environmental Control (“Department”) from promulgating a regulation that relies on a stormwater runoff volume reduction approach. It is the General Assembly’s intent that this prohibition result in the Department repealing the existing *Sediment and Stormwater Regulations*, § 5101, Title 7 of the Delaware Administrative Code, (“*Sediment and Stormwater Regulations*”) and replacing them with a responsible state stormwater management program that can be complied with without extensive offset payments.

This Act amends § 4006(d) to make clear that the Department may promulgate regulations only after a public hearing.

This Act creates § 4006(f) of Title 7 to require both a regulatory impact statement under § 10404A of Title 29 and a regulatory flexibility analysis under § 10404B of Title 29, even if the Department could otherwise claim an exemption under § 10404A(b)(1) of § 10404B(b)(1) of Title 29.

This Act adds “agricultural structure” and “standard plan” as defined terms in § 4002 of Title 7, largely adopting the definition of these terms as used in the *Sediment and Stormwater Regulations*.

This Act makes technical corrections to conform existing law to the guidelines of the *Delaware Legislative Drafting Manual*.

Author: Senator Hocker & Senator Lawson