



**STATE  
OF  
DELAWARE**

**Sediment & Stormwater Law  
(with Amendments)**

Effective Date: June 15, 1990

DELAWARE STATE SENATE  
135TH GENERAL ASSEMBLY  
SENATE BILL NO. 359

INTRODUCED: MAR 20, 1990  
SIGNED: JUN 15, 1990

AN ACT TO AMEND CHAPTER 40, TITLE 7, DELAWARE CODE, RELATING TO EROSION AND SEDIMENTATION CONTROL AND STORMWATER MANAGEMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 40, Title 7, Delaware Code by striking Chapter 40 in its entirety and by substituting in lieu thereof a new Chapter 40 to read as follows:

§4001. Legislative Findings and Statement Policy

(a) Legislative Findings. The General Assembly finds that erosion and sedimentation continue to present serious problems throughout the State, and that the removal of a stable ground cover in conjunction with the decrease in the infiltration capability of soils resulting from the creation of additional impervious areas such as roads and parking lots has accelerated the process of soil erosion and sediment deposition resulting in pollution of the waters of the State. This damages domestic, agricultural, industrial, recreational, fish and wildlife and other resource uses. The General Assembly further finds that accelerated stormwater runoff increases flood flows and velocities, contributes to erosion, sedimentation, and degradation of water quality, overtaxes the carrying capacity of streams and storm sewers, greatly increases the costs of public facilities in carrying and controlling stormwater, undermines flood plain management and flood control efforts in downstream communities, reduces groundwater recharge, and threatens public health, welfare, and safety.

(b) State of Policy. In consideration of these legislative findings, it is declared to be the policy of this Chapter to strengthen and extend the present erosion and sediment control activities and programs of this State for both rural and urban lands and to provide for control and management of stormwater runoff consistent with sound water and land use practices. These activities will reduce to the extent possible any adverse effects of stormwater runoff on the water and lands of the State. This policy, to be carried out by establishing and implementing the Department of Natural Resources and Environmental Control, hereinafter referred to as the 'Department', in cooperation with conservation districts, counties, municipalities and other local governments and subdivisions of this State, and other public and private entities, a statewide comprehensive and coordinated erosion and sediment control and stormwater management program to conserve and protect land, water, air and other resources of the State. This program shall be consistent with, and coordinated with other environmental programs implemented by the Department such as wetlands protection and groundwater protection.

§4002. Definitions. The following words, 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) 'Certified Construction Reviewer' means an individual who has passed a departmental sponsored or approved training course and who provides on-site construction review for sediment control and stormwater management in accordance with regulations promulgated under this chapter.

(2) 'Designated Watershed or Subwatershed' means a watershed or subwatershed proposed by a conservation district, county, municipality, or State agency and approved by the

Department. The Department may establish additional requirements due to existing water quantity or water quality problems. These requirements shall be implemented on an overall watershed or subwatershed master plan developed for water quality and/or water quantity protection.

(3) 'Land Disturbing Activity' means any land change or construction activity for residential, commercial, silvicultural, industrial, and 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 and filling of land.

(4) 'Person' means any State or federal agency, individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private or public institution, utility, cooperative, municipality or other political subdivision of this State, any interstate body, or any other legal entity.

(5) 'Responsible Personnel' means any foreman or superintendent who is in charge of on-site clearing and land disturbing activities for sediment and stormwater control associated with a construction project.

(6) 'Sediment and Stormwater Management Plan' or 'plan' means a plan for the control of soil erosion, sedimentation, stormwater quantity, and water quality impacts which may result from any land disturbing activity.

(7) 'State Waters' means any and all waters, public or private, on the surface of the earth which are contained within, flow through or border upon the State of Delaware or any portion thereof.

(8) 'Stormwater' means the runoff of water from the surface of the land resulting from any form of precipitation and including snow or ice melt.

(9) '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.

(10) 'Stormwater Utility' means the establishment of an administrative organization that has been created for the purposes of funding sediment control, stormwater management or flood control planning, design, construction, maintenance, and overall resource needs by authorized and imposed charges.

#### §4003. Duties of Persons Engaged in Land Disturbing Activities

(a) After July 1, 1991, unless exempted, no person shall engage in land disturbing activities without submitting a sediment and stormwater management plan to the appropriate plan approval authority and obtaining a permit to proceed.

(b) Projects which do not alter stormwater runoff characteristics may be required to provide water quality enhancement even if the predevelopment runoff characteristics are unchanged. Criteria will be detailed in the regulations regarding level of water quality control and variance procedures.

(c) Each land developer shall certify, on the sediment and stormwater management plan submitted for approval, that all land clearing, construction, development, and drainage will be done according to the approved plan.

(d) All approved land disturbing activities shall have associated therein at least one individual who functions as responsible personnel.

#### §4004. Applicability

(a) The provisions of this Chapter shall not apply to agricultural land managements

practices unless the conservation district of 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 not subject to the provisions of this Chapter.

#### §4005. Program Funding and Financial Assistance

(a) The Department, conservation districts, counties, or municipalities are authorized to receive from federal, State, or other public or private sources financial, technical or other assistance for use in accomplishing the purposes of this Chapter. The Department may allocate, as necessary or desirable, any funds received to conservation districts, counties, or municipalities for the purpose of effectuating this Chapter.

(b) The conservation districts, counties, and municipalities shall have authority to adopt a fee system to help fund program implementation. That fee system shall be implemented by the designated plan approval agency to fund overall program management, plan review, construction review, enforcement needs, and maintenance responsibilities. In those situations where the Department may assess a plan review and inspection fee. That fee shall not exceed \$80.00 per disturbed acre per project. There shall be no duplication of fees by the various implementing agencies for an individual land disturbing activity and the fee schedule shall be based upon the costs to the Department, conservation districts, counties, or municipalities to implement and administer the program.

(c) Authority is also granted to the Department, conservation districts, counties or municipalities to establish a stormwater utility as an alternative to total funding under the fee system. The stormwater utility shall be developed for the designated watersheds and may fund such activities as long range watershed master planning, watershed retrofitting, and facility maintenance. This fee system shall be reasonable and equitable so that each contributor of runoff to the system, including State agencies, shall pay to the extent to which runoff is contributed. Criteria for the implementation of the stormwater utility shall be established in regulations promulgated under this Chapter. The implementation of a stormwater utility will necessitate the development of a local utility ordinance prior to its implementation.

#### §4006. State Management Program

(a) The Department shall, in cooperation with appropriate State and federal agencies, conservation districts, other governmental subdivisions of the State, and the regulated community develop a State Stormwater Management Program. This program shall take into consideration both quantity and quality of water, and shall be integrated with, and made a part of the amended State Erosion and Sediment Control Program to create a Sediment and Stormwater program.

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

(1) Provide technical and other assistance to districts, counties, municipalities, and State agencies in implementing this Chapter;

(2) Develop and publish, as regulation components, minimum standards, guide lines and criteria for delegation of sediment and stormwater program components, and model sediment and stormwater ordinances for use by Districts, counties, and municipalities;

(3) Review the implementation of all components of the statewide sediment and stormwater program that have been delegated to either the conservation dis-

tricts, counties, municipalities, or other State agencies in reviews to be accomplished at least once every three (3) years;

(4) Require that appropriate sediment and stormwater management provisions be included in all new erosion and sediment control plans developed pursuant to this Chapter;

(5) Cooperate with appropriate agencies of the United States of other states or any interstate agency with respect to sediment control and stormwater management;

(6) Conduct studies and research regarding the causes, effects and hazards of stormwater and methods to control stormwater runoff;

(7) Conduct and supervise educational programs with respect to sediment control and stormwater management;

(8) Require the submission to the Department of records and periodic reports by conservation districts, tax ditch organization, county and municipal agencies as may be necessary to carry out this Act;

(9) Review and approve designated watersheds for the purpose of this Act;

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

(11) Establish a means of communication, such as a newsletter, so that information regarding program development and implementation can be distributed to interested individuals.

(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 Act. The recommendations of this committee shall be presented at all public workshops and hearings related to the adoption of the regulations implementing this Act. Prior to final promulgations of regulations under this Act, 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 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;

(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) The Department may adopt, amend, modify, or repeal rules or 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.

#### §4007. Local Sediment and Stormwater Programs

(a) Pursuant to regulations promulgated by the Department, each conservation district, county, municipality, or State agency may adopt, and submit to the Department for approval, one or more components of a sediment and stormwater program for the area within its jurisdiction.

(b) Requests for delegation of program elements shall be submitted within six months of the promulgation of State regulations, and by January 1 of subsequent years if delegation is desired at a future date. The Secretary shall grant or deny such a request on or before April 1 of the year for which delegation is sought.

(c) Delegation, once applied for, shall become effective on July 1 and shall not exceed (3) years, at which time delegation renewal is required.

(d) A district, county, municipality, or State agency may develop the program in cooperation with any other governmental subdivisions.

(e) Initial consideration regarding delegation of program elements shall be given to the conservation districts, since the conservation districts, having unique capabilities and areawide responsibilities, are in an ideal position to coordinate and implement local sediment and stormwater programs.

#### §4008. Interim Program

(a) Prior to July 1, 1991 requirements for sediment control shall be as provided in existing erosion and sediment control regulations promulgated September 26, 1980. Also, until July 1, 1991 any State or locally developed regulation or criterion for stormwater management shall remain in effect at the discretion of the implementing authority.

(b) Projects approved prior to July 1, 1991, but which are under construction after July 1, 1991, shall be subject to the penalty provisions contained in Section 4015 of this Chapter.

#### §4009. Failure of Conservation Districts, Counties, Municipalities, or State Agencies to Implement Delegated Program Elements

(a) If, at any time, the Department finds that a conservation district, county, municipality, or State agency has failed to implement program elements that the Department has delegated, the Department shall provide written notice of violation to the conservation district, county, municipality or State agency.

(b) Within 60 days of receipt of the notice of violation, the conservation district, county, municipality or State agency shall report to the Department the action which it has taken to comply with the requirements set forth in the violation notice.

(c) If after 120 days of receipt of the notice of violation, the conservation district, county, municipality, or State agency has failed to comply satisfactorily with requirements set forth in the notice of violation, the Department may suspend or revoke the delegated authority.

#### §4010. State and Federal Projects

After July 1, 1991 a State or federal agency may not undertake any land clearing, soil movement, or construction activity unless the agency has submitted a sediment and stormwater management plan to the Department and received its approval. The only variation to this requirement shall be when delegation of the plan approval process has been granted by the Department to a specific State or federal agency.

#### §4011. Designated Watersheds or Subwatersheds

(a) Watersheds or subwatersheds approved as designated watersheds or subwatersheds by the Department shall have the regulatory requirements clearly specified through a watershed approach to nonpoint pollution control or flood control. The watershed approach shall result in a specific plan, developed or approved by the Department, for the designated watershed or subwatershed that contains the following information:

- (1) Stormwater quantity or quality problem identification;
- (2) The overall needs of the watershed, not just the additional impacts of new development activities;
- (3) Alternative approaches to address the existing and future problems;
- (4) A defined approach which includes the overall costs and benefits;
- (5) A schedule for implementation;
- (6) Funding sources and amounts; and
- (7) A public hearing process prior to departmental approval.

(b) Upon approval of the designated watershed or subwatershed plan, all projects undertaken in that watershed or subwatershed shall have stormwater requirements placed upon them that are consistent with the designated watershed or subwatershed plan.

#### §4012. Construction Review and Enforcement

(a) With respect to approved sediment and stormwater plans, the agency responsible for construction review during and after construction completion shall ensure that periodic reviews are undertaken, implementation is accomplished in accordance with the approved plans, and the required measures are functioning in an effective manner. Notice of such right of construction review shall be included in the sediment and stormwater management plan certification. The agency responsible for construction review may, in addition to local enforcement options, refer a site violation to the Department for additional action.

(b) Referral of a site violation to the Department may initiate a departmental construction review of the site to verify site conditions. That construction review may result in the following actions:

(1) Notification through appropriate means to the person engaged in a land disturbing activity and the contractor to comply with the approved plan within a specified time frame.

(2) Notification of plan inadequacy, with a time frame for the person engaged in a land disturbing activity to submit a revised sediment and stormwater plan to the appropriate plan approval agency and to receive its approval with respect thereto.

(c) Failure of the person engaged in the land disturbing activity or the contractor to comply with departmental requirements may result in the following actions in addition to other penalties as provided in this Chapter.

(1) The Department shall have the power to issue a cease and desist order to any person violating any provision of this Chapter by ordering such person to cease and desist from any site work activity other than those actions necessary to achieve compliance with any administrative order.

(2) The Department may request that the appropriate plan approval agency refrain from issuing any further building or grading permits to the person having outstanding violations until those violations have been remedied.

#### §4013. Approval of Certified Construction Reviewers

(a) Based on criteria established by the Department through regulation and any additional criteria established by the agency implementing the plan review and construction elements of the sediment and stormwater program, the person engaged in a land disturbing activity may be required to provide for construction review by a certified construction reviewer.

(b) Individuals functioning as certified construction reviewers must attend and pass a departmental sponsored or approved construction review training course. The Department will establish, through regulation, the length of time for which the certification will last and procedure for renewal. The construction reviewers shall also function under the direction of a registered professional engineer licensed to practice engineering in the State of Delaware.

(c) The responsibility of the certified construction reviewer will be to ensure the adequacy of construction pursuant to the sediment and stormwater management plan.

(d) The certified construction reviewer shall be responsible for the following items:

(1) Provision of a construction review of active construction sites on at least a weekly basis, as determined on a case-by-case basis by the plan review and construction review agencies, or as required by regulations promulgated pursuant to this Chapter;

(2) Within five calendar days, informing the person engaged in the land disturbing activity, and the contractor, by a written construction review report of any violations of the approved plan or inadequacies of the plan. The plan approval agency shall be informed, if the approved plan is inadequate, within five working days. In addition, the appropriate construction review agency shall receive copies of all construction review reports; and

(3) Referral of the project to the Department for appropriate enforcement action if the person engaged in the land disturbing activity fails to address the items contained in the land disturbing activity fails to address the items contained in the written construction review report. Verbal notice shall be made to the Department within two working days and written notice shall be provided to the Department within five working days.

(e) If the Secretary or his designee determines that a certified construction reviewer is not providing adequate site control or is not referring problem situations to the Department, the Secretary or his designee may suspend or revoke the certification of the construction reviewer.

(f) In any situation where a certified construction reviewer's approval is being suspended or revoked, an opportunity for hearing before the Secretary or his designee shall be provided. During any suspension or revocation, the certified construction reviewer shall not be allowed to provide construction reviews pursuant to this Chapter.

(g) The failure to assign a departmental approved certified construction reviewer to a land disturbing activity, when required by the approved plan, will place that project in violation of this Chapter and result in appropriate administrative and/or enforcement action.

#### §4014. Training of Responsible Personnel

After July 1, 1991, any applicant seeking sediment and stormwater plan approval shall certify to the appropriate approval agency that all responsible personnel involved in the construction project will have a certificate of attendance at a departmentally sponsored or approved training course for the control of sediment and stormwater before initiation of any land disturbing activity. The certificate of attendance shall be valid until the Department notifies the individual or announces in local newspapers that recertification is required due to a change in course content.

#### §4015. Penalties

(a) Any person who violates any rule, regulation, order, condition imposed in an approved plan or other provision of this Chapter shall be fined not less than \$200 or more than \$2,000 for each offense. Each day that the violation continues shall constitute a separate offense. The Justice of the Peace Courts shall have jurisdiction of offenses brought under this subsection.

(b) Any person who intentionally, knowingly, and after written notice to comply, violates or refuses to comply with any notice issued pursuant to Section 4013(2) of this Chapter shall be fined not less than \$500 or more than \$10,000 for each offense. Each day the violation continues shall constitute a separate offense. The Superior Court shall have jurisdiction of offenses brought under this subsection.

#### §4016. Injunctions

The Court of Chancery shall have jurisdiction to enjoin violations of this Chapter. The appropriate program element authority, the Department, or any aggrieved person who suffers damage or is likely to suffer damage because of a violation or threatened violation of this Chapter may apply to the Chancery Court for injunctive relief. Among any other appropriate forms of relief, the Chancery Court may direct the violator to restore the affected land or water impacted area to its original condition."

## SYNOPSIS

The intent of this legislation is to replace the existing sediment control law with new language that will strengthen that law. Additionally, in the same Chapter, a new statewide stormwater management program component is proposed that will reduce, to the extent possible, the adverse water quantity and water quality impacts of stormwater runoff after construction is completed.

The legislation improves upon existing criteria by including the ability to assess a permit fee to assist in program funding, a certification program for construction review (inspection), an educational program for contractors, regulation promulgation procedures that include input from the regulated community, and expanded delegation criteria that recognizes the importance of conservation district involvement while including counties, municipalities, and State agencies in program implementation.

The proposed stormwater management component will arrest the further decline of water quality, and reduce the increased potential of flooding on downstream properties that new development may exacerbate. The prevention of further decline will be accomplished through the imposition of stormwater control practices by individual land developers such as ponds and infiltration practices. A strategy is also presented that would provide for a watershed approach to stormwater management that would eventually improve water quantity and water quality conditions.

Placement of stormwater management legislation within the existing framework of the sediment control law reinforces the concept that these two programs are integrally related.

Author: Sen. Minner

DELAWARE STATE SENATE  
137TH GENERAL ASSEMBLY  
SENATE BILL NO. 388

INTRODUCED:

SIGNED:

JUL 11, 1994

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO STATE FORESTRY AND SEDIMENTATION AND EROSION CONTROL.

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

Section 1. Amend Chapter 40, §4002(3), Title 7, Delaware Code by deleting the word "silvicultural" as it appears in that section.

Section 2. Amend Chapter 40, §4002(3), Title 7, by adding a new final sentence to the section to read, "This subsection does not apply to commercial forestry practices."

Section 3. Amend Chapter 29, Title 7, of the Delaware Code by adding a new subchapter, designated as Subchapter VI, which subchapter shall read as follows:

"Subchapter VI. Water Quality as it relates to silvicultural systems and sedimentation and erosion control."

§2977. ~~Findings; policy; purpose.~~

The Forestry Administrator shall provide for the protection of the waters of the state from pollution by sediment deposits resulting from silvicultural activities as provided in §2978 of this title. Through the adoption of this subchapter, the State of Delaware recognizes that water quality protection techniques for silvicultural practices are an integral component of properly managed forests. Further, the State of Delaware recognizes the positive benefits that properly managed forest systems have on the environment, water quality, and quality of life in Delaware.

§2978. Definitions

The following words, terms and phrases, as used in this Subchapter, shall have the following meaning ascribed to them except where the context clearly indicates a different meaning:

(1) 'Owner' shall mean any person that (a) owns or leases land on upon which silvicultural activity occurs or (b) owns timber on land which silvicultural activity occurs.

(2) 'Operator' shall mean any person that operates or exercises control over any silvicultural activity.

(3) 'Pollution' shall mean such alteration of the physical, chemical or biological properties of any waters of the state resulting from sediment deposition that will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future source of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses.

(4) 'Silvicultural activity' shall mean any forest management activity, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation.

(5) 'Reforestation' is the establishment of a tree crop on forest land.

(6) 'Special order' shall mean a special order or emergency special order issued under §2980.

#### §2979. Conduct of silvicultural activities.

If the Forestry Administrator or his or her designee determines that an owner or operator is conducting or allowing the conduct of any silvicultural activity in a manner which is causing or is likely to cause pollution, he or she may advise the owner or operator of corrective measures needed to prevent or cease the pollution. Failure of the Forestry Administrator, or his or her designee, to advise an owner or operator of such corrective measures shall not impair the Forestry Administrator's authority to issue special orders.

#### §2980. Issuance of special orders.

Special orders can be issued if the Forestry Administrator, or his or her designee, finds that any owner or operator is conducting any silvicultural activity in a manner which is causing or is likely to cause alteration of physical, chemical or biological properties of any state water, resulting from sediment deposition presenting an imminent and substantial danger to (a) the public health, safety or welfare, or the health of animals, fish or aquatic life (a) a public water supply; or (c) recreational, commercial, industrial, agricultural or other reasonable uses. The Forestry Administrator, or his or her designee, shall have the authority to issue special orders to any owner or operator who is conducting any silvicultural activity in a manner which is causing or likely to cause pollution, to cease immediately all or part of the silvicultural activities on the site and to implement specified corrective measures within a stated period of time. Such special orders are to be issued only after a hearing with reasonable notice to the owner or operator, or both, of the time, place and purpose thereof, and shall become effective not less than five days after service as provided in this section. The commencement of proceedings by the Forestry Administrator for the issuance of a special order shall not impair the authority of the Forestry Administrator to issue an emergency special order pursuant to this subsection. The Forestry Administrator shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner or operator, to affirm, modify, amend or cancel such emergency special order. The Forestry Administrator shall not issue a special order to any owner or operator who has incorporated generally acceptable sediment control and stormwater management techniques and guidelines developed by the Forestry Administrator, which techniques have failed to prevent pollution. If the Forestry Administrator determines that the pollution is the direct result of unusual weather events which could not have been reasonably anticipated.

#### §2981. Hearings, notices

Any hearing required under this section shall follow Title 29, Chapter 101, of the Delaware code, the Administrative Procedures Act.

#### §2982. Civil penalties

Any owner or operator who violates, fails or refuses to obey any special order may be assessed a civil penalty by the Forestry Administrator. Such penalty shall not be less than \$200.00 or more than \$2,000.00 for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of assessing penalties. The Superior Court shall have jurisdiction of the offenses brought under this subsection. In determining the amount of the penalty, consideration shall be given to the owner's or operator's history of noncompliance, the seriousness of the violation, including any irreparable harm to the environment, any hazards to the health or safety of the public, whether the owner or operator was negligent, and the demonstrated good faith of the owner or operator in reporting and remedying the pollution. A civil penalty may be assessed by the Superior Court only after the owner or operator has been given an opportunity for a hearing as specified under in §2981 of this Title. Any person who intentionally, knowingly and after written notice to comply, violates or refuses to comply with any notice issued pursuant to this chapter shall be fined not less than \$500.00 or more than \$10,000.00 for each offense. Each day the violation continues shall constitute a separate

offense. The Superior Court shall have jurisdiction of offenses brought under this subsection.

#### §2983. State program

In carrying out this chapter, the Forestry Administrator may, in cooperation with appropriate municipal, county, State and Federal agencies, and with representatives from operators and owners groups:

- (1) Develop and publish sediment control and stormwater management techniques and guidelines for use by owners and operators;
- (2) Provide technical and other assistance to owners and operators in the implementation of techniques and guidelines;
- (3) Conduct and supervise educational programs for owners and operators with respect to sediment control and stormwater management techniques and guidelines;
- (4) Conduct studies and research and publish the results regarding the causes, effects, and hazards of sediment and stormwater originating from silvicultural activities;
- (5) Cooperate with appropriate agencies of the United States or other states or any Interstate agency with respect to silvicultural activities; and
- (6) Establish a means of communication, such as a newsletter, so that information regarding program development and implementation can be distributed to interested owners and operators.

#### SYNOPSIS

This legislation amends Chapter 40, §4002 (3) Title 7, Delaware Code by deleting the word silvicultural. It also creates a new subchapter VI, Chapter 29, Title 7, placing the authority of protecting the state water's from pollution by sedimentation and erosion resulting from silvicultural activities under the Forestry Administrator.

Author: Sen. Adams

DELAWARE STATE SENATE  
137TH GENERAL ASSEMBLY  
SENATE BILL NO. 395

INTRODUCED: JUN 14, 1994  
SIGNED: JUL 11, 1994

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

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

Section 1. Amend §4015 of Title 7, Delaware Code by deleting the phrase "§4013(d)(2)" as it  
appears in said section and replacing said phrase with the phrase "§4012".

SYNOPSIS

This Bill would correct the reference in the penalties section of Chapter 40 of title 7 to the proper section.

Author: Sen. Adams

DELAWARE STATE  
HOUSE OF REPRESENTATIVES  
137TH GENERAL ASSEMBLY  
HOUSE BILL NO. 268  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1  
INTRODUCED:  
SIGNED: JUL 7, 1995

AN ACT TO AMEND CHAPTER 40, TITLE 7 OF THE DELAWARE CODE RELATING TO STORM WATER PLAN APPROVALS FOR WORK ON OR ADJACENT TO A STATE RIGHT-OF-WAY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend §4005(b) of Title 7, Delaware Code by adding the following after the last sentence thereof:

"In addition, the Department of Transportation is authorized to act as the designated plan approval agency in those situations where a public utility engages in land-disturbing activity for which a permit is required because of a project initiated by the Department of Transportation, subject to the following provisions:

(1) If the land-disturbing activity takes place on an existing right-of-way of the Department of Transportation, that Department is permitted to assess and collect a fee for this purpose which shall not exceed \$125 per acre, with a \$250 minimum.

(2) If the land-disturbing activity takes place adjacent to but not upon an existing right-of-way of the Department of Transportation, the fee contemplated in paragraph (1) above is waived."