

MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: 2004 Proposed Revisions to the
Delaware Sediment and Stormwater Regulations

DATE: January 4, 2005

I. Background:

On April 20, 2004, a public hearing was held in the DNREC Auditorium in Dover to receive comment on the Department's proposed revisions to the Delaware Sediment and Stormwater Regulations. The Sediment and Stormwater Program of the Department held a series of workshops in the fall of 2003 to explain and discuss the draft proposed changes to these Regulations. Comments were solicited from the community by the Department regarding same at that time as well.

This rule making procedure represents a culmination of a process which began in February of 2001 when the Department convened a regulatory advisory committee to assist in the implementation of proposed changes to these regulations. Subsequent to the Start Action Notice being filed in August of 2001, the first public workshop was held in October of 2002. Additional comment and response periods occurred between October of 2002 and April 2003, at which time the Division received their legal review concerning these proposed revisions. In

November of 2003, several optional public review workshops were once again held to further discuss the draft regulation with the public. On March 1, 2004, the proposed amendments were forwarded to the Register of Regulations, and the actual public hearing was held on April 20, 2004.

No public comments were entered into the record at the time of the public hearing on April 20, 2004. However, as a result of Department's solicitation for public input regarding this rulemaking, there were written comments received and incorporated into the record from the public in both the pre-hearing and post-hearing phases of this rulemaking process. Those comments will be addressed further within this Memorandum. Proper notice of the hearing was provided as required by law.

II. Summary of Record:

The aforementioned proposed revisions involve various modifications to Delaware's current Sediment and Stormwater Regulations. It should be noted that these regulations will no longer cover silvicultural activities, due to a recent change in Delaware law at the legislative level. Also, many of the proposed revisions reflect the Department changing their terminology from a "permit" to a "plan approval". If adopted, these revisions would result in the Department having a greater degree of flexibility for new land development projects to be considered for approval, as well as for the design criterion with regard to existing water quality requirements. Additionally, a new definition for

“Green Technology Practices” has been added to the already existing suite of “Best Management Practices” to better implement the Department’s conservation design efforts in Delaware.

Section 10 of these Regulations, Specific Design Criteria and Minimum Standards and Specifications, is where the majority of the proposed revisions have been made. The following list highlights those revisions as contained within that section:

- Existing language has been changed to reflect the most current version of the Erosion and Sediment Control Handbook.
- Proposed language will indicate the Department’s preference to minimize the water quantity and water quality impacts due to land disturbing activity, as to mimic predevelopment hydrology to the maximum extent practicable in regards to the rate, volume, and duration of flow.
- The methodologies in the current Regulations refer to the Soil Conservation Service. They have since changed their name to the Natural Resource Conservation Service, and so the language has been modified to reflect that name change. Moreover, as new methodologies with regard to technical releases become available, language has been added to allow the Department to adopt those methods.

- With regard to the Department's desire to best address small frequent rainfall events within its Water Quality goals, the following proposed revisions should be noted:
 - The removal of the preference for ponds and proposal to use, where possible and practicable, the Department's new Green Technology Best Management Practices (i.e., utilization of the best practice that fits the particular site involved).
 - Rather than using an inch of run-off for the water quality design form, the Department now proposes to use a two-inch rainfall event, up to a maximum of one inch of run-off.
 - Department shall consider alternative design practices that allow for removal efficiency of 80% total suspended solids.
 - The adoption of additional requirements, such as total maximum daily load, or other such criteria.
 - Language to allow the Department to accept some water quality type practices which may be better suited to a particular land use, and the responsibility of the Department for maintaining documentation as to how to design these types of practices.
 - Language to allow the Department or plan approval agency to review specific water quality practices in the Sediment and Stormwater Management Program, and to allow them to

either approve or deny same based on design criteria specified in this section of the regulations.

Other notable revisions proposed at this time include changing all of the appropriate language in Section 11 from “general permit criteria” to “standard plan”, again, to avoid confusion with EPA’s general permitting process. Also, under subpart “D” of this section, the word “institutional” has been added to allow projects where the total disturbed area will be less than one acre. In the past, this was limited to a half acre. The Department now proposes to enlarge this area to an acre, which is the threshold level where EPA takes over with their construction activities permit.

With respect to the comments received by the Department concerning these proposed amendments, there was public input at both the pre-hearing and post-hearing phases of this rulemaking process. The pre-hearing comments consisted of a November 24, 2003 letter from Adam Stern, P.E., of Applied Water Management, Inc., and a Memorandum dated April 16, 2004 from the Kent County Department of Planning Services. Both of these written comments were submitted as a result of the Department’s solicitation for input on the draft proposed changes. Applied Water Management’s comments were merely clarification suggestions regarding the proposed regulations. The Kent County Planning Staff recommended the adoption of the proposed regulatory changes.

