

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Chapter 40 (7 **Del.C.** Ch.40)
7 **DE Admin. Code** 5101

EMERGENCY

SECRETARY'S ORDER NO: 2016-WS-0029

Pursuant to Senate Bill 253 with Senate Amendment 2

5101 Sediment and Stormwater Regulations

AUTHORITY

Pursuant to Senate Bill 253 with Senate Amendment 2 (SB 253 W/ SA 2), signed by the Governor on June 24, 2016, which amends Title 7, Chapter 40 of the Delaware Code, the Department of Natural Resources and Environmental Control (Department) will continue to utilize the previously-adopted 2016 Emergency Delaware Sediment & Stormwater Regulations, (7 **DE Admin Code** 5101) that incorporates the April 2016 Technical Document. In addition, the Department will apply the new provisions in SB 253 W/ SA 2, to review and approve Sediment and Stormwater Management Plans, pending promulgation of comprehensive new regulations currently being developed by the Department and the Regulatory Advisory Committee (RAC).

REASON FOR THE ORDER

SB 253 W/ SA 2 adds provisions to 7 **Del.C.** Ch. 40 that will be incorporated into Del. Administrative Code 5101 Sediment and Stormwater Regulations. However SB 253 W/ SA 2 waives the Administrative Procedures Act limitation that emergency regulations are only effective for up to 180 days, thereby allowing the emergency regulations to remain in effect while the Regulatory Advisory Committee continues to develop proposed changes to the regulations and supporting technical documents. The RAC will make recommendations for incorporation of these elements of SB 253 W/SA 2 into the regulations prior to promulgation of the comprehensive new regulations. These comprehensive new regulations will comply with the Regulatory Flexibility Act (29 **Del.C.** Ch. 104) as specifically directed by SB 253 W/SA 2. Therefore, during the interim period, the Department and its Delegated Agencies will utilize the previously-adopted 2016 Emergency Delaware Sediment & Stormwater Regulations incorporating by reference the April 2016 Technical Document, in addition to the new provisions in SB 253 W/ SA 2, to review and approve Sediment and Stormwater Management Plans. The new provisions in SB 253 W/ SA 2 allow applicants seeking approval for a Sediment & Stormwater Plan to:

- Continue to utilize standards established in the 2016 emergency regulations until new comprehensive regulations are adopted;
- Use alternative methodology for determining the Resource Protection Event runoff volume (RPv);
- Use additional BMPs that are determined to be functionally equivalent to existing BMPs under existing emergency regulations;
- Utilize standard plans for agricultural structures, including poultry houses, that disturb less than 10 acres;
- Exempt residential construction projects that disturb less than one acre from post construction stormwater management requirements; and
- Allow plans approved after the effective date of SB 253 W/ SA 2 and this order to be valid for five years.

EFFECTIVE DATE OF ORDER

This Order shall take effect at 12:01 AM on June 25, 2016 and shall apply to all activities subject to these regulations as of June 25, 2016, and shall remain in effect until the Department formally adopts comprehensive new regulations pursuant to the APA.

ORDER

It is hereby ordered, the 25th day of June 2016 that the above referenced 2016 Emergency Delaware Sediment & Stormwater Regulations with the April 2016 Technical Document, along with the new provisions in SB 253 W/ SA 2, are adopted and supported by the evidence contained herein.

A copy of the 2016 Emergency Delaware Sediment & Stormwater Regulations and the April 2016 Technical Document can be viewed at the following link:

<http://regulations.delaware.gov/register/may2016/emergency/19%20DE%20Reg%20963%2005-01-16.htm>

David S. Small, Secretary

20 DE Reg. 87 (08/01/16) (Emer.)