

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 17 WATER MANAGEMENT

Chapter 01 Erosion and Sediment Control

Authority: Environment Article, §4-101, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. (1) — (12). (text unchanged)

B. (13) “Grading unit” means the maximum contiguous area allowed to be graded at a given time.[For the purposes of this chapter, a grading unit is 20 acres or less.]

B. (14) — (30). (text unchanged)

.08 Approval or Denial of Erosion and Sediment Control Plans.

A.— E. (text unchanged)

F. (1) Approved erosion and sediment control plans remain valid for [2] 3 years from the date of approval, except surface mines and landfill plans, which remain valid for 5 years from the date of approval.

F. (2) — G. (text unchanged)

.09 Inspection and Enforcement.

A.— C. (text unchanged)

D. The appropriate enforcement authority shall inspect sites with an approved erosion and sediment control plan [an average of once every 2 weeks] for compliance with the approved plan.

E. — J. (text unchanged)

COMAR 26.17.01.11 Sediment Control Design Standards and Specifications.

A. The handbook titled “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control” is hereby incorporated by reference by the Administration, and shall serve as the official guide for erosion and sediment control principles, methods, and practices.

Currently, Page A.5 reads, in part:

4.

In order to realize these goals, the establishment of grading units is required. As defined by regulations, a grading unit is the maximum contiguous area allowed to be graded at a given time and is limited to 20 acres. Requiring adherence to a maximum disturbed area on a project will limit mass grading, improve phasing and sequencing, and encourage timely stabilization.

A project is to be sequenced so that grading activities begin on one grading unit at a time. Work may proceed to a subsequent grading unit when at least 50 percent of the disturbed area in the preceding grading unit has been stabilized and approved by the enforcement authority. Unless otherwise specified and approved by the approval authority, no more than 30 acres cumulatively may be disturbed at a given time. Any activity pursuant to and in compliance with Title 15 Mines and Mining of the Environment Article or Title 9, Section 204 pursuant to sanitary landfills, as defined by COMAR 26.04.07.02(.26) is exempt from the grading unit restriction.

Proposed to read:

In order to realize these goals, the establishment of grading units may be required. As defined in regulations, a grading unit is the maximum contiguous area allowed to be graded at a given time and can be established on a site specific basis. Requiring adherence to a maximum disturbed area on a project will limit mass grading, improve phasing and sequencing, and encourage stabilization.

If a project is to be sequenced to minimize mass grading and total disturbed area, grading activities should begin on one grading unit at a time. Work may proceed to a subsequent grading unit when at least 50 percent of the disturbed area in the preceding grading unit has been stabilized and approved by the enforcement authority. The approval authority may determine the size of each grading unit, and the overall cumulative earth disturbance at any one time during construction. Any activity pursuant to and in compliance with Title 15 Mines and Mining of the Environment Article or Title 9, Section 204 pursuant to sanitary landfills, as defined by COMAR 26.04.07.02(.26) is exempt from the grading unit restriction.

Response to Comments on

Proposal to amend Regulations .01, 08.09, and .11 under COMAR 26.17.01 Erosion and Sediment Control

Background

On January 20, 2017, the Maryland Department of the Environment (Department) proposed to amend the Erosion and Sediment Control regulations to amend the definition of “grading unit,” extend the time period an approved sediment control plan is valid, eliminate the requirement that sites be inspected once every two weeks, and update the handbook entitled “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control” (Standards), which is incorporated by reference in COMAR 26.17.01.11. Public comments on the proposed amendments were accepted through February 21, 2017. The Department received written comments from a coalition of environmental organizations, Waterkeepers Chesapeake, the Prince George’s Soil Conservation Board of Supervisors, the Maryland Building Industry Association, and the Utility-Scale Solar Energy Coalition of Maryland. The following summarizes the comments by regulation with the Department’s responses.

Comments and Responses

COMAR 26.17.01.01 Definitions.

B. (13) “Grading unit” means the maximum contiguous area allowed to be graded at a given time. [For the purposes of this chapter, a grading unit is 20 acres or less.]

COMMENTS: The Department received five comments regarding a regulatory change to remove the 20 acre criterion from the grading unit definition. Two commenters from the environmental community were in opposition, stating that:

MDE established the maximum 20-acre grading unit for construction sites to limit larger earth disturbances that are more likely to cause sediment pollution. This was a reasonable step because even sediment pollution runoff from a grading unit less than 5-acres in size can be detrimental and is much higher than expected, according to the USGS...Given this, it would not be prudent for MDE to remove the maximum acreage requirement all together.

One commenter from the plan review authority was neutral stating that:

The proposed changes remove the numerical cap from the definition of a “Grading Unit” and places the responsibility of regulating this limit on a per County and per case basis. This change, if passed, can be implemented within the current District program on the basis of project scope, development type, topography, existing natural features and soil formations. Limits can be imposed and enforced for such cases with highly erodible soils, existing sensitive features and steep topography, among others.

Two commenters from the development community were in favor, stating that:

The current regulation limited land disturbances to 20 acre sections regardless of the size of the parcel. Development projects, large projects specifically, have needed to grade large areas at one time in order to complete work in a shorter time frame. Otherwise grading operations may take years instead of months and will result in an increased risk of releasing sediment.

RESPONSE: The Department's final decision is to remove the 20 acre criterion from the grading unit definition. Removing the 20 acre reference will allow Soil Conservation Districts and the Department the flexibility needed to approve plans for large construction projects. Some construction and linear road construction projects can result in disturbances greater than 20 acres. Limiting projects to a 20 acre grading unit can result in an unnecessary, extended construction schedule. The Department and local regulatory authority will have the flexibility to appropriately address these individual situations.

COMAR 26.17.01.08 Approval or Denial of Erosion and Sediment Control Plans.

F. (1) Approved erosion and sediment control plans remain valid for [2] 3 years from the date of approval, except surface mines and landfill plans, which remain valid for 5 years from the date of approval.

COMMENTS: The Department received five comments regarding a regulatory change to extend plan approvals from 2 to 3 years. Two commenters from the environmental community were in opposition, stating that:

Conditions on-site are capable of changing over time, which is why there is an expiration date on these plan approvals. Plans must be based on current conditions, and extending the plan for another year increases the likelihood that conditions have changed.

One commenter from the plan review authority was in opposition stating that:

This change could result in a 30-40% revenue reduction for Maryland Soil Conservation Districts...[and]...reduced services provided to the development community...The second critical aspect of this proposed change relates to...the comprehensive project site review and evaluation required at the shorter two (2) year cycle allows for both the inspections/ enforcement programs and the District to essentially take stock of a project and provide the necessary guidance and direction earlier in the development process to rectify sometimes significant deficiencies.

Two commenters from the development community were in favor, stating that:

[Commenter] believes that extending the valid time period from 2 to 3 years for approved sediment control plans is a positive step. It allows projects that

have been halted for good reasons, such as bad weather, more time to reach completion.

RESPONSE: The Department’s final decision is to extend plan approval length from 2 to 3 years. This will provide developers with greater flexibility in starting and completing projects. There is no evidence that a shorter approval period leads to greater environmental protection. Indeed, other water quality permits for surface mines and landfills are for 5 years. This change will also better align the validation date of the sediment control approval with the local building and grading permit approvals.

COMAR 26.17.01.09 Inspection and Enforcement.

D. The appropriate enforcement authority shall inspect sites with an approved erosion and sediment control plan [an average of once every 2 weeks] for compliance with the approved plan.

COMMENTS: The Department received five comments regarding a regulatory change to eliminate the mandated two-week inspection frequency. Two commenters from the environmental community were in opposition, stating that:

Our most significant concern is repealing the requirement in section .09 (Inspection and Enforcement) to inspect sites with an approved sediment and control plan an average of once every two weeks. There is no scientific basis cited to justify removing these inspection requirements. Weakening inspection requirements also weakens the incentive to follow erosion control procedures and put in important erosion control mechanisms. MDE needs to ensure the cost to pollute and the chances of getting caught remain high.

One commenter from the plan review authority was opposed stating that:

A recurring documented deficiency issue from the Maryland Department of the Environment’s (MDE) programmatic review of the delegated authorities for inspections and enforcement relates to inspectors not being current with the progress of construction on their sites...It goes without saying, that a removal of the requirement for a site visit within a reasonable designate timeframe will result in inspections and enforcement efforts and resources being skewed towards more high profile or “demanding” sites and leaving the others to their own whims with little or no oversight.

Two commenters from the development community were in favor, stating that:

The proposed action...would...eliminate bi-weekly site inspection requirements. [Commenter] supports these changes as they will ease operating costs while still promoting land stewardship.

RESPONSE: The Department's final decision is to eliminate the mandated two-week inspection frequency. Eliminating the requirement that sites be inspected once every two weeks allows the counties and the Department to prioritize workloads according to need and focus on those sites that require greater attention. In addition to State law and regulation, construction projects that disturb one acre or more are also subject to federal pollution control requirements, which are implemented by the Department. The General Permit for Stormwater Associated with Construction Activity requires that, for construction sites that disturb one acre or more, site operators must conduct their own erosion and sediment control inspections once a week and after every storm event. These inspections must be documented in a log book, which is reviewed by the Department's inspector during unannounced site inspections.