



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Maryland Department of the Environment Stormwater Management Regulations Expiration of Administrative Waivers – Further Clarification & Illustrative Example October 2015

MDE previously issued a guidance document in August 2015 meant to clarify the Department's interpretation of the expiration of administrative waivers as it relates to construction completeness for stormwater management practices. A number of stakeholders have asked for further clarification, which is difficult due to broad authority over local stormwater management programs rightfully exercised by county and municipal agencies. Their authority includes decisions regarding construction completeness and administrative waivers.

MDE will not review nor intervene on individual projects for the purposes of determining if administrative waivers have been applied acceptably. This includes decisions made regarding construction completion. Project level decisions of whether construction is considered complete for this purpose will be left to the local jurisdiction. Each project is unique and local officials most familiar with the project details will need to exercise their own professional judgment to make the decision. MDE believes that its role is limited in these circumstances and defers to county authority to exercise professional judgment and make decisions on a case by case basis.

The Department has an oversight role to ensure that local stormwater management programs are administered acceptably. In this capacity, MDE has no authority to pass judgment on individual projects. However, each county will be evaluated individually on an overall programmatic basis. MDE will be reviewing administrative waiver policies to make sure that there are no instances of blatant misreading of statutory language. In addition, MDE's programmatic review will assess whether the decisions by the local jurisdiction have supporting information and justification in the record and that administrative waivers were issued and sustained appropriately.

The August 2015 guidance document provides an array of possibilities for local jurisdictions to work within. To further delineate the August 2015 guidance document an example of an acceptable grandfathered project is illustrated here.

Example: A project received an administrative waiver, which was secured by obtaining final approval in May of 2013. The construction schedule calls for completion of a sediment control trap that will be converted to a stormwater management structure, and submission of a partial as-built survey of the trap to the local jurisdiction by May 2017. No other work (mass grading, water and sewer utilities, storm drain lines, upland water quality control devices, roads, etc) will be completed at that time. The project was not redesigned since the administrative waiver was issued originally.

The Department would consider this interpretation as consistent with the intent and language of the waiver provision's use of the word "complete" as it relates to the expiration of administrative waivers. Additionally, some projects may not require a sediment control trap or basin but, based on the circumstances, may also be considered complete based upon the work that had been done thus far.

