



TECHNICAL MEMORANDUM #5

TO: Applicants and Designers for State and Federal Projects

FROM: Sediment and Stormwater Plan Review Division
Water and Science Administration

DATE: August 2, 2017

SUBJECT: **Determination of Approval Authority**

As the sediment control and stormwater management approval authority for State and federal projects, the Maryland Department of the Environment (MDE) reviews erosion and sediment control (ESC) and stormwater management (SWM) plans for all State and federal agencies, with the exception of the State Highway Administration that has been delegated approval authority. Most of the time an agency is working on its own property, but not always. There are instances when a State or federal agency is doing work on private or county property or a private developer or county is doing work on State or federal property. When a project involves a combination of private, county, State, or federal properties and developers, ownership of the land upon which the activity is occurring is not the sole factor in determining the approval authority. **Determination of approval authority is typically based on the developer, not the property owner.** If the party undertaking the work is a State or federal agency, the review typically falls to MDE regardless of who owns the property. For example, if the Maryland Department of Transportation (MDOT) were building a park and ride lot on county property, the approval authority would be MDE. Conversely, if a private entity or county were doing work on State or federal property, the review would typically fall to the local SWM and ESC approval authorities. For example, if Baltimore Gas and Electric (BGE), a non State/federal agency, were running utility lines or building a switching station on State/federal property to service the general public, such a project would be reviewed by the local approval authority. The exception is when an independent party is doing work for the benefit of a State/federal applicant on State/federal property. In these instances, the review typically falls to MDE. As an example, MDE reviews and approves BGE projects located on State/federal property that are being done for the benefit of a State/federal applicant. MDE will request that the owner/developer certification be signed by the State/federal applicant in addition to the developer. On occasion the certification will be broken into a separate owner certification and developer certification.

Although any local approval authority may make a written request to the MDE for a joint review of an erosion and sediment control plan, typically this does not occur, with the exception of State projects located in the Severn River Watershed that are also reviewed by the Anne Arundel Soil Conservation District for sediment control. When a private developer or county is working on State/federal property or a State/federal entity is working on private/county property, there are

agreements, reviews, and requirements made between the parties. This is separate from the approval authority's review and issuance of sediment and stormwater approval.

COMAR 26.17.01.05 reads:

B. A project that involves any combination of private lands, county lands, State lands, or federal lands, such as a utility right-of-way, requires the approval of the approval authority affiliated with the entity undertaking the activity or for whose benefit the activity is being undertaken.

Ownership of the land or lands upon which the activity is occurring is not to be the sole factor in determining the approval authority.

C. Any approval authority may make a written request to the Administration for a joint review of an erosion and sediment control plan.

Questions about this information or other items relating to sediment and stormwater plans can be directed to Amanda Malcolm amanda.malcolm@maryland.gov or Matthew Keenan matthew.keenan@maryland.gov.