

State Permit Number: WIPCC 3033/20

NPDES Permit Number: DE 00350217

Effective Date: DATE

Expiration Date: DATE

GENERAL PERMIT AUTHORIZATION FOR STORM WATER DISCHARGES FROM  
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
AND THE LAWS OF THE  
STATE OF DELAWARE

**PHASE II MS4 TIER II GENERAL PERMIT**

This General Permit is in compliance with the provisions of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (33 U.S.C. §§ 1251 et seq.) and pursuant to the provisions of Title 7, Del. C., § 6003.

This National Pollutant Discharge Elimination System (NPDES) General Permit covers discharges from newly identified small municipal storm water sewer systems (MS4s) located in the State of Delaware that are not currently covered under an individual MS4 permit issued by the Delaware Department of Natural Resources and Environmental Control (the Department) and that have not been granted a waiver.

Only small MS4s that submit a Notice of Intent (NOI) and a Storm Water Management Program Plan in accordance with the terms and conditions of this permit and obtain written authorization from the Department are authorized under this Tier II General Permit to discharge storm water to the waters of the State of Delaware.

\_\_\_\_\_  
Program Manager  
Surface Water Discharges Section  
Division of Water  
Department of Natural Resources and Environmental Control

\_\_\_\_\_  
Date Signed

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## Part I. Coverage under this General Permit

### A. Permit Coverage

This NPDES General Permit ([GP permit](#)) provides authorization for new regulated small municipal separate storm sewer systems (MS4s), defined at 40 C.F.R. §122.26(b)(16), located within the State of Delaware to discharge storm water into waterbodies of the State.

**Commented [ESB(1)]:** Previous comment not addressed: Should be consistent with Tier I and state "permit". Future locations have not been noted.

Small MS4 permittees are required under this Tier II GP to reduce the discharge of pollutants from its MS4 to the maximum extent practicable (MEP) and to meet the water quality requirements of the Clean Water Act (CWA) as applicable.

### B. Regulated Small MS4s

[MS4 owners or operators](#) Entities required to obtain coverage under this GP are those who own or operate, or have jurisdiction over an MS4 in the State of Delaware which are not currently covered under an existing NPDES MS4 permit issued by the State of Delaware Department of Natural Resources and Environmental Control (the Department) and:

1. Located in [whole or in part within urbanized areas](#) Urban Areas with populations greater than [50,000](#) as determined by the latest Decennial Census of the United States Census Bureau, or
2. Designated by the Department under the CWA and other associated regulations, or
3. By petition to and designation by the United States Environmental Protection Agency (US EPA).

**Commented [ESB(2)]:** Language should be updated per the EPA's final rule on Urban Areas.

### C. Obtaining Coverage

A regulated small MS4 in Delaware is authorized to discharge under this permit if:

1. The MS4 is not a large or medium MS4.
2. The MS4 submits a Notice of Intent (NOI) [and Storm Water Management Program \(SWMP\) Plan](#) and obtains written authorization to discharge from the Department.

**Commented [ESB(3)]:** Previous comment not addressed: Should be consistent with Tier I and not included here. In addition, the SWMP is submitted at a later date and not while obtaining initial coverage.

### D. Notice of Intent Process

MS4 owners and operators shall complete a NOI form and submit it to the Department. The NOI form is available at <https://dnrec.alpha.delaware.gov/water/surface-water/npdes/municipal-storm-sewers/>. The NOI shall be submitted to the Department within sixty (60) days of the Permit effective date (**DATE**).

Notices of Intent shall be submitted to the Department at the following address.

State of Delaware  
Department of Natural Resources and Environmental Control  
Division of Water/Surface Water Discharges Section/MS4 Program  
89 Kings Highway  
Dover, DE 19901

The Department may require future NOI submittals to be executed electronically in accordance with 40 CFR Part 127. Upon written notification from the Department all permittees and co-permittees shall transition to eNOI submission in lieu of hardcopy submittals. The eNOI shall be electronically signed.

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### E. Storm Water Management and Water Quality

The permittee shall write, implement, manage, and enforce a [Storm Water Management Plan](#) (SWMP) plan in accordance with the Clean Water Act and its implementing NPDES regulations, 40 C.F.R. §122.34(a) to meet the following requirements.

- 1) ~~Reduce pollutants to the maximum extent practicable to the MS4~~
- 2) 1) Effectively reduce pollutants in stormwater discharges or other unauthorized discharges into the MS4 as necessary to [achieve-comply with](#) Delaware's Surface Water Quality Standards to the maximum extent practicable. Comply with all other provisions and requirements contained in this General Permit.
- 3) 2) The SWMP plan shall include a list of all waters that receive a discharge from the MS4 owned or operated by the permittee, including the following information for each such receiving water.
  - a) The number of outfalls discharging to each [watershed-waterbody](#).
  - b) Designated uses of each [waterbody-watershed](#) which can be found on the Department's website at: <http://regulations.delaware.gov/AdminCode/title7/7000/7400/7401.shtml>
  - c) Whether the receiving watersheds are listed as impaired in the latest State of Delaware Combined Watershed Assessment Report (305(b)) and the Clean Water Act Section 303(d) List Waters Needing TMDLs which can be found on the Department's website at: <https://documents.dnrec.delaware.gov/swc/wa/Documents/2020%20Draft%20Delaware%20R%20with%20appendices.pdf>

If the watershed is included on the Combined Watershed Assessment Report as impaired, provide the following details:

- i. TMDL status or Pollutant Attainment Classification.
  - ii. Listing of relevant pollutant(s) or stressor(s) causing impairment.
  - iii. Probable source of pollutant(s) or stressor(s) (according to the 303(d) list).
  - iv. A description of the permittee's potential sources of relevant pollutants, including description of the sources, their locations, and any structural and nonstructural measures and Best Management Practices (BMPs) that are or can reasonably be taken to reduce their exposure or release to the MS4.
  - v. A summary of any pollution control strategies or watershed plans and strategies that have been developed for the waterbodies which can be found on the Department's website at: <https://dnrec.alpha.delaware.gov/watershedstewardship/assessment/plans-and-strategies/>
  - vi. ~~An estimate of costs to implement the BMPs.~~
  - vii. ~~A schedule for implementing the BMPs.~~
- d) The SWMP plan shall also include a statement describing what, if any, local public notice requirements apply to the applicant's storm water program, including the SWMP finalization, if applicable, including a:

**Commented [ESB(4)]:** Previous comment not addressed: Should be consistent with Tier I and spelled out, and also removed previous reference as deleted above.

**Commented [ESB(5)]:** Previous comment not addressed: Should be consistent with Tier I, which does not have this clause. Also is redundant with provision 2.

**Commented [ESB(6)]:** Previous comment not addressed: Should be consistent with Tier I.

**Commented [ESB(7)]:** Previous comment not addressed: Waterbody is not included in the definitions, but watershed is.

**Commented [ESB(8)]:** Previous comment not addressed: Tier II's are not required to implement BMPs.

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- a) Citation to any applicable public notice rules.
- b) Description of the process for notice and comment as described in the rule.
- c) Timeline for complying with the rule, which outlines total amount of time required to notice, allow for comment, respond to comments, revise and finalize the SWMP under the applicable rule so that the notice and comment part of the SWMP will be accounted for and completed in compliance with the deadline of this Permit.
- d) Attestation to the following statement with original signature of a person who is authorized to represent and legally bind the entity.

*"I certify under penalty of law this document and all attachments were prepared under my direction, or supervision, in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or person(s) directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."*

DRAFT

[Public Notice Draft Tier II General Permit: May 29, 2022](#)

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## Part II. Storm Water Management Program Plan

### A. Schedule for Implementing Plan for New Permittees

Upon Department approval of the NOI, the permittee shall develop and provide adequate resources to fully implement the SWMP plan according to the following submission deadlines.

1. An initial draft SWMP plan consisting of an outline of the basic program elements shall be submitted to the Department for review within six (6) months of the permit effective date. The Department will provide comments and recommendations on the SWMP plan within 60 days of the receipt from the permittee.
2. The final comprehensive SWMP plan shall be submitted to the Department within twelve (12) months of the permit effective date and after receiving a review response from the Department.

This Tier II General Permit includes milestones for developing the SWMP plan that shall be implemented prior to finalization of the SWMP plan. A table of milestones is listed in Appendix A.

### B. General Requirements

The permittee shall develop a strategy to meet its measurable goals and a schedule of implementation for the [minimum control measures \(MCMs\)](#) described in Section D below. The measurable goals strategy shall include the following three components:

1. the activity or BMP to be completed.
2. a schedule or date of completion.
3. a quantifiable target to measure progress toward achieving the activity or BMP.

The permittee shall also provide the contact information for one person who is primarily responsible for implementing and/or coordinating the storm water management program.

The SWMP plan shall span the entire term of this permit and shall be reviewed and updated as needed, but no less than annually to maintain accuracy, ~~and as required by the Department.~~ [The Documentation of the](#) review process and any updates shall be included in the annual report.

### C. Small MS4s Working Together as Co-Permittees

~~Small municipalities with limited resources for implementing some of the required MCMs. Permittees~~ have an option to be a co-permittee with ~~neighboring other~~ regulated MS4 permittees. This could help ~~small~~ MS4 permittees by sharing their resources to gain operational and cost efficiencies. The process for establishing a co-permittee relationship is with a Memorandum of Understanding (MOU) or other contractual and legally binding agreement. The MOU ~~must shall~~ be appended to ~~the NOI and~~ the ~~final~~ SWMP Plan.

1. When two or more entities have decided to enter into a co-permittee relationship, each co-permittee shall deal in good faith with its co-permittee(s), including developing and abiding by the terms of a legal document that clearly defines each co-permittee's responsibilities.
2. If a co-permittee's compliance with this permit is at risk because another co-permittee is failing to meet the terms of the MOU in a timely manner, the at-risk co-permittee(s) shall amend or terminate the MOU ~~and fulfill the requirements of this permit in a timely manner on its own or in conjunction with any remaining co-permittee(s), whichever scenario enables the permittees to comply with the permit.~~ Co-permittees will each be required to maintain the conditions of this permit as agreed upon in the MOU.

**Commented [ESB(9)]:** Previous comment not addressed: Needs to be defined, and to be consistent with Tier I.

**Commented [ESB(10)]:** Previous comment not addressed: Should be consistent with Tier I.

**Commented [ESB(11)]:** Previous comment not addressed: A co-permittee relationship should not be limited to small municipalities that are neighboring. The section should be made more generic.

**Commented [ESB(12)]:** Previous comment not addressed: Should be consistent with Tier I, which does not mention the NOI. Further, the MOU will not be developed in time to be appended to the NOI.

**Commented [ESB(13)]:** Previous comment not addressed: The permittee that has completed their requirements of the MOU should not be responsible for the permit requirements of the failing permittee. If the MOU is a legally binding document, DNREC should seek enforcement measures on the failing permittee. As written, it does not benefit to enter a MOU if you are subject to take on the responsibilities, potentially at the last second, of a failing permittee.

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#### D. Minimum Control Measures

There are six Minimum Control Measures (MCMs) that comprise the SWMP. The permittee will demonstrate compliance with this permit through the submission of an annual report due to the Department by July 1 of each year.

##### 1. Public Education and Outreach

The permittee shall develop, implement, and maintain a written public education and outreach program and distribute educational materials to the community, and relevant employees, and contractors about the consequences of polluted storm water runoff. The materials must provide actions the public can take to reduce pollutants from entering the storm water system. Examples of educational materials include web pages, brochures, booklets, and training programs. The education and outreach program may be coordinated with other portions of the permittee's MS4 program or developed independent of other pollution control efforts. The program shall be designed to achieve measurable improvements in the public's understanding of the causes and impacts of storm water pollution and the actions they can take to prevent pollution. Permittees are encouraged to work with other MS4 permittees, especially those located in the same watershed, when educating the public.

**Commented [ESB(14)]:** Previous comment not addressed: Should be consistent with Tier I.

Implementation of activities performed to achieve measurable goals shall be recorded and documented in each annual report. In addition, the program shall be revised as necessary to achieve progress with identified goals. The education and outreach program should shall be integrated with other program elements and adjusted to address issues brought to the permittee from the public and from lessons learned in implementing other program elements.

**Commented [ESB(15)]:** Previous comment not addressed: Should be consistent with Tier I.

To comply with this MCM, the permittee shall:

- a. Within **90 days** of the Permit effective date (**by DATE**), establish a process by which the public can report water quality complaints that must include a 24-hr hotline phone number.
- b. Determine the target audience(s) within the MS4 jurisdiction and develop materials to educate the audience(s) on the impact of storm water pollution. These topics may include water conservation, chemical application on lawns and landscaping, proper car wash procedures, proper disposal of paint and other household hazardous waste, recycling and trash pick-up, and proper pet waste disposal.
- c. Within **one (1) year** of the Permit effective date (**DATE**), conduct one educational event or campaign per year that may include distributing educational materials describing the impacts of storm water pollutant discharges on waterbodies and methods of reducing storm water pollution. Materials may be distributed through newsletters, websites, or other appropriate methods, radio or television public service announcements, or other events that will reach the target audiences. Submit examples of educational material to the Department as part of the annual report. If using websites with webpage tracking capabilities, report the number of page views to help determine the effectiveness of outreach efforts.
- d. Within **six (6) months** of the Permit effective date (**by DATE**), develop and implement an annual employee training program that addresses topics to prevent or reduce the discharge of storm water pollution into the MS4. Submit topics selected and attendee list to the Department as part of the annual report.
- e. Describe in annual reports how the education programs complement and strengthen other requirements in the MS4 permit.

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## 2. Public Involvement and Participation

Permittees are required to create opportunities for public participation and encourage citizens to engage in the MS4 management program for controlling storm water discharges. Examples of activities that involve the public include stewardship activities such as adopt-a-stream programs, stream clean-ups, litter pickup days, public surveys, storm drain marking, volunteer water quality monitoring, tree plantings, and other pollution prevention events.

This program may be coordinated with other portions of the permittee's MS4 program or developed independent of other pollution control efforts. Permittees are encouraged to work with ~~neighboring other~~ MS4 permittees when involving and engaging the public to participate in the SWMP.

The permittee shall develop, implement, and maintain a public involvement and participation program. The permittee shall provide program updates in the annual report.

To comply with this MCM, the permittee shall:

- a. Develop, implement, and maintain a written public involvement and participation program which promotes and provides participation activities available to the community and describes the methods on encouraging the public's involvement and input.
- b. Determine the target audiences within the MS4 jurisdiction to promote public involvement and participation activities. Identify key individuals and groups - public and private, who are interested in or affected by the SWMP plan.
- c. Specify activities appropriate for each of the target audience groups and promote participation through the permittee's website, print media, and other methods.
- d. ~~Comply with all State and federal public notice requirements for any regulated activity associated with this permit.~~
- e.d. Within **one (1) year** of the permit effective date (by **DATE**), perform two public participation activities each year and submit a summary of the activity and number of participants in the annual report.
- f.e. Provide public access to the permittee's MS4 annual reports on a website or by request and consider incorporating substantive public comments received when updating and implementing, and/or making improvements to the SWMP plan.

## 3. Illicit Discharge Detection and Elimination (IDDE)

The permittee is required to develop, implement, manage, and enforce a program to detect and eliminate illicit discharges into the MS4. The program shall include a plan to detect and eliminate non-storm water discharges, including illegal dumping and spills, to the MS4. The permittee shall provide program updates in the annual report.

Unless identified by the permittee as a significant source of pollutants to waters of the State, the following non-storm water discharge categories are allowed to enter the MS4:

- water line flushing
- landscape irrigation
- diverted stream flows

**Commented [ESB(16)]:** Previous comment not addressed: Why neighboring? Using Camden and Smyrna as an example: They are not neighboring but why couldn't they develop a public survey together, or cost share on a "only rain down the drain" elementary school program, or other initiative(s)?

**Commented [ESB(17)]:** Previous comment not addressed: Does not make sense to have to public notice all public participation events. What if working with a specific school? This requirement is not in current MS4 permits.

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- rising groundwaters
- uncontaminated groundwater infiltration
- uncontaminated pumped groundwater
- discharges from potable water sources
- foundation drains
- air conditioning condensate
- springs
- water from crawl space pumps
- footing drains
- lawn watering
- individual residential vehicle washing
- flows from riparian habitats and wetlands
- dechlorinated swimming pool discharges
- street wash water (discharges or flows from firefighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

To comply with this MCM, the permittee shall:

- a. Within **two (2) years** of the permit effective date (**by DATE**), develop and maintain a map(s) of the regulated MS4 that identifies all storm water conveyances, outfalls, storm water management structures and waters of the State that receive storm water discharges from the MS4. In the development of mapping, verify outfall locations and map new conveyances, outfalls and storm water management structures as they are constructed or newly discovered within the regulated MS4 area.
- b. Within **one (1) year** of the permit effective date (**by DATE**), develop and adopt an ordinance or other regulatory means to implement and enforce a program that includes the prohibition of non-storm water discharges to the MS4.
- c. Develop, maintain, implement, and enforce a written Illicit Discharge Detection and Elimination (IDDE) program that shall include the following elements:
  - 1) Within **two-one (21) years** of the permit effective date (**by DATE**), develop and implement procedures for identifying priority areas that have a higher likelihood of illicit discharges, illicit connections, or illegal dumping. Areas to examine include older infrastructure, historical high-risk activities, and areas with higher incidence of spill or illicit discharge history.

**Commented [ESB(18):** Previous comment not addressed: I believe all the Tier II have their infrastructure mapped already in anticipation of the permit. The mapping should be moved up in timeframe so that it is available for the program elements that utilize the mapping, such as the IDDE.

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2) Develop and implement ~~a written dry weather field outfall~~ screening program to assist in detecting and eliminating illicit discharges. ~~Dry weather field screening must consist of field screening of outfalls and, as needed, field evaluations. Starting in the first second (42) year of the permit effective (by DATE), the permittee shall conduct dry weather field screening for 20% of different outfalls each year. Prioritize field screening work based on the identified areas of higher likelihood of discharges.~~

~~a. The screening program shall include a schedule and methodology to evaluate at least 20% of the permittee's storm sewer system per year, using mapping and water quality data, to determine areas with high potential for illicit discharges and improper disposal. Dry weather screening and field evaluation activities shall be conducted in these areas.~~

~~b. Develop written procedures to determine which outfalls will receive dry weather screening based on results of field observations, complaints from the public, or investigations from the permittee's trained field staff. When visual observations indicate a potential problem such as discolored flows, foam, surface sheen, and other similar indicators of contamination, the permittee shall sample and analyze for selected indicator pollutants that are defined in the written procedures. Any field evaluations shall be included in the annual report.~~

2)3) Establish a system for identifying the source of an illicit discharge when a contaminated flow is detected at an outfall and establish procedures for eliminating an illicit discharge when possible. The annual report shall include the written procedures, sample report template, and a summary of all reported illicit discharges including incident description reported, date, response actions, follow-up actions, and enforcement actions.

3)4) Establish a legal mechanism for gaining access to private properties to inspect outfalls and investigate illicit connections or discharges. Examples of mechanisms include, town/city ordinances, land easements, and search warrants.

4)5) Record all outfall inspections including flows observed, results of screening and testing, follow up investigations, and corrective actions taken to ~~eliminate reduce~~ illicit discharges. Written procedures shall document the evaluation and assessment of this program element.

5)6) Establish a system for addressing public reporting of illicit discharges or other related complaints and procedures to inform employees, businesses, and the general public of the hazards associated with illegal discharges and improper waste disposal.

6)7) Within ninety (90) days of the Permit effective (by **DATE**), the permittee shall develop procedures to recognize and report any sanitary sewer overflows or leaking on-site sewage disposal systems that discharge into the small MS4 and submit those procedures to the Department for review and approval.

For any SSO that enters the MS4 or that has the potential to impact the MS4, a written report shall be provided to the Department's Surface Water Discharges Section at the address noted in this permit within **five (5) days** of the release. This notification shall contain the following information:

- a) a description of the discharge, including an estimate of the amount ~~discharged,~~ and the cause ~~of non-compliance.~~
- b) the period of discharge, including the dates and times and if the discharge has not

**Commented [ESB(19)]:** Previous comment not addressed: The outfall screening should not start before the mapping of the outfalls has been completed (currently IDDE is in year 1, and mapping is in year 2). In addition, it is expensive to start an IDDE program as either a consultant needs to be hired or staff needs to be trained and water quality testing equipment purchased, and a laboratory coordinated with for testing. Additional time should be given to establish these parameters.

**Commented [ESB(20)]:** Previous comment not addressed: Request to utilize wording as written in the 2013 Phase I Permit, as this allows for the permittee to weed out highly unlikely outfalls, such as one that collects highway runoff with no adjacent residential, commercial, or industrial use.

**Commented [ESB(21)]:** Previous comment not addressed: Should be consistent with Tier I

**Commented [ESB(22)]:** Previous comment not addressed.

**Commented [ESB(23)]:** Previous comment not addressed: Should be consistent with Tier I.

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been corrected, the anticipated time when the discharge will be eliminated, and the system will return to normal operation.

- c) actions taken or to be taken to reduce, eliminate, and prevent recurrence of the discharge.

#### 4. Construction Site Storm Water Runoff Control

The permittee shall develop and implement a Construction Stormwater Management Program. All local regulatory mechanisms shall be reviewed and updated in accordance with Title 7 Delaware Code Chapter 40. Modifications or updates to state and/or federal regulations shall be implemented as required to maintain compliance with this permit. The permittee shall modify and update its SWMP plan to meet all the requirements of the updated Delaware Sediment and Stormwater Regulations.

The permittee shall implement and enforce a program to reduce the discharge of pollutants from

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active construction sites that result in land disturbance of greater than 5,000 square feet. The permittee may fulfill this requirement through a cooperative agreement with a Delegated Agency in accordance with Delaware Administrative Code 5101, Sediment and Stormwater Regulations. If the permittee chooses to rely on a Delegated Agency, it shall indicate this in the SWMP plan and submit a copy of the cooperative agreement to the Department within **one (1) year** of the permit effective date (**by DATE**). The permittee shall ensure that the fully executed cooperative agreement with the Delegated Agency clearly describes each of the participants' responsibilities to coincide with 40 CFR Part 122 and that the cooperative agreement is appended to the SWMP plan.

To comply with this MCM, the permittee shall develop, maintain and enforce a program that, consistent with Delaware Sediment and Stormwater Regulations, shall include:

- a. Requirements for the review and approval of Sediment and Stormwater Plans to ensure compliance with standards in the Delaware Sediment and Stormwater Regulations and Special Conditions for Storm Water Discharges Associated with Construction Activities (7 Del. C. Ch. 60). The Delegated Agency will review and approve Sediment and Stormwater Plans, inspect that a copy of the Sediment and Stormwater Plan along with the Construction General Permit and Construction Site Reviewer weekly inspection reports are on every construction site, and document inspections.
- b. Requirements for the use and maintenance of appropriate structural and nonstructural sediment and erosion controls and other BMPs to reduce polluted discharges to the MS4 during the time when construction is underway. The Delegated Agency will inspect the construction and maintenance of critical stages to verify compliance with the approved plans [7 DE Admin. Code 5101 Section 6.0]. Critical stages of construction include the installation of critical structures including, but not limited to, outfalls, sediment basins, vegetative stabilization, and inlets.
- c. Requirements and procedures for the inspection and enforcement of sediment and erosion controls and BMPs during construction to ensure that polluted runoff from the construction site is not occurring during active construction, and enforcement if necessary. The permittee may enter into an agreement with the Delegated Agency that outlines the responsibility of the Delegated Agency to ensure that Certified Construction Reviewer (CCR) and Inspector's reports are available on construction sites along with the Construction General Permit. Information on inspections shall be included in the annual report.
- d. Requirements for construction site operators to control wastes such as discarded construction or building materials, concrete truck washout, chemicals, litter, oil, and sanitation waste in consideration of potential water quality impacts. The permittee shall review plans to ensure that pollution prevention measures are included in the Sediment and Stormwater Plan that is maintained on-site and that CCR inspections include pollution prevention measure reviews consistent with this requirement. The annual report shall include a summary of plans reviewed, pollution prevention inspections, and enforcement actions taken.
- e. Requirements to ensure adequate training of site contractor in accordance with the current Delaware Sediment and Stormwater Regulations (DE Admin Code 5101) and Special Conditions for Storm Water Discharges Associated with Construction Activities (7 Del. C. Ch. 60).
- f. Inspection requirements to ensure that BMPs are properly constructed and installed. Ensure CCRs are on site during critical stages of BMP construction and BMP Construction Checklists are completed and submitted to the Delegated Agency. Submit a summary of inspections in the annual report.
- g. Validation that the Delegated Agency is performing these actions appropriately throughout

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the MS4 jurisdiction in accordance with the cooperative agreement.

- h. Development and adoption of an ordinance or other regulatory mechanism for enforcing compliance with this section within **two (2) years** of the permit effective date (**by DATE**).
- i. Procedures for receipt and consideration of information submitted by the public.

The permittee shall report the following activities associated with this MCM in the Annual Report:

- a. number of Sediment and Stormwater Management Plans reviewed.
- b. number and type of actions that resulted in compliance.
- c. percent of active construction sites inspected once.
- d. percent of active construction sites inspected more than once.
- e. percent of active construction sites with Sediment and Stormwater Management Plans located on-site.
- f. number of construction sites authorized for disturbances of one acre or more
- g. summarize CCR training records including topic of training, date and hours of training and names of trainees, and
- h. effectiveness of the program and assessment of E&S BMP procedures.

#### 5. Post Construction Storm Water Management

The permittee or delegated agency shall develop and implement a Post-Construction Stormwater Management Program. All local regulatory mechanisms shall be developed or updated in accordance with [Title 7 Delaware Code Chapter 40](#). Any modifications or updates to the Delaware Sediment and Stormwater Regulations shall be implemented as required. The permittees shall develop and implement a SWMP plan to meet all the requirements of the [updated Delaware Sediment and Stormwater Regulations](#).

The permittee is required to maintain an acceptable SWMP plan in accordance with Delaware Administrative Code 5101, Sediment and Stormwater Regulations to reduce the discharge of pollutants from post construction BMP facilities. The permittee may fulfill some of their requirements under this MCM through a cooperative agreement with a Delegated Agency in accordance with Delaware Administrative Code 5101, Sediment and Stormwater Regulations. If the permittee chooses to rely on a Delegated Agency, it shall indicate this in the SWMP plan and submit a copy of the cooperative agreement to the Department within **one (1) year** of the permit effective date (**by DATE**). The permittee shall ensure that the fully executed cooperative agreement with the Delegated Agency clearly describes each of the participants' responsibilities to coincide with 40 CFR Part 122 and that the cooperative agreement is appended to the SWMP plan.

To comply with this MCM, the permittee shall develop, maintain, and enforce a program that, consistent with Delaware Sediment and Stormwater Regulations, shall include the following requirements:

- a. A procedure to address any amendments to applicable State or federal regulations that may become effective during the term of this permit.
- b. [Procedures to conduct annual visual inspections of all stormwater management systems](#)

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**Commented [ESB(24)]:** Previous comment not addressed: Should be consistent with Tier I, and is unnecessary.

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owned or maintained by the permittee and development of a maintenance program to prioritize repairs. A summary of the inspections and repairs performed shall be submitted in the annual report.

- c. The permittee shall identify and map all stormwater management systems which may discharge to the MS4 and each year conduct a **comprehensive visual** inspection of **at least 40% a representative sample** of these stormwater management systems, **which are not looked at by another MS4 permittee** in such a manner as to ensure proper function. A summary of the inspections and findings shall be submitted in the annual report. All stormwater management systems **which are not looked at by another MS4 permittee** are to be inspected in this manner at least once in the term of this permit.
- d. Within **three (3) years** of the Permit effective date (**by DATE**), develop and implement a program to address post-construction runoff from new development and redevelopment projects to ensure adequate long-term operation and maintenance of stormwater management systems in accordance with 7 DE Admin. Code 5101 Section 7.0.
- e. A program to ensure **appropriate** staff are **appropriately** trained in proper BMP design, performance, inspection, and routine maintenance.

#### 6. Pollution Prevention and Good Housekeeping

Permittees are required to develop and implement an operations and maintenance program to prevent and reduce pollutant runoff from municipal operations in accordance with 40 CFR § 122.34(b)(6). The permittee will satisfy this MCM by developing, implementing, and maintaining procedures for pollution prevention and good housekeeping at permittee owned or operated facilities, including municipal operations and activities within the regulated MS4 area.

To comply with this MCM, the permittee shall:

- a. Ensure that appropriate staff and contractors receive training at least annually. The training must be designed to reduce or eliminate the discharge of pollutants during municipal operations. Training may include in-person, online, on-the-job, or other formats, and the permittee may build on existing training activities to fulfill this requirement. Trainings may be coordinated with other MS4 permittees, where appropriate. Topics must include spill prevention and response, proper disposal of waste, and how to conduct periodic visual inspections to detect and correct potential discharges at properties owned or operated by the permittee. Details of trainings, including date, topic, and attendees, shall be included in the annual report.
- b. Within **two (2) years** of the permit effective date (**by DATE**), develop and implement a good housekeeping plan for permittee owned or operated properties that could contribute to the discharge of pollutants from the MS4. Properties include buildings, roadways, parks, and other locations where the following activities are performed: vehicle or heavy equipment maintenance, storage and use of deicers, fertilizers, pesticides, road maintenance materials, litter or debris, petroleum products or hazardous materials. A standard plan may be created to address multiple properties where similar activities are conducted.

The plan must include:

- 1) A description of site activities.
- 2) A list of potential pollutants including their sources and locations on the site. The plan must consider conveyance of storm water entering, flowing through and leaving the site.
- 3) Written good housekeeping procedures designed to prevent the discharge of pollutants into the permittee's MS4 that includes regular visual inspections to detect potential

**Commented [ESB(25)]:** Previous comment not addressed: This differs from the Tier I wording and should be made consistent.

**Commented [ESB(26)]:** Previous comment not addressed: Should be consistent with Tier I.

**Commented [ESB(27)]:** Previous comment not addressed: Clarity needs to be added. If another MS4 is providing annual inspections per item "a" above, then this should not be required as it will be redundant and a waste of resources.

**Commented [ESB(28)]:** Previous comment not addressed: At minimum appropriate needs to be added to staff. Finance staff do not need to know proper BMP design and maintenance.

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discharges and any maintenance requirements, with all outfalls and stormwater facilities inspected at least once each permit term.

- 4) Written procedures for corrective actions to address any release, spill, or leak on site.
  - 5) Documentation of any discharge, release, leak, or spill, including the date, findings of investigation, and response actions.
- c. Within **three (3) years** of the permit effective date (**by DATE**), quantify and report pollution prevention efforts related to the following activities.
- 1) Permittees that own, operate, or maintain roads shall develop a street sweeping program which shall be described within the SWMP. Permittees must ~~either develop a science-based street sweeping program that demonstrates by research, modeling, or otherwise appropriate scientific literature that substantiates the adequacy for pollutant removal and improved water quality, or sweep all curbed streets with stormdrains under the jurisdiction of the permittee a minimum of one time annually.~~ The SWMP shall also describe procedures for the proper disposal of street sweeping debris and waste. All street sweeping activities should be summarized in an annual report and include information about size, location, and frequency, of area swept. ~~All curbed streets with storm drains owned or operated by the permittee shall be swept a minimum of four times annually, weather and surface conditions permitting, unless and until it is demonstrated that pollutant removal and improved water quality would be adequately achieved otherwise.~~
  - 2) If the permittee's MS4 contains catch basins, the permittee shall maintain ~~a risk-based program to prioritize catch basin inspection and maintenance. Permittees may use analysis of past data, weather patterns, public complaints, and observations incidental to other field operations to prioritize catch basin inspections so long as this analysis is included in the SWMP a catch basin program that ensures routine cleaning and maintenance of catch basins.~~ A map of the locations of catch basins and a summary of the volume of solids removed and maintenance performed to comply with this permit shall be included in the annual report. All catch basins must be inspected and maintained as necessary and at a minimum of once during the term of this permit.
- d. Within **three (3) years** of the Permit effective date (**by DATE**), develop and implement standard operating procedures for the following activities if applicable.
- 1) Pesticide/herbicide application, storage, and disposal such as integrated pest management plans or alternative techniques.
  - 2) Fertilizer application, such as chemical storage, landscaping with low maintenance/native species, and application procedures.
  - 3) Snow and ice control, such as use of pretreatment, truck calibration and storage, and salt dome storage and containment.
  - 4) Prevention and control of litter and floatables that could enter the MS4. ~~Examples- Program activities may include marking and maintaining storm drain inlets, inspecting and litter collection of streams and waterbodies, household hazardous waste collection, municipal composting programs, street curb maintenance and sidewalk sweeping. Provide an analysis of the progress toward implementing litter reduction strategies in the Annual Report. The analysis shall describe the status of trash elimination efforts including resources (e.g. personnel and financial) expended and the effectiveness of all program components.~~
- e. ~~Each permittee shall maintain a list of properties owned or operated by the Permittee that are covered under the State of Delaware's NPDES General Permit for Storm Water Discharges.~~

**Commented [ESB(29)]:** Previous comment not addressed: Allowing either a science based approach or a minimum prescribed effort will provide flexibility to those that are starting out and just want to know the minimums and for those that have complex systems that may want to purpose other strategies. If not, as currently written, the minimum all curbed streets being swept 4x per year goes against a science based approach which focuses higher AADT/heavy landuse curbed streets greater than 4x/year, but subdivision curbed streets only 1x/year, for example.

**Commented [ESB(30)]:** Previous comment not addressed: Should be consistent with Tier I.

**Commented [ESB(31)]:** Previous comment not addressed: Previous comment not addressed: Should be consistent with Tier I.



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~~Associated with Industrial Activities (7201 Section 9.1). The permittee shall ensure that each property has a copy of the NOI and Storm Water Plan onsite and complies with the Plan and State regulations. Provide an update in the annual report if the status of industrial activity permit coverage changes for any property.~~

f.e. Consider incorporating runoff reduction techniques and green infrastructure in the routine upgrade of existing storm water conveyance systems and municipal properties. Examples may include replacement of closed drainage with grass swales, replacement of existing

**Commented [ESB(32):** Previous comment not addressed: This was removed from Tier I and should be removed from Tier II.

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islands in parking lots with rain gardens or curb cuts to route the flow through below-grade infiltration areas or other low-cost improvements that provide runoff treatment or reduction.

### Part III. Program Evaluation and Assessment, Recordkeeping, Reporting and Program Review

#### A. Evaluation and Assessment

The permittee shall assess and evaluate the BMPs described in the SWMP plan. The assessment is the process of evaluating the actual BMP's effectiveness. The evaluation is conducted to determine whether the BMP is performing as intended to achieve its water quality goals as defined in the SWMP plan. In this evaluation, the permittee shall consider the appropriateness of the BMPs and whether other or additional BMPs would be more effective in pursuing those goals. If, as a result of the evaluation, the permittee determines that additional or other BMPs could advance the SWMP plan toward the goals more effectively, the permittee shall incorporate those BMPs into its SWMP plan. Assessment and evaluation activities shall be documented in the annual report as defined in this part, section C below.

#### B. Recordkeeping

The permittee shall keep records for at least 3-5 years after the expiration of this permit. In addition to the information required in MS4 annual reports specified below, permittees must submit any additional supporting documentation at the request of the Department. The permittee shall make its MS4 program information, including records, available to the public during regular business hours.

#### C.B. Reporting

The permittee shall prepare and submit an annual report. The annual report shall document the activities, and BMPs best practices implemented by the permittee to demonstrate compliance with this General Permit.

If more than one entity is permitted via the same written NOI authorization to discharge under this permit, one comprehensive annual report shall be submitted with input from each principal and co-permittee. The permittee(s) shall submit the annual report to the Department's Surface Water Discharge Section no later than **July 1<sup>st</sup> of each year** after issuance of written NOI authorization to discharge and shall describe all activities related to this permit during the preceding calendar year. The permittee shall include a summary of the data documenting compliance with this permit in the annual report.

All permittees are jointly responsible for timely submittal of the system-wide annual report, and each section addressed within the annual report shall identify individual tasks along with the jurisdiction responsible for performing them. The annual report shall indicate any missing information. Each permittee is responsible for the content of the report related to those portions of the MS4 for which it is responsible, as determined in the MOU.

The permittee shall include a summary of the data documenting its/their compliance with this permit in the annual report, in addition to one "MS4 Summary Report Form" per permittee which is available on the Department website at:

[https://documents.dnrec.delaware.gov/wr/Information/SWDInfo/Documents/Draft%20Appendix%20B.%20Summary%20Report%20\(1\).pdf](https://documents.dnrec.delaware.gov/wr/Information/SWDInfo/Documents/Draft%20Appendix%20B.%20Summary%20Report%20(1).pdf)

#### D.C. Program Review

The Department will review all annual reports and other documentation to assess the permittee's compliance with this permit. Additional reviews, inspections, and audits of MCM implementation and

**Commented [ESB(33)]:** Previous comment not addressed: This section should be removed in its entirety as it is redundant to Part IV, Section J "Retention of Records". Entire paragraph should be removed. Mark-ups are provided in case it is not removed.

**Commented [ESB(34)]:** Previous comment not addressed: Should be consistent with Tier I which has 5 years.

**Commented [ESB(35)]:** Previous comment not addressed: Previous MS4 permits, and also the Industrial Permit regulations, only require records to be kept for 5 years, not 5 years after the permit expiration. If Section B is kept, the language should be updated to reflect 5 years, which is also the way Part IV, Section J "Retention of Records" is worded.

**Commented [ESB(36)]:** Previous comment not addressed: Should be consistent with Tier I.

**Commented [ESB(37)]:** Previous comment not addressed: Should be consistent with Tier I.

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other permit requirements may be conducted at any time by the Department to determine compliance with permit conditions.

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#### Part IV. Standard Permit Conditions

##### A. Legal Authority

The permittee shall maintain the legal authority to implement the programs outlined in the SWMP plan as stated in the NOI.

##### B. Duty to Comply

The permittee shall comply with all conditions of this permit. All discharges authorized herein shall be consistent with the terms and conditions of this permit. The violation of any condition specified in this permit shall be grounds for enforcement as provided in 7 Del. C. §6005; for loss of authorization to discharge pursuant to this permit; for permit revocation and reissuance or modification pursuant to this permit; or for denial of a permit renewal application. Pursuant to 7 Del. C. §6019, the Department may, in its discretion, seek voluntary compliance by way of warning, notice of violation, or technical assistance, as appropriate.

##### C. Alternative Compliance Clause

Non municipal permittees who do not have the authority or ability to fulfill all permit requirements may request alternative protocols for compliance with those specified elements, such as a cooperative agreement with other agencies. Such requests should be made in writing to the Surface Water Discharges Section, Richardson and Robbins Building, 89 Kings Highway, Dover DE 19901. The department will review the request and provide a written determination of exemptions and/or alternative compliance arrangements within 30 days.

##### D. Facilities Operation

The permittee shall at all times maintain in good working order and operate efficiently all structural controls and other best management practices, facilities, systems, and related appurtenances installed or used by the permittees to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance include, but ~~is-are~~ not limited to, effective performance based upon design, adequate funding, effective management, adequate operator staffing and training, and appropriate quality control procedures.

**Commented [ESB(38)]:** Previous comment not addressed: Should be consistent with Tier I.

##### E. Removed Substances

The permittee shall dispose of solids, floatables, litter, sludges, backwashes, or other similar substances that are removed in the course of storm water infrastructure maintenance or in the course of collection or treatment of the discharges authorized herein in a manner such as to prevent any pollutant from such materials from entering surface waters or groundwaters. All removed substances must be properly disposed of in accordance with applicable State and federal regulations.

##### F. Availability of Reports

Except for data determined to be confidential under Section 308 of the Act and the Freedom of Information Act, all reports prepared in accordance with the terms and conditions of this permit shall be available for public inspection at the offices of the Department. As required by the Act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for under 7 Del. C. § 6013.

##### G. Test Procedures

Analyses of pollutants shall conform to the applicable procedures identified in 40 C.F.R., Part 136, unless otherwise specified in this permit.

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#### H. Penalties for Tampering

State law, 7 Del. C. §6013, provides that any person who falsifies or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall upon conviction, be punished by a fine of not less than \$500 nor more than \$10,000 or by imprisonment for not more than six (6) months, or by both.

#### I. Record Contents

For each measurement or sample taken pursuant to the requirements of this permit, the permittee taking such sample shall record the following information:

1. the date, exact place, time, and method of sampling or measurements.
2. the individual(s) who performed the sampling or measurements.
3. the date(s) analyses were performed.
4. the individual(s) who performed each analysis.
5. the analytical techniques or methods used.
6. the results of such analyses.
7. any quality assurance information.

#### J. Retention of Records

The permittee shall retain all records and information resulting from the activities required by this permit as well as any voluntary monitoring records including all records of analyses performed, records of calibration and maintenance of instrumentation, all original strip chart recordings from continuous monitoring instrumentation, and copies of all reports required by this permit for a period of **three five (35) years**. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee. The permittee shall make records available to the Department within the timeframe specified by the Department at the time of request.

**Commented [ESB(39)]:** Previous comment not addressed: Should be consistent with Tier I.

#### K. Transfer of Permit

In the event of any change in ownership or control of facilities covered by this permit from which the authorized discharges emanate, this permit may be transferred to another entity if all of the following elements apply.

1. The current permittee notifies the Department, in writing, of the proposed transfer at least 30 days in advance of the proposed transfer date.
2. The notice includes a written agreement between the transferor and the transferee, indicating a specific date for transfer of permit responsibility, coverage, and liability.
3. Within **thirty (30) days** of receipt of the notification of the proposed transfer, the Department does not notify the current permittee and the new permittee of intent to modify, revoke and reissue, or terminate the permit and require that a new application be submitted.

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#### **L.** **Reapplication for a Permit**

The permittee shall submit a new NOI within 60 days of the expiration of this permit unless permission for a later date has been granted in writing by the Secretary. Failure to submit an application for renewal within this period may cause a lapse in permit coverage and also may result in enforcement action. In the event that the Department is unable, through no fault of the permittee, to issue a new permit before the expiration date of this permit, the terms and conditions of this permit are automatically continued through an administrative extension and remain fully effective and enforceable until the Department issues a new permit.

**Commented [ESB(41)]:** Previous comment not addressed: Tier II should have a requirement to reapply for a permit at the conclusion of this permit as does Tier I.

#### **L.M.** **Permit Modification, Revocation and Reissuance, and Termination**

This permit may be modified, revoked and reissued, or terminated for cause, including but not limited to violation of any terms or conditions of this permit; obtaining this permit by misrepresentation or failure to disclose all relevant facts; or a change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

#### **M.N.** **Right of Entry**

The permittee shall allow the Secretary, the EPA Regional Administrator, or their authorized representatives, jointly and severally, upon the presentation of credentials and such other documents as may be required by law:

1. to enter upon the premises of the permittee where a regulated facility or activity is located or conducted, or where any records are required to be kept under the terms and conditions of this permit.
2. at reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit; to inspect any structural controls, collection, treatment, pollution management, or discharge facilities required under this permit; and to sample any discharge.

Failure to allow access or provide records in accordance with this provision constitutes a violation of the permit for which enforcement actions may be taken.

#### **N.O.** **Duty to Provide Information**

The permittee shall furnish to the Department or the EPA, during normal business hours, any requested information to determine compliance with this permit. The permittee shall also furnish, upon request, copies of records required to be kept by this permit [40 CFR 122.41(h)]. The permittee shall submit records to the Department within 30 days or a timeframe specified by the Department upon time of request.

#### **O.P.** **Signatory Requirements**

The permittee shall sign all applications, annual reports, the SWMP, certifications or other information required by this permit, whether submitted to the Department or maintained by the permittee, as follows:

1. by a principal executive officer or ranking elected official; or
2. a duly authorized representative of that person. A person is a duly authorized representative only if:
  - a. the authorization is made in writing by the principal executive officer or ranking elected official

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and is submitted to the Department and

- b. the authorization specifies ~~either an individual or~~ a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or ~~an individual or~~ position having overall responsibility for environmental matters. ~~A duly authorized representative may thus be either a named individual or any individual occupying a named position.~~

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For purposes of this paragraph, the principal executive officer of a federal, state, or public agency includes: (i) the chief executive officer of the agency (e.g., Cabinet Secretary); or (ii) a senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency (e.g., the Regional Administrator of EPA).

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, the permittee must submit a new notice satisfying the requirements of this paragraph to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative no later than 30 days prior to the date of the next due deliverable.

**Commented [ESB(43)]:** Previous comment not addressed: Permittees should not have to send a notice when a person retires from a position and an incumbent is hired. That should merely be an update in the annual report. This is an obscure requirement leading to failure (ie, will be forgotten about). I could see the need if the permittee wants to change the position title that has been duly authorized. Ie, a municipality may request their Director of Public Works to be allowed to sign off on all documentation. If the Director of Public Works moves on and someone else becomes the new Director that shouldn't require formal notification. However, if the municipality now wants the Assistant Director of Public Works or the Director of Finance to sign off on documentation then that should require notification.

#### **P.Q. Civil and Criminal Liability**

Nothing in this permit shall be construed to relieve the permittee from administrative, civil, or criminal penalties for noncompliance.

##### **1. Penalties for Falsification of Reports**

Section 309(c)(4) of the CWA provides that any person who knowingly makes a false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance, shall upon conviction, be punished by a fine of not more than \$10,000 as adjusted by law for inflation or by imprisonment for not more than two years or by both.

##### **2. Penalties for Violations of Permit Conditions**

Part 309 of CWA provides significant penalties for any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any such section in a permit issued under CWA Section 402. Any person who violates any permit condition of this permit is subject to a civil penalty not to exceed \$27,500 as adjusted by law for inflation per calendar day of such violation, as well as any other appropriate sanction provided by Section 309 of CWA.

##### **3. Any person who violates 7 Del. C. Chapter 60 or any rule or regulation duly promulgated thereunder, or any permit condition or any order of the Secretary, shall be subject to the appropriate civil and administrative penalties pursuant to 7 Del. C. §6005 or criminal penalties pursuant to 7 Del. C. §6013.**

#### **Q.R. Discharge of Pollutants**

Any person who causes or contributes to the discharge of a pollutant into waters of the State or the United States either in excess of any conditions specified in this permit or in absence of a specific permit condition, shall report such an incident to the Department as required under 7 Del. C. §6028.

#### **R.S. Oil and Hazardous Substance Liability**

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee(s) is/are or may be subject under 7 Del. C. Chapter 60.

#### **S.T. Fiscal Resources**

The permittee shall provide the appropriate resources, including but not limited to finances, staff, equipment, and support capabilities, to comply with this permit, including but not limited to implementation of the SWMP plan. The permittee shall include in each annual report a demonstration of sufficient fiscal capability meets permit requirements.

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**T.U. Construction Authorization**

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

**U.V. Property Rights**

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, State, or local laws or regulations.

**V.W. State Laws**

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation.

**W.X. Severability**

The provisions of this permit are severable. If any provision of this permit is held invalid, the remainder of this permit shall not be affected. If the application of any provision of this permit to any circumstance is held invalid, its application to other circumstances shall not be affected.

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## Part VI. Definitions

**"Act"** means the Federal Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or the Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub.L. 95-217, Pub.L. 95-576, Pub.L. 96-483, Pub.L. 97-117, Pub. L. 100-4 (the Water Quality Act of 1987), Pub. L. 100-688, Pub. L. 100-581, Pub.L. 102-580, Pub. L. 102-240; 33 U.S.C. 1251 §§ *et seq.*

**"Best Management Practices"** (BMPs) means activities, prohibitions of activities, procedures, structures, and other means to prevent or reduce the discharge of pollutants. BMPs may also include treatment requirements, operating procedures and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs can be applied before, during or after pollution generating activities to reduce or eliminate the introduction of pollutants into receiving waters.

**"C.F.R."** means the Code of Federal Regulations.

**"Catch basin"** means a depression, trench, or pit, which is a collection point for drainage, either water or spilled oil, that which provides a means of containment for and prevents the uncontrolled discharge of the collected liquid from a facility or oil storage area.

**"Co-Permittee"** refers to the entity that is applying for coverage under the Phase II MS4 General Permit in combination with another entity or entities, which own or operate a MS4.

**"Delegated Agency"** means the Conservation District, county, municipality, or State agency that has accepted responsibility in a jurisdiction for implementation of one or more elements of the Sediment and Stormwater Program as part of the Delaware Sediment and Stormwater Regulations 7 Del. Admin Code 5101, within that jurisdiction.

**"Department"** means the State of Delaware Department of Natural Resources and Environmental Control.

**"Discharge"** for the purpose of this permit, when used without qualification, refers to the discharge of a pollutant.

**"Discharge of a Pollutant"** means any addition of any pollutant, or combination of pollutants, to State Waters.

"Dry Weather" means when no more than 0.1 inches of rainfall has occurred in the previous 24-hour period and no significant snow melt is occurring.

**"Existing Permittee"** means any permittee that has been operating under a Phase II MS4 Permit issued by the Department.

**"Illicit Discharge"** means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except that which is sanctioned by a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and that which results from firefighting and other activities listed in Part II.D.3 of this permit.

**"Maximum Extent Practicable"** for the purpose of this general permit, means using measures that are capable of being done after taking into consideration cost, feasibility, existing technology, and logistics in light of overall facility operations and project purposes.

**"Minimum Control Measures"** refers to the six programmatic elements that are expected to result in the reduction of the discharge of pollutants in receiving waters. The programmatic elements include: (1) Public Education and Outreach, (2) Public Involvement and Participation, (3) Illicit Discharge Detection and Elimination, (34) Storm Water Management during Construction, (45) Post-Construction Storm

**Commented [ESB(44)]:** Previous comment not addressed: Should be consistent with Tier I.

**Commented [ESB(45)]:** Previous comment not addressed: A definition of dry weather should be included so all IDDE methodologies are using consistent analysis.

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Water Management, ~~and (56) Pollution Prevention and~~ Good Housekeeping/Pollution Prevention, ~~and (6) Public Involvement.~~

"MS4" means a Municipal Separate Storm Sewer System.

**Commented [ESB(46)]:** Previous comment not addressed: Names should match the naming convention in the permit.

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**"Municipal Separate Storm Sewer"** means: (1) a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, pipes or storm drains) owned or operated by a city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over the disposal of sewage, industrial waste, storm water, or other wastes, storm water management, drainage or flood control, which is: (2) designed or used for collecting or conveying storm water; (3) not a combined sewer; and (4) not part of a publicly owned treatment works as defined at 40 C.F.R. § 122.2.

**"Outfall"** means a *point source* as defined by 40 C.F.R. § 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

**"Permittees"** refers to all of the entities listed on the Notice of Intent and may include individual permittees and co-permittees.

**"Person"** means any individual, trust, firm, corporation (including a government corporation), partnership, association, institution, enterprise, state, municipality, commission, agency, political subdivision of a state or an interstate body, or an agent or employee thereof.

**"Point Source"** means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

**"Pollutant"**, for the purpose of this general permit, means any substance, which causes or contributes to, or may cause or contribute to, the degradation of water, air, and soil resources or to the health of humans, animals, or aquatic life. Examples may include, but are not limited to excess nutrients, chemicals, toxic substances, industrial, municipal or agricultural wastes, etc.

**"Pollution"** or **"Water Pollution"** means the man-made or human-induced alteration of the physical, chemical, biological or radiological integrity of any State waters.

**"Redevelopment"**, including brownfield development, means any construction, alteration or improvement, including, but not limited to, the demolition or building of structures, filling, grading, paving, or excavating, where existing land use is residential, commercial, industrial, or institutional. Ordinary maintenance activities, remodeling of existing buildings, resurfacing of paved areas, and exterior changes or improvements are not considered to be redevelopment activities for the purposes of this general permit.

**"Secretary"** means the Secretary of the State of Delaware Department of Natural Resources and Environmental Control.

**"Storm Water"** means storm water run-on or runoff, snow melt runoff, surface runoff and drainage.

["Stormwater management systems" means vegetative, structural, and other facilities or measures, singularly or in combination, as defined in DE Admin. Code 5101 Section 11.0, that provide stormwater management.](#)

**Commented [ESB(47)]:** Previous comment not addressed: Should be consistent with Tier I

**"Structural controls"** means installed or constructed curbs, dikes, berms, walls, sheds, impervious pads, ditches, diversions or other structures which limit the contribution or transport of significant materials and pollutants to storm water.

["Surface Water Quality Standards" means the Delaware Surface Water Quality Standards as amended and as subsequently revised and incorporated by reference \(7 Del. C. §7401\).](#)

**Commented [ESB(48)]:** Previous comment not addressed: Definition should be listed alphabetically, not at the end.

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**SWMP** means Storm Water Management Program as required by 40 C.F.R. § 122.34(a).

**"Total Maximum Daily Load"** (TMDL) is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

**"Waters of the State"** or **"State Waters"** means all water, on the surface and under the ground, wholly or partially within, or bordering the State of Delaware, or within its jurisdiction including but not limited to:

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- (a) Waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean.
- (b) All interstate waters, including interstate wetlands.
- (c) All other waters of the State, such as lakes, rivers, streams, (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sandflats, wetlands, sloughs, or natural or impounded ponds.
- (d) All impoundments of waters otherwise defined as Waters of the State under this definition.
- (e) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a)-(d). Waste and storm water treatment systems that would otherwise meet this definition are not "Waters of the State" or "State Waters".

**"Watershed"** means the land area that drains water to a particular stream, river, or lake.

~~**"Surface Water Quality Standards"** means the Delaware Surface Water Quality Standards as amended and as subsequently revised and incorporated by reference (7 Del. C. §7401).~~

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**Appendix A: SWMP Development Milestones**

**Phase II MS4 Tier II General Permit**

**Schedule of MS4 Storm Water Management Program Element Milestones**

**Permit Effective Date: TBD**

Program Element	Milestone Date	Notes
Notice of Intent Due	<b>DATE</b>	60 days after permit effective date
<b>Public Education Program Elements</b>		
Spill Hotline	<b>DATE</b>	90 days - Reporting Procedures and Spill Hotline posted on website
Employee Training	<b>DATE</b>	6 months - Complete one employee pollution prevention/illicit discharge identification and reporting training event per year. The Department will provide first training event
Education Outreach	<b>DATE</b>	One year - Conduct one public education outreach event on pollution prevention/illicit discharge identification and reporting. One event shall be conducted each year thereafter.
<b>Public Participation</b>	<b>DATE</b>	One year - Conduct two public participation events on pollution prevention. Examples are storm drain stenciling, stream cleanups, Adopt-a-Storm Drain, rain barrel programs, volunteer educator/speakers for public workshops. Two events shall be conducted each year thereafter.
<b>Illicit Discharge, Detection and Elimination Program</b>		
Sanitary Sewer Overflow Procedures	<b>DATE</b>	4 months - Develop and implement procedures for locating and reporting sanitary sewer overflows that may affect the MS4 system
Adopt an IDDE Ordinance	<b>DATE</b>	One year - Develop and adopt a storm water ordinance prohibiting illicit discharges including enforcement authority.
Mapping MS4 Conveyance System	<b>DATE</b>	<del>2-1 years</del> - map all inlets, conveyance piping and outfalls, including waterbodies receiving the discharges
High Priority Area for Illicit Discharges	<b>DATE</b>	2 years – identification of high priority areas of illicit discharges
Dry Weather Outfall Screening	<b>DATE</b>	<del>1-2 years</del> - develop a priority list of high-risk outfalls and screen 20% of these each year.
<b>Construction Activities</b>		
Delegated Agencies	<b>DATE</b>	1 year - have an agreement in place with a delegated agency for oversight of construction activities or apply to become a delegated agency
Ordinance	<b>DATE</b>	2 years - develop and adopt a sediment and storm water ordinance to provide authority for inspections and enforcement of State Sediment and Stormwater regulations.

**Commented [ESB(49):** As previously commented on – the mapping needs to occur before screening.

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<b>Post Construction Activities</b>		
Delegated Agencies	<b>DATE</b>	1 year - have an agreement in place with a delegated agency for oversight of construction activities or apply to become a delegated agency
Ordinance	<b>DATE</b>	2 years - develop and adopt a sediment and storm water ordinance to provide authority for inspections and enforcement of State Sediment and Stormwater regulations.
<b>Pollution Prevention and Good Housekeeping</b>		
Municipal Properties	<b>DATE</b>	2 years - identify all municipal properties that may contribute pollutants to the MS4 or state waterbodies. Submit an NOI for facilities subject to NPDES industrial stormwater regulations.
Standard Operating Procedures	<b>DATE</b>	3 years - develop procedures and implement good housekeeping programs to include, street sweeping, inlet catch basin cleaning, snow and ice removal, pesticides, herbicide and fertilizers and litter control.
<b>Other Milestones</b>		
Complete draft SWMP Plan	<b>DATE</b>	6 months- submit a draft SWMP plan to the Department for review and recommendations.
Review of SWMP Plan	<b>DATE</b>	60 Days - The Department shall submit review comments to the permittee within 60 days of receipt of the draft plan.
Final SWMP Plan	<b>DATE</b>	12 months – Submit Final SWMP plan to the Department within 12 months of the permit effective date.
Annual Reports	<b>DATE</b>	2 years – submit annual reports documenting the progress of the storm water management program each year by July 1.
Extensions	<b>DATE</b>	The milestones in this table may be extended based on the conditions of the MS4 operator. Extension requests must be submitted to the Department for approval.



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## Appendix B: NPDES MS4 Designation Criteria

### EPA designation criteria suggestions:

- Discharge to sensitive waters;
- High population density;
- High growth or growth potential;
- Contiguity to a UA;
- Significant contributor of pollutants to waters of the United States; and
- Ineffective protection of water quality concerns by other programs.

### Delaware Designation Criteria:

A National Pollutant Discharge System (NPDES) Municipal Storm Sewer System (MS4) permit encompasses a multi-faceted program that aims to control urban stormwater runoff pollution. In Delaware, New Castle County, the Delaware Department of Transportation, the City of Wilmington, the City of Delaware City, the City of New Castle, the Town of Elsmere, the Town of Newport and the Town of Bellefonte are is the only large regulated Phase I MS4, with smaller regulated Phase II MS4s in the remaining urbanized areas. By federal regulation, small MS4s are designated in one of three ways. The first is as described in 40 CFR § 122.32(a)(1), an automatic designation by the EPA. This designation is based on population density and location within an Urbanized Areas defined by the US Census Bureau's decennial census data. The second is as described in 40 CFR § 123.35(b), where the permitting authority, the Delaware Department of Natural Resources and Environmental Control (DNREC), develops a process and criteria to regulate additional entities that do not qualify for the automatic designation. The third allows the general public to petition the State or the EPA to designate an entity as a regulated MS4 and require permit coverage.

As required by regulation, DNREC has developed the following criteria to use when an entity does not qualify for automatic designation. These criteria consider population, environmental factors, growth rates and impervious cover, and have been adopted to regulate additional entities as MS4s under the NPDES permitting program.

Criteria One: The entity has had an increase in population density (at a rate above 20%), a high growth rate (population or town boundaries) exhibited in the last three years, and/or a high growth potential for the next three years. Similarly, the entity has a seasonal population increase of over 30% entering and staying within the jurisdiction during the peak vacationing months of the year (May-Sept).

Criteria Two: The entity is a significant contributor of pollutants to waters of the State and/or is exhibiting ineffective protection of water quality.

Criteria Three: The entity is discharging to waters of the State that have an EPA-approved Total Maximum Daily Load (TMDL) which calls for a reduction of pollutants associated with stormwater beyond what can be achieved with existing programs (and the area is not already covered under automatic designation).

Criteria Four: The entity is discharging to the State of Delaware's Waters of Exceptional Recreational and Ecologically Sensitive (ERES) waters.

Criteria Five: The entity is contiguous to an automatically designated urbanized area (town boundaries) that discharges to sensitive waters classified by either an EPA-approved TMDL plan or ERES waters.

Criteria Six: The entity has impervious surface coverage that exceeds a certain percentage (35% for urban areas, 15% for residential developments, or 5% for rural areas) of the entity's total area within its jurisdictional boundaries and stormwater pollution is not being controlled by other existing CWA programs. For this criterion, impervious surface is defined by Title 7 § 7201 § 9.1

### Designation Criteria Determination

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**Commented [ESB(50)]:** The comment that New Castle County is the only large MS4 is misleading. There are other entities named in the Phase I permit, and there are Phase II permittees within the county of New Castle County.

**Commented [ESB(51)]:** Should this be based on the decennial census instead?

**Commented [ESB(52)]:** The location of the EPA approved TMDLs should be provided.

**Commented [ESB(53)]:** Needs a definition

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In conjunction with federal regulations, the Department reserves the right to designate any entity as a regulated MS4 based on the criteria listed above. If an entity meets at least three of the criteria the entity will be designated as a regulated MS4. If an entity meets less than 3 of the criteria, the Department will determine whether the entity will be regulated as an MS4 and required to obtain an NPDES permit.

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**Appendix C: Waiver Program**

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In accordance with the Clean Water Act, MS4s are required to obtain a discharge permit unless they are granted a waiver by the NPDES permitting authority (the Department) under 40 CFR § 122.32 (c), (d) or (e). Under the Stormwater Phase II Final Rule, the Department may waive permit coverage of a MS4 if it serves a population below a certain number, the MS4 is not contributing substantially to the pollutant loadings and storm water controls are not needed based on waste load allocations that are part of a TMDL. The inclusion of town population as a criterion demonstrates a recognition that the burden of maintaining a full storm water management program on small jurisdictions is potentially disproportionate to the water quality benefits.

The vast majority of watersheds in Delaware are impaired by nutrients, measured as total nitrogen (N) and total phosphorous (P), dissolved oxygen (DO) and bacteria (B).

The Department has designated several streams as exceptional recreational or ecological significance (ERES), which are important, unique, or sensitive. According to State policy, 5.6.1 in the State of Delaware Water Quality Standards (as amended, October 1, 2014), ERES waters shall be accorded a level of protection and monitoring in excess of that provided most other waters of the State. ERES waters shall be restored, to the maximum extent practicable, to their natural condition.

The watersheds with ERES designations are:

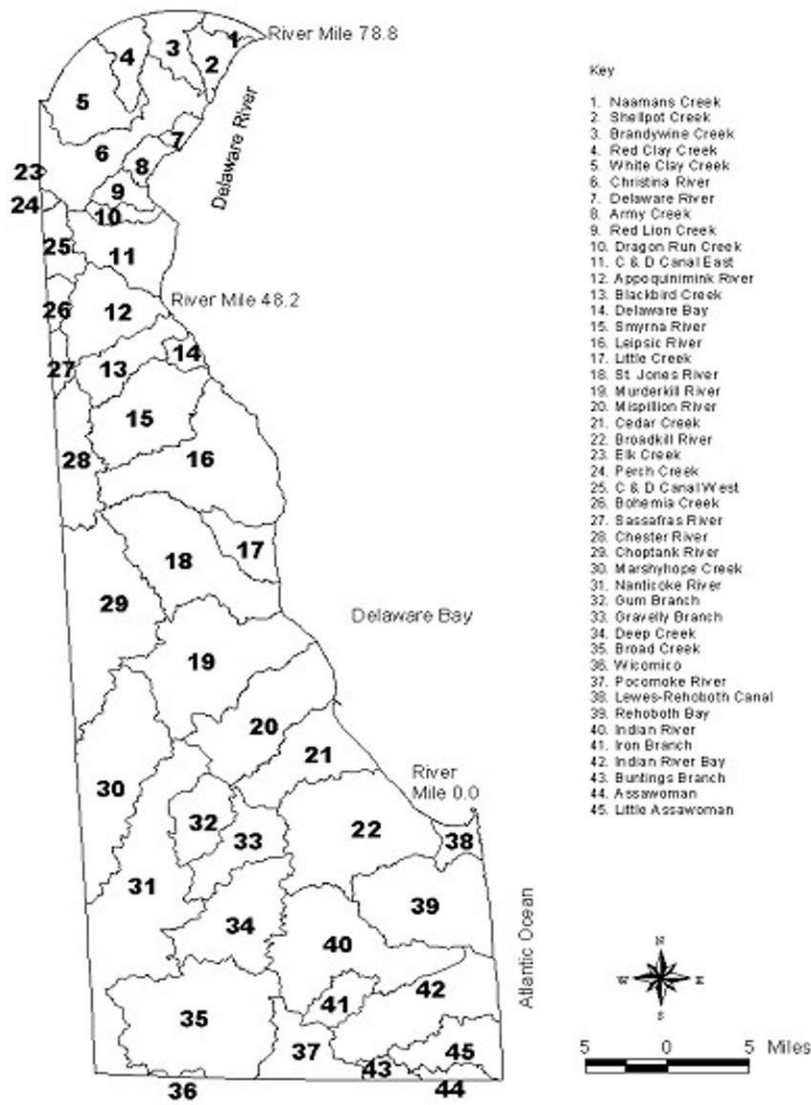
Brandywine Creek (portions)	Gravelly Branch
Red Clay Creek (portions)	Deep Creek
White Clay Creek (portions)	Broad Creek
Cedar Creek (portions)	Wicomico
Marshyhope Creek	Rehoboth Bay
Nanticoke River	Indian River
Gum Branch	Assawoman Bay
Iron Branch	Delaware Bay (not including tributaries)
Indian River Bay	Atlantic Ocean (not including tributaries)
Little Assawoman Bay	

According to the Pollution Control Strategies (PCSs) developed in association with the State's TMDLs, the inputs of TN, TP and bacteria are dominated by agricultural sources (see PCSs on Department's website). Some BMPs which are designed to reduce nutrient loads to surface waters will have positive impacts on reducing bacterial levels as well.

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Figure 1. Delaware Watersheds



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**Table 1. MS4s Identified by the 2010 Census**

MS4	Population*	Watershed	Pollutants Causing Impairments
Blades	1,241	Nanticoke	TN, TP, Bacteria
Camden	3,464	St. Jones	TN, TP, Bacteria
Cheswold	1,380	Leipsic	TN, TP, Bacteria
Clayton	3,037	Smyrna	TN, TP, Bacteria
Delmar	1,597	Broad Creek/Pocomoke	TN, TP, Bacteria
Felton	1,298	Murderkill	TN, TP, Bacteria
Federica	774	Murderkill	TN, TP, Bacteria
Laurel	3,708	Broad Creek	TN, TP, Bacteria
Magnolia	225	St. Jones	TN, TP, Bacteria
Seaford	6,928	Nanticoke	TN, TP, Bacteria
Smyrna	11,147	Smyrna	TN, TP, Bacteria
Viola	157	Murderkill	TN, TP, Bacteria
Woodside	181	Murderkill	TN, TP, Bacteria
Wyoming	1,313	St. Jones	TN, TP, Bacteria

**Commented [ESB(54)]:** The title of Table 1 should be changed to "MS4s with Automatic Designation by the EPA based on the 2010 Census"; OR Kent and Sussex County should be added; OR should be replaced with 2020 census Urban Areas.

\*Populations were taken from the Delaware League of Local Governments website (09/23/19)

**Waiver Criteria**

In Delaware's TMDLs, the Department discusses the sources of nutrient and bacteria pollutants. In the case of urban land uses, those sources consist primarily of sedimentation and erosion from construction, septic systems, wildlife and pet waste, and lawn fertilizers. Structural and nonstructural BMPs can intercept these pollutants and prevent them from washing into surface water. Structural BMPs for nutrients and bacteria include vegetated stream buffers, infiltration trenches, and grassed swales. Nonstructural BMPs include actions like pumping septic systems, educating the public to avoid over fertilizing their lawns, and properly managing pet waste.

The Department has established State-wide *Sediment and Stormwater Regulations* (7 DE Admin. Code 5101) for land disturbance on an area equal to or greater than one acre. The Department also delegated authority for reviewing construction plans and conducting inspections to counties, county conservation districts, certain municipalities, and DeIDOT. As the NPDES permitting authority, the Department believes that the implementation of these *Regulations* meets the construction and post-construction storm water runoff control requirements of §122.34 (b)(4) and (5). For those permittees who either are or have relevant agreements with the aforementioned delegated agencies, establishment by a MS4 permittee of a construction and post-construction runoff control program would be duplicative of that State-wide program.

In order to qualify for a waiver, small new MS4s with a population between 1,000 and 10,000 residents must pass threshold criteria of controlling TP, TN and bacteria through the implementation of a construction/post-construction sediment and stormwater control program and the replacement of onsite septic systems with centralized wastewater treatment. The Department has determined that under the following circumstances, a MS4 municipality may be waived from the Tier II General Permit, where:

1. the MS4 contributes less than 5% of the total load of nutrients and bacteria to the watershed, and
2. the MS4 does not drain to a waterbody that is classified as ERES, and

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3. new construction and post-construction stormwater standards are ensured through the application of the statewide Sediment and Stormwater Regulations by the delegated agency, and
4. the MS4 is served by a centralized wastewater treatment system that has its own National Pollutant Discharge Elimination System (NPDES) permit or State of Delaware spray irrigation and biosolids permits.

For small new MS4s with populations below 10,000 residents, which discharge to an ERES waterbody, the permitting authority waives MS4s where:

1. the MS4 community contributes less than 1% of the load of nutrients and bacteria to the watershed, and
2. new construction and post-construction stormwater standards are ensured through the application of the statewide Sediment and Stormwater Regulations by the delegated agency, and
3. the MS4 municipality is served by a centralized wastewater treatment system that has its own National Pollutant Discharge Elimination System (NPDES) permit or State of Delaware spray irrigation and biosolids permits.

While the Department may make a determination regarding waiver eligibility, the Department reserves the right to retract a waiver if we become aware of information that counters our conclusion regarding water quality impacts of the communities proposed to be waived in this document. Those communities that have been waived during this cycle will be reviewed following the 2020 Census results and upon each reissuance of this permit by the Department to determine if conditions have changed.

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