



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
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DOVER, DELAWARE 19903

NICOLE MAJESKI
SECRETARY

February 23, 2023

Lisa Vest
Hearing Officer
Office of the Secretary
Delaware Dept of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Dear Ms. Vest:

The Delaware Department of Transportation would like to provide the below written comments in regard to the public hearing (Docket #2022-P-W-0017) issued for the Phase II, Tier II NPDES Permit No. DE 0051217 (State No. WPCC 3033/20). Thank you for providing the opportunity to comment.

DelDOT participated in the January 25, 2023 public hearing for the Phase II, Tier II permit and issued a statement based on the June 8, 2022 permit draft. We were unaware of the revised permit issued on December 14, 2022 in conjunction with the public hearing notice until the DNREC presentation was made during the public hearing. Subsequently, after reviewing the latest revision, we would like to amend our oral statement.

The public comments submitted by DelDOT to DNREC on July 7, 2022 and abbreviated in the January 25, 2023 public hearing speech outlined rationale on why Kent and Sussex County should be included in the Phase II, Tier II permit. The December 14, 2022 draft Phase II, Tier II permit issued by DNREC provided revisions that may address DelDOT's concern, which is appreciated. However, there is permit language that we would request further clarification of:

1. Part 1.B of the permit was amended to the following:

~~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:

DelDOT reads that to be that Kent and Sussex would be required to obtain coverage as they have jurisdiction over MS4s, as the MS4 definition includes associations that

own or operate stormwater conveyances. Kent and Sussex Counties are the approving jurisdiction for subdivisions that are managed by Homeowner's Associations, and therefore applicable to Part 1.B for the non-municipal lands contained within the permitted areas. However, the permit requirement does not specify that the entity must also have been designated by the EPA and therefore must be shown in Table 1 in Appendix B. In correspondence received by DNREC, it was referenced that an entity must be designated by the EPA to fall under automatic designation. The permit should be revised to leave no ambiguity in the interpretation.

DelDOT also questions if the automatic designation based on the 2010 census as shown in Table 1 was in error and should have had Kent and Sussex Counties included initially, just as New Castle County was include automatically in the Phase I permit designation. The 2010 census allowed for entities partially within the urban areas to be regulated: "If a small MS4 is not located entirely within an urbanized area, only the part of the system within the urbanized area is regulated." Therefore, the portions of Kent and Sussex Counties that were in the urbanized area should have received automatic designation.

2. Part 1.B.1 of the permit was amended to the following:

Located in whole or in part within urbanized areas as determined by the latest Decennial Census of the United States Census Bureau, or

DelDOT concurs with the addition of "whole or in part within", however questioning the latter half of the permit requirement which states "*as determined by the latest Decennial Census of the United States Census Bureau*".

The latest Decennial Census was the 2020 census, and the EPA has issued the Urban Areas associated with the 2020 census on December 29, 2022. The slides shown in the January 25, 2023 public hearing showed a list of municipalities (slide 5) and a map (slide 8) indicating the urbanized areas based on the 2010 census, as does Table 1 in Appendix B of the draft permit. However, the public hearing slides also made mention to the forthcoming March 2, 2023 Final Rule by the EPA (slide 8) which will put into effect the Urban Areas issued on December 29, 2022. Per the Final Rule, Urban Areas based on the 2020 census are areas with populations greater than 50,000. The permit should be revised to leave no ambiguity in the interpretation of which census is being administered. Since the latest census is the 2020 census, Table 1 in Appendix B should be updated to show the new Urban Areas (shown below). In addition, the permit requirement stated above should be revised to be "*Located in whole or in part within Urban Areas with populations greater than 50,000 as determined by the latest Decennial Census of the United States Census Bureau, or*"

Table A – Urban Areas in Delaware Issued by the US Census Bureau on 12/29/22

<u>UACE</u>	<u>NAME</u>	<u>STATE</u>		<u>POP</u>	<u>HOUSING</u>	<u>AREA</u>
		<u>FP</u>	<u>PART</u>			<u>LAND</u>
24580	Dover, DE	10		123,101	48,756	187,266,900
32950	Georgetown, DE	10		9,921	2,777	12,775,601
36973	Harrington, DE	10		4,943	2,152	8,705,129
49231	Lewes--Rehoboth Beach, DE	10		39,681	33,284	99,205,323
51202	Long Neck, DE	10		20,169	14,343	57,027,366
56845	Middletown, DE	10		41,851	14,796	62,573,948
57196	Milford, DE	10		17,754	7,450	31,005,770
57358	Millsboro, DE	10		9,844	4,574	17,182,721
64660	Ocean Pines--Ocean City, MD--DE	10	P	6,973	7,695	18,241,211
64702	Ocean View, DE	10		18,025	22,598	60,911,394
69076	Philadelphia, PA--NJ-- DE--MD	10	P	494,087	207,228	492,582,276
78364	Salisbury, MD--DE	10	P	2,321	961	4,222,817
80259	Seaford--Laurel-- Bridgeville, DE	10		29,147	11,999	61,081,401

Per the 2020 Census data shown in Table A of this chart, there are only two Urban Areas with a population (“POP”) greater than 50,000, Dover and Philadelphia areas. All other Urban Areas fall below the Phase II threshold. However, the Dover Urban Area meets the definition of a Medium MS4 with a population between 100,000 and 250,000 and the Philadelphia Urban Area meets the definition of a Large MS4 with a population greater than 250,000. Clarification should be provided on what areas are applicable to the Phase II Tier II permits based on the 2020 Census.

3. DelDOT also questions the Designation Criteria added to the December 14, 2022 version of the permit.
 - a. In the first paragraph under Delaware Designation Criteria in Appendix B, the draft permit states “*In Delaware, New Castle County is the only large regulated Phase I MS4...*” DelDOT finds this statement to be misleading since although the Phase I permit covers lands within New Castle County, the county is not the only large regulated Phase I MS4. DelDOT is also named as a principal permittee within the Phase I permit, as are six other towns and cities as co-permittees. In addition, there are also Phase II entities within New Castle County.
 - b. The Phase II Final Rule indicates similar designation criteria that DNREC has included, except that it includes that it shall be applicable to small MS4s serving a jurisdiction with a population of at least 10,000 and a population density of at least 1,000 people/square mile. DelDOT questions if the same criteria should be added to be consistent with the federal designation criteria.

- c. For Criteria One in Appendix B, should the growth rate be based on the decennial census data instead of intermediary data?
 - d. For Criteria Two in Appendix B, should thresholds for a “significant contributor of pollutants to waters of the State and/or is exhibiting ineffective protection of water quality be better defined”? As written, the criteria is subjective.
 - e. For Criteria Three in Appendix B, can a list of EPA-approved TMDLs be provided? It was unclear on the [DNREC TMDL webpage](#), whether the DNREC TMDLs were EPA approved.
 - f. For Criteria Six in Appendix B, what is the definition of urban areas? Is it the same as the 2020 decennial census definition of urban area?
4. There are previous comments submitted in DelDOT’s July 7, 2022 Phase II, Tier II public comments that were not addressed. Many of the comments were made to make the Tier I and Tier II permits consistent with each other. While DelDOT acknowledges that DNREC may not concur with every change, there are many that we see as relevant. The comments have been remade in the attached permit mark-up.

If you have any questions regarding any of the information, please do not hesitate to contact me at sara.esposito@delaware.gov or 302.760.2346. DelDOT is available to discuss any of the topics in further detail with DNREC as you work through the comments. Thank you.

Sincerely,



Sara Esposito, PE
DelDOT NPDES Program Manager

SE:

Attachments

cc: Anne Brown, DelDOT
Brian Urbanek, DelDOT
Dan Taylor, DelDOT
Kerin Hume, DelDOT
Jen Roushey, DNREC
Gordon Woodrow, DNREC
Alexis Capes, DNREC
Gavin Ferris, DNREC

