



STATE OF DELAWARE

COMMERCIAL &  
GOVERNMENT  
SERVICES:  
WASTEWATER,  
STORMWATER, &  
BIOSOLIDS  
MANAGEMENT

DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL

DIVISION OF WATER  
RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE  
(302) 739-9946

GENERAL PERMIT FOR STORMWATER DISCHARGES FROM  
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS IN THE  
STATE OF DELAWARE

**PHASE II MS4 TIER I GENERAL PERMIT FACT SHEET**

NPDES Permit Number: DE 0051195  
State Permit Number: WPCC 3212/20  
Permit Effective Date: January 1, 2024  
Permit Expiration Date: December 31, 2028

The State of Delaware has developed a National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from Small Municipal Separate Storm Sewer Systems (MS4s). The General Permit addresses the federal requirements under Section 402 of the Clean Water Act (CWA) to reduce polluted stormwater runoff that is contributed by the MS4, and which ultimately discharges to local rivers and streams without treatment.

This fact sheet provides details on permit history, statutory authority, water quality, the MS4 Remand Rule and the Stormwater Management Program's six minimum control measures, Pollutant Reduction Plans, contact information and procedures for submitting comments.

**Background and Permit History**

The State of Delaware NPDES Phase II MS4 Tier I General Permit (permit) will provide coverage for those entities that were identified as small MS4s under the criteria provided in 40 C.F.R. §122.32 and currently maintain coverage under an individual Phase II MS4 permit.

Prior to the issuance of this Tier I permit, the State of Delaware permitted four Phase II small MS4s to discharge stormwater: the City of Newark (DE 0051152), the City of Dover (DE 0051161), the Town of Middletown (DE 0051209), and the Delaware Department of Transportation (DeIDOT) for infrastructure maintained and operated in urbanized portions of Kent County (DE 0051144). The Department issued individual permits to Newark, Dover, and DeIDOT in 2003 and issued an individual permit to the Town of Middletown in 2013. All four of these individual permits have since expired but have been administratively extended pursuant to State and federal regulations and are enforceable. These four individual Phase II permits provided the foundation on which this General Permit was formed.

The Phase II Final Rule requires coverage of all small MS4s that are located within the boundaries of a Bureau of the Census-defined “urbanized area” (UA) based on the latest decennial Census [40 C.F.R. §122.32(a)]. (If a small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated; *id.*). Under the 2010 Census, fourteen (14) new MS4s were identified as requiring permit coverage.

To address the differences between the four currently permitted small MS4s and the municipalities identified as new small MS4s, Delaware’s General Permit is divided into two tiers: permittees with an existing Phase II MS4 permit (Tier I) and new permittees that were identified under the 2010 Census (Tier II).

Under this tiered system, the Tier I permit provides discharge authorization to all existing Phase II MS4 permittees. The Tier II permit will be issued as an initial Phase II MS4 permit to those entities identified as new small MS4s through the results of data from the 2010 census that were not granted a waiver from NPDES coverage. It will also be used for future small MS4s requiring permit coverage. Permittees that obtain coverage under the Tier II permit will apply for a Tier I permit after the first permit cycle.

### **Statutory Authority and Notice of Intent**

The Department of Natural Resources and Environmental Control (the Department) proposes to issue this Tier I General Permit to those designated entities subject to the discharge limitations, terms and conditions outlined in the permit. Section 402 of the Federal CWA of 1977, as amended by the Water Quality Act of 1987 and as subsequently modified, and 7 Del. C., Chapter 60 provide the statutory authority for permit issuance.

The operator of a regulated MS4 must submit a Notice of Intent (NOI) for coverage to the Department within sixty (60) days after the effective date this General Permit, unless granted an extension in writing by the Department. The NOI must include the name of the discharging entity, the operator responsible for the management of the MS4 program and descriptive information about the waters to which the MS4 drains. This information must include the names of all known waters that receive a discharge from the MS4, the designated use and the impairment status of each of these waterbodies. A copy of the NOI form is provided on the Department’s website at:

<https://dnrec.alpha.delaware.gov/water/surface-water/npdes/municipal-storm-sewers/>

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

### **Small MS4 Definition**

Permittees required to seek coverage under this permit include those entities that own or operate and maintain a portion of a municipal separate storm sewer system that is either located in an urbanized area as determined by the decennial Census or is designated by the Department and have an existing MS4 permit. EPA defines “municipal separate storm sewer system” as “...a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or

other public body...having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes...; (ii) Designed or used for collecting or conveying stormwater;” [40 C.F.R. §122.26(b)(8)]. Under this definition, any area that a regulated jurisdiction “owns or operates” infrastructure that conveys runoff can be covered under this NPDES MS4 permit.

### **Regulatory History of Stormwater Management and Water Quality**

Section 402 of the Federal CWA, 33 U.S.C. § 1342, prohibits the discharge of any pollutant to waters of the United States from a point source, unless that discharge is authorized by a NPDES permit. Similarly, 7 Del. C., Chapter 60, § 6003(a)(2), prohibits the undertaking of any activity “in a way which may cause or contribute to the discharge of a pollutant into any surface or ground water” without first having obtained a permit from the Secretary of the Department.

Efforts to improve water quality under the NPDES program have traditionally focused on reducing pollutants in discharges of industrial process wastewater and municipal sewage. As pollution control measures have been implemented for these discharges, it has become evident that diffuse sources of water pollution (*i.e.*, those occurring over a wide area) are also major contributors to water quality degradation. Research has shown that stormwater runoff from urban and industrial areas typically contain the same general types of pollutants that are often found in industrial wastewater discharges, with similar impacts on surface water quality. Pollutants commonly found in stormwater runoff include nutrients, heavy metals, pesticides, herbicides, and synthetic organic compounds such as fuels, waste oils, solvents, lubricants, and grease. These compounds can have damaging effects on both human health and aquatic ecosystems. In addition, the high volumes of stormwater discharged from municipal separate storm sewer systems in areas of rapid urbanization have had significant impacts on aquatic ecosystems due to physical modifications such as bank erosion and widening of channels.

With the growing concern and realization that stormwater runoff, including both urban stormwater and runoff from industrial sites, greatly contributes to surface water quality impairment, Congress added specific provisions to the CWA in 1987 (the Water Quality Act of 1987) to address stormwater. To view these provisions, see section 402(p) of the CWA, 33 U.S.C. § 1342(p). Congress directed the EPA to develop regulations and require NPDES permits for discharges of stormwater from sites of industrial activities and from large and medium sized urbanized areas.

In 1990, EPA published Phase I of its municipal stormwater regulations for medium and large cities or certain counties with populations of 100,000 or more (55 Fed. Reg. 47990 [Nov. 16, 1990]). The Phase II MS4 program, issued in 1999, requires small MS4s in urbanized areas, as well as small MS4s outside urbanized areas that are designated by the permitting authority, to obtain NPDES permit coverage for their stormwater discharges (64 Fed. Reg. 68722 [Dec. 8, 1999]).

### **Phase II Remand Rule**

On December 9, 2016, EPA published regulatory changes affecting NPDES small MS4 General Permits, known as the “Remand Rule” (81 FR No. 237). The new rule was promulgated in response to a remand from the U.S. Court of Appeals for the Ninth Circuit in *Environmental Defense Center et al. v. EPA*. The Court determined that provisions of the Phase II regulations lacked an opportunity for public comment on NOIs submitted by MS4 permittees. In addition, the Court found that Phase II regulations must be revised to preclude permittees from determining on their own the actions necessary to meet the MS4 permit standard. The Court

emphasized that the permitting authority is responsible for establishing requirements that meet the standard of reducing pollutants to the maximum extent practicable (MEP). The Remand Rule under 40 C.F.R. §122.34(a) specifies that “the NPDES permitting authority must include permit terms and conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality and satisfy the appropriate water requirements of the Clean Water Act.” In addition, this regulation specifies that permit requirements “must be expressed in clear, specific, and measurable terms.” To address the regulatory changes in the Remand Rule and associated guidance, the Department has developed this Tier I General Permit to meet the “Comprehensive General Permit” option as provided in 40 C.F.R. §122.28(d)(1) with the additional requirement for the Department to public notice their proposed Pollutant Reduction Plan as required by 40 C.F.R. §122.28(d)(2)(ii). This hybrid approach allows the Department to offer a general permit with clear, specific, and measurable terms and conditions while still providing the flexibility permittees need to develop appropriate Pollutant Reduction Plans for their respective watersheds and meet their water quality requirements.

The Remand rule applies to permit terms and conditions established for the six minimum control measures (MCMs), evaluation and reporting requirements, and water quality-based requirements. This can be expressed as either narrative, numeric, or other types of requirements. EPA further notes that implementation of best management practices (BMPs) designed to control stormwater runoff from the MS4 is generally the most appropriate approach for reducing pollutants to satisfy the MEP standard (FRL-13-006 and 9779-7).

Pursuant to 40 C.F.R. §122.44(k), the Tier I General Permit requires MS4 operators to control stormwater discharges through BMPs, including development and implementation of a comprehensive stormwater management program (SWMP) as the mechanism to achieve the required pollutant reductions.

EPA views the MEP standard in the CWA as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness. To satisfy this requirement, the Tier I permit includes requirements for tracking data collected through implementation of the six MCMs. MS4 Operators must analyze this information to identify trends, patterns, areas of concern, and common problems. Based on the analysis, operators can then effectively adjust the program to focus their resources on areas of greatest concern. For example, the permit requires MS4 operators to collect and track information on illicit discharges and annually evaluate the information to focus their efforts on areas with the greatest number of past illicit discharges. As information on sources of illicit discharges becomes available, additional public outreach should be focused on these areas and illicit discharge sources.

### **Permit Term and Conditions**

The Department proposes to issue this Tier I General Permit to eligible small MS4 entities for a period not to exceed five (5) years, unless administratively extended, subject to the discharge goals, limitations, monitoring requirements, and operational requirements as outlined in the permit.

Conditions of this permit require eligible entities to possess the legal authority to: (1) control non-point source pollutants that enter the storm sewer system, (2) monitor stormwater discharges, (3) provide mapping of the storm sewer system, and (4) develop and implement management programs to minimize the pollutant contribution to and from the MS4.

The Department developed the terms and conditions of this Permit to further the purposes of Title 7, Del. C., Chapter 60 and to achieve the water quality protection goals of the federal CWA and its implementing regulations.

The statutory provisions governing discharges from MS4s are contained in Section 402(p)(3)(B) of the CWA, 33 U.S.C. § 1342(p)(3)(B), as amended. In general, Congress provided that permits for discharges from MS4s:

- may be issued on either a system-wide or jurisdiction-wide basis;
- shall effectively prohibit any non-stormwater discharges into the MS4s; and
- shall require controls to reduce the discharge of pollutants from MS4s to the MEP.

### **Clear, Specific, and Measurable Requirements**

This permit largely follows the Phase II regulations put forth in 40 C.F.R. §122.34 and is based on the implementation of six MCMs. Any permittee receiving coverage under this Tier I General Permit shall continue to maintain, update, and report progress on working toward these measures in MS4 annual reports. Annual reports will show continual progress toward program goals and shall demonstrate full implementation of all permit requirements by the end of the five-year permit term. It is anticipated that during the permit period, permittees will be required to submit Annual Reports electronically through an E-reporting system currently being developed. Details and instructions will be provided to permittees by the Department.

This Tier I General Permit also includes provisions that require permittees to maintain both adequate legal authority to control discharges to and from the MS4 and sufficient resources – financial, staff, equipment, and support –to implement the stormwater management program and administer it effectively. In addition, permittees must undertake appropriate monitoring and reporting to assess progress and overall program effectiveness.

The Department may specify additional requirements or compliance schedules for any and all components of the permittees' comprehensive Stormwater Management Program (SWMP) to meet the intent of the NPDES MS4 program and to achieve the level of implementation and progress deemed necessary to achieve water quality protection. This would include any area-specific or site-specific requirements identified through the Department's whole-basin or watershed assessment activities (i.e., the development of any applicable TMDLs and/or pollution control strategies to address specific ambient water quality problems).

### **Stormwater Management Program Plan**

Permittees under this Tier I General Permit must maintain their current SWMP plan and will be required to update their plan and revise as needed to be in compliance with this permit. The SWMP plan is a planning document and does not require Department approval; however, permittees shall submit an updated SWMP plan for review and comment within twelve (12) months of the permit effective date. The Department shall respond with comments and recommendations within sixty (60) days of receipt of the updated SWMP plan.

The General Permit includes the requirement to update, continue to implement, and assess the six MCMs of the SWMP plan as required in 40 C.F.R. §122.34. A description of each measure and permittee requirements are detailed in the following sections.

### **Small MS4s Working Together as Co-Permittees**

Municipalities have an option to be co-permittees with other MS4s in order to implement some of the required MCMs. This could help permittees by sharing their resources to gain operational and cost efficiencies. The process for establishing a co-permittee agreement is with a Memorandum of Understanding (MOU) or other legally binding agreement. The relationship shall be identified in the NOI and SWMP plan, both documents will need to be revised if an MOU is established after submittal. Each entity will deal in good faith including developing and abiding by the terms of the legal document that will define the co-permittees responsibilities. If a co-permittees 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 shall amend or terminate the MOU. The remaining entity will need to fulfill the requirements of the permit in a timely manner. The MOU is ultimately an agreement between permittees which the Department is not a party to, and therefore cannot enforce its terms. The Department is, however, required to enforce the conditions of the permit. Permittees are responsible for fulfilling permit requirements even if a co-permittee fails to meet their obligations. If this situation were to occur, the Department may work with the permittees to develop a compliance schedule or an alternative compliance plan. If a permittee suffers any damages due to another party defaulting on an MOU, it will be up to them to seek redress as the Department would have no standing in the matter.

### ***Public Education and Outreach***

Permittees are required to update, implement, and maintain a written public education and outreach program to reduce the discharge of pollutants caused by stormwater runoff [40 C.F.R. §122.34(b)(1)]. The permit contains specific requirements to assist the permittee with successfully implementing this program element, including:

- Establish a process by which the public can report water quality complaints that must include a phone number.
- Determine the target audience(s) within the MS4 jurisdiction and develop materials to educate the audience on the impact of stormwater pollution.
- Conduct at least two educational events or campaigns per year that may include distributing educational materials describing the impacts of stormwater discharges on receiving waters and methods of reducing stormwater pollution.
- Revise as needed an employee training program that addresses appropriate topics to prevent or reduce discharge of pollutants into the storm drain system.
- Describe in annual reports to the Department how the educational programs complement and strengthen other programs of the MS4.

The education and outreach program should be integrated with the other program elements and adjusted to address issues brought to the permittee from the public and from lessons learned in implementing other program elements.

### ***Public Involvement and Participation***

Public involvement in the permitting process and participation in stormwater pollution prevention projects benefits the program by raising community awareness, sustaining pollution prevention practices, and saving valuable resources through volunteerism. Permittees are required to update, implement, and maintain a public involvement and participation program [40 C.F.R. §122.34(b)(2)]. The permit contains specific requirements to assist the permittee with successfully implementing this program element, including:

- Specify activities appropriate for each of the target audience groups and promote participation through the permittee's website, print media and other methods.
- Promote and perform public participation events within the jurisdiction such as adopt-a-stream program, storm drain stenciling, stream clean-ups, litter pick-up days, tree plantings, volunteer water quality monitoring, and other pollution prevention events.
- 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.
- Allow public access to the annual progress reports and consider incorporating public comments when making improvements to the stormwater management program.

### ***Illicit Discharge Detection and Elimination***

An illicit discharge is any discharge to a municipal separate storm sewer that is not composed entirely of stormwater except that which is sanctioned by a NPDES permit under 40 C.F.R. §122.34(b)(3) and Part 2.D.3 of this general permit. Adequately preparing for, identifying, responding to, and mitigating illicit discharges will minimize the risk to water quality and human health. A comprehensive IDDE program will include community involvement, dry weather screening, and the establishment of protocols for investigating and resolving suspected illicit discharges.

Permittees are required to update, implement, and maintain a program to identify and reduce to the maximum extent practicable non-stormwater discharges, illegal dumping, spills, and illicit connections to the MS4. Permittees are required to include public education and outreach activities aimed at reducing pollution from entering the MS4. The permit contains specific requirements to assist the permittee with successfully implementing this program element, including:

- Maintain a map of the permittee's storm drain system identifying all outfalls, inlets, stormwater management structures, and State waters that receive stormwater discharges.
- Verify outfall locations and map new conveyances, outfalls, and stormwater management facilities as they are constructed or newly discovered.
- Maintain an ordinance or other regulation that prohibits illicit discharges into the storm drain system and legal mechanism for gaining access to private properties.
- Procedures for identifying priority areas that have a higher likelihood of illicit discharges.

- Maintain a system for the public to report illegal dumping or spills and procedures to inform the public of the occurrence of an illegal discharge or improper waste disposal.
- Update and implement a screening program to evaluate at least 20% of the system per year using mapping and data to determine areas with higher potential for discharges. Dry weather screening and field evaluation shall be conducted in those areas.
- Maintain documentation of illicit discharge screening efforts and follow up investigations.
- Report remedial actions to address any water quality problems identified during illicit discharge screening efforts.
- Develop procedures to recognize and report any sanitary sewer overflows that discharge into the MS4.

### ***Construction Site Stormwater Runoff Control***

Stormwater discharges from construction activity can cause significant discharges of sediment and other pollutants to State waterbodies if not properly controlled.

Permittees are required to update, implement, and maintain a construction site stormwater runoff control program [40 C.F.R. §122.34(b)(4)]. This program is intended to ensure consistency with Delaware's Sediment and Stormwater Regulations and Title 7, Delaware Code, Chapter 40, through controlling stormwater runoff from construction activities.

The Department has delegated the authority to administer the program to Delegated Agencies, listed on the Department website here: <https://dnrec.alpha.delaware.gov/watershed-stewardship/sediment-stormwater/delegated-agencies/>

The permittee shall implement and enforce a program to reduce the discharge of pollutants from 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 must indicate this in the SWMP plan and ensure that the fully executed cooperative agreement with the Delegated Agency clearly describes each of the participants' responsibilities to coincide with 40 C.F.R. Part 122 and that the cooperative agreement is appended to the SWMP plan.

Any modifications or updates to state regulations shall be implemented as required. The permittees must modify and update their SWMP plan to meet all the requirements of the Sediment and Stormwater regulations. The permit contains specific requirements to assist the permittee with successfully implementing this program element, including:

- Requirements for the review and approval of Sediment and Stormwater Plans to ensure compliance with standards in the Delaware Sediment and Stormwater Regulations (7 Del. C. Ch. 40) and Special Conditions for Stormwater Discharges Associated with Construction Activities (7 Del. C. Ch. 60).
- 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.



- Requirements and procedures for the inspection and enforcement of erosion and sediment controls during construction to that polluted runoff from the construction site is not occurring during active construction.
- Stormwater Site contractors responsible for inspection shall be certified through DNREC or DNREC approved training pursuant to the regulation and CGP.
- Ensure completion of stormwater BMP Construction Checklists by CCRs and submission as required in the Delaware Sediment and Stormwater Regulations.
- Summary with the annual report the Delegated Agency is performing these actions throughout the MS4 in accordance with the MOU.
- Maintain an ordinance or other regulatory mechanism to ensure compliance.
- Procedures for receipt and consideration of information submitted by the public.
- Permittee shall report required activities associated with this MCM in the annual report.

### ***Post Construction Stormwater Management***

Inspection, proper operation, and maintenance of post-construction control structures will keep them functioning properly to protect State waterbodies from pollution. Permittees are required to update, implement, and maintain a post construction stormwater management program [40 C.F.R. §122.34(b)(5)]. This program is intended to ensure consistency with Delaware's Sediment and Stormwater Regulations and Title 7, Delaware Code, Chapter 40, to address long term post-construction stormwater discharges from new construction and redeveloped sites.

The Department has delegated the authority to administer portions of the Post-Construction Stormwater Management program to Delegated Agencies throughout the State. The permittee may fulfill this requirement through a cooperative agreement with a Delegated Agency in accordance with Sediment and Stormwater Regulations. If the permittee chooses to rely on a Delegated Agency, it must indicate this in the SWMP plan and ensure that the fully executed cooperative agreement with the Delegated Agency clearly describes each of the participants' responsibilities to coincide with 40 C.F.R. Part 122 and that the cooperative agreement is appended to the SWMP plan.

Any modifications or updates to state regulations shall be implemented as required. The permittees must modify and update their SWMP plan to meet all the requirements of the Sediment and Stormwater regulations. The permit contains specific requirements to assist the permittee with successfully implementing this program element, including:

- Conduct annual visual inspections of all publicly and privately owned and operated stormwater management systems and develop a maintenance program to prioritize repairs.
- Identify and map all stormwater management systems which may discharge to the MS4, and each year conduct a visual inspection of a representative sample as to ascertain proper function. All systems are to be inspected in this manner at a minimum of once

every permit term. A summary of inspections and findings shall be included in annual report.

- Update, implement, and enforce a program to address post-construction runoff from new development and redevelopment projects to ensure adequate long-term operation and maintenance of BMPs.
- Ensure appropriate staff are trained in proper BMP design, performance, inspection, and routine maintenance.

### ***Pollution Prevention and Good Housekeeping***

Efficient operations and properly planned and tracked maintenance of municipal facilities and work activities will help to protect receiving water quality by ensuring equipment and stormwater structures are operating as intended. Pollution prevention and good housekeeping can also create cost savings for the MS4 operator by reducing repair and replacement costs of equipment and stormwater control structures.

Permittees are required to update, implement, and maintain pollution prevention and good housekeeping techniques and procedures to reduce pollutants from all municipal operations (40 C.F.R. §122.34(b)(6)). Components of this MCM include updating or developing new policies and procedures to effectively reduce pollutant discharges to the storm drain system from activities located at municipal properties such as: water and wastewater treatment facilities, fleet yard operations, maintenance garages, parks and recreation sites, street and infrastructure maintenance operations, and grounds maintenance. The permit contains specific requirements to assist the permittee with successful implementation of this program element, including:

- Ensure that appropriate staff receive annual training designed to address the importance of water quality protection through pollution prevention and good housekeeping measures.
- Develop and implement pollution prevention plans at all facilities that outline good housekeeping procedures to detect and correct any pollutant discharge, release, leak, or spill on site.
- Street sweeping and catch-basin cleaning and inspections.
- Document any spill, discharge, or release and efforts related to containment and clean up.
- Track and quantify efforts to reduce fertilizers, herbicides, pesticides, and winter deicing materials.
- Ensure the permittee maintains proper coverage under the General Permit for Stormwater Discharges Associated with Industrial Activity. As a result, municipal facilities may require additional NPDES permit coverage beyond this MS4 permit.

- Consider incorporating cost effective runoff reduction techniques and green infrastructure when upgrading stormwater systems.

### ***Pollutant Reduction Plan***

A Pollutant Reduction Plan (PRP) is a planning document prepared by the permittee which guides the selection and implementation of specific BMPs to reduce pollutant loading to surface waters. The objective of a PRP is to improve the condition of surface waters such that the waters eventually attain water quality standards, including designated and existing uses, in accordance with Delaware Water Quality Standards.

This permit does not contain numeric effluent limits relating to Total Maximum Daily Loads (TMDLs) and, instead, focuses on the development of the PRP. As part of the PRP, the permit requires the identification of TMDLs and the pollutants of concern. Permittees will identify targeted controls, BMPs, or other Department approved methods to address these pollutants. The PRP will also include information on existing and proposed stormwater management strategies, general information on BMPs currently employed and proposed to be implemented, modeling or other quantification methods describing BMP effectiveness in reducing pollutant loads, and a schedule for BMP implementation (if needed). Since progress towards addressing TMDLs is iterative and the PRP's implementation schedule may extend beyond this permit's term, the permittee will be required to provide any updates or modifications of the PRP in each annual report. As part of the PRP, permittees may utilize partnerships or existing programs to help address impaired waters and TMDLs. The Department has developed Pollution Control Strategies (PCSs) for several watersheds that identify potential BMPs to address TMDL Waste Load Allocations. As part of the PRP, permittees may incorporate any of the specific plans, strategies, or BMPs associated with an existing PCS. Available PCSs can be found on the Department's website:

<https://dnrec.alpha.delaware.gov/watershed-stewardship/assessment/tributary-action-teams/>

The Department also encourages permittees to consider MS4 TMDL guidance documents offered by other states as resources and examples of successful PRP implementation. Many of these documents will also be available on the Department's website:

<https://dnrec.alpha.delaware.gov/watershed-stewardship/assessment/tmdl/>

### ***Analyzing Pollutant Loads***

The permittees can review existing federal and state permitting resources for assistance in using existing literature or developing methods to analyze the expected pollutant load reductions from selected BMPs and to provide a preliminary indicator of anticipated progress toward achieving TMDL loads. EPA Region 3's Fact Sheet *Understanding Impaired Waters and TMDL Requirements for Municipal Stormwater Programs* (Jan. 2008) (available on the Department's website) provides a step-by-step approach for addressing water quality in MS4 stormwater management programs, including selecting and implementing BMPs to address TMDL requirements. The Chesapeake Bay Program Expert Panel Reports are another resource for analyzing pollutant load reductions from selected BMPs which can be found at [https://www.chesapeakebay.net/who/group/bmp\\_expert\\_panels](https://www.chesapeakebay.net/who/group/bmp_expert_panels)

The State of Delaware is also actively working to establish a Nutrient Banking, Offset, and Trading Program as an additional way to help permittees comply with NPDES, TMDL and water quality requirements. This approach would allow small MS4 permittees to offset or trade nutrient load requirements with wastewater treatment plants, farmers, and public/private

property owners implementing BMPs for credit. Since this program has yet to be established in the state of Delaware, the permit states: “Trading with other sectors may also be considered as another method to achieve pollutant reductions.”

### ***SWMP Assessment and Evaluation Requirements***

As part of the annual report, the permittees shall evaluate progress towards achieving compliance with all permit requirements and review the appropriateness of implemented BMPs as required by 40 C.F.R. §122.34(g). Based on the evaluation, permittees shall review all programs, BMPs, and MCMs outlined in the SWMP plan to determine their effectiveness and make program adjustments as necessary. The permittee is required to document any areas where additional measures or BMPs are needed and submit an implementation schedule.

### ***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 Commercial Services and Government Section, Richardson and Robbins Building, 89 Kings Highway, Dover DE 19901. The department will review the request and provide a written determination of alternative compliance arrangements within 30 days.

### **Public Notice and Process for Reaching a Final Decision**

The public notice of the Department’s issuance of the Tier I General Permit outlined herein was published in the Wilmington News Journal and the Delaware State News on July 8, 2020. Interested persons were invited to submit their written views on the permit and the tentative determinations made with respect to this permit. The Department did not hold a public hearing on this application as the Department did not receive a meritorious request to do so. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit’s probable impact. The request for a public hearing shall be in writing and shall state the nature of the issues to be raised at the hearing. All comments received by the close of business at 4:30 pm on September 6, 2020, were considered by the Department in preparing the final permit.

### **Second Public Notice and Comment Period**

On July 8, 2020, The Delaware Department of Natural Resources and Environmental Control (Department) offered a draft permit for public notice and comment. The comment period initially was set for 30 days, the Department extended the comment period to a total of 60 days at the request of commenters. The comment period closed on September 6, 2020, and the Department received extensive comments. The Department determined that some changes were substantive enough to justify a second public notice and comment period.

The Department has carefully considered all comments received and has made modifications to the Draft Permit in response to many of them. This fact sheet will address only provisions that are new and notably different from the 2020 Draft Permit.

## **Response to Comments**

The following sections of the permit have been modified from the publicly reviewed version. The Department's commentary on the rationale for the modifications are in italics. The original Fact Sheet and Draft General Permit from 2020 is posted on the DNREC website.

### **Part I. Coverage under this General Permit**

#### ***E. Stormwater Management and Water Quality***

1. Reduce pollutants to the maximum extent practicable to the MS4
2. Effectively reduce pollutants in stormwater discharges or other unauthorized discharges into MS4 as necessary to achieve Delaware's Surface Water Quality Standards to the maximum extent practicable
3. Comply with all other provisions and requirements contained in this General Permit

*In reference to maximum extent practicable (MEP): The federal Clean Water Act (CWA) provides the National Pollutant Discharge Elimination System (NPDES) permits for Municipal Separate Storm Sewer Systems (MS4) must require municipalities to reduce pollutants in their stormwater discharges to the MEP. CWA 402(p)(3)(B)(iii). MS4 permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." The draft permit has been updated with the term maximum extent practicable to be in line with this standard.*

### **Part II. Stormwater Management Program**

#### ***A. Permittees Renewing Coverage***

A permittee renewing coverage under this permit shall continue to operate pursuant to its current SWMP plan and make progress on permit requirements and report information annually. The permittee shall review its current SWMP plan and revise as needed to be in compliance with this permit. The permittee shall submit an updated SWMP plan for review within six (six) months of the permit effective date. The Department shall provide comments and recommendations within sixty (60) days of receipt of the updated SWMP plan.

#### ***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, where appropriate, the following three components:

1. the activity or BMP to be completed;
2. a schedule or date of completion; and
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 stormwater 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. Documentation of the review process and an updated SWMP plan shall be included in the annual report.

*The SWMP plan is a document intended to guide the MS4 operator's stormwater management strategy, accounting for all elements of the General Permit. The Department will review the SWMP to provide comment on consistency with General Permit requirements; however, the requirement for Department approval of the SWMP was removed. It is understood that the SWMP is a living, dynamic document and, therefore, when a compliance review occurs, compliance will be measured against General Permit requirements. The intent is to require that the SWMP plan is reviewed and updated at least annually and that an up-to-date Plan is included in the annual report for review and comment by the Department.*

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

d. Update, maintain, and enforce a written Illicit Discharge Detection and Elimination (IDDE) program that shall include the following elements:

- 2) Update and continue to 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.
  - a) Conduct dry weather field screening for 20% of outfalls each year. Prioritize field screening work based on the identified areas of higher likelihood of discharges.
  - b) Update 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.
- 7) Within ninety (90) days of the Permit effective date (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) description of the discharge, including an estimate of the amounts discharged, and the cause of non-compliance;
- b) the period of noncompliance, including the dates and times and if the noncompliance has not been corrected, the anticipated time when the discharge will be eliminated, and the system will return to compliance; and
- c) actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliant discharge.

*Dry weather field outfall screening is a central component of a comprehensive IDDE program. Requiring field screening for 20% of outfalls and prioritizing those with a high risk of illicit discharge ensures adequate diligence in monitoring for dry weather flow and unreported illicit discharges*

*The threshold quantity of 50 gallons in the draft permit has been changed to any quantity in recognition that any amount of sewage discharged to the MS4 is by definition an illicit discharge. Any incidence of an SSO that discharges sewage to the MS4 is an illicit discharge and will be addressed under the permittees IDDE protocols.*

## **5. Post Construction Stormwater Management**

- b. The permittee shall identify and map all stormwater management systems which may discharge to the MS4, and each year conduct a visual inspection of a representative sample of these stormwater management systems 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 are to be inspected in this manner at a minimum of once every permit term.

*A revision to the draft permit was made to provide permittees with the ability to develop their own risk based inspection and maintenance programs. The intent is to ensure that stormwater facilities are being prioritized, inspected, and maintained sufficiently using standard procedures.*

## **6. Pollution Prevention and Good Housekeeping**

- 1) Permittees that own, operate, or maintain roads shall develop a street sweeping program which shall be described within the SWMP. Permittees must demonstrate by research, modeling, or otherwise appropriate scientific literature that substantiates the adequacy for pollutant removal and improved water quality. 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 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.

*Street sweeping is a highly effective and therefore critically important measure in pollutant removal and water quality improvement. This element requires permittees to develop an effective street sweeping program and establishes a minimum standard of effort.*

*The Department considers catch basin maintenance to be an integral part of Good Housekeeping and will require an effective catch basin maintenance program to be followed. This element was revised in the draft permit to allow permittees to develop their own risk-based program while requiring that the program be sufficiently effective.*

## **E. Pollutant Reduction Plan (PRP)**

Within twenty-four (24) months from the date of written NOI authorization to discharge issued by the Department (**by DATE**), the permittee shall submit a PRP that addresses the TMDL requirements of one watershed with an approved TMDL, including the following elements.

*This element was revised to clarify that the Department intends for the permittee to submit a PRP for only one watershed in each permit cycle.*

## **Part IV. Standard Permit Conditions**

### **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 alternative compliance arrangements within 30 days.

*This clause is added to the draft permit to accommodate non-municipal permittees such as DeIDOT, Universities, and other entities who do not have enforcement authorities or other mechanisms to implement specific permit requirements.*

### **Public Notice and Process for Reaching a Final Decision**

The public notice of the Department's issuance of the Tier I General Permit outlined herein will be published in the Wilmington News Journal and the Delaware State News on July 6th, 2022. Interested persons are invited to submit their written views on the permit and the tentative determinations made with respect to this permit. The Department will not hold a public hearing on this application unless the Department receives a meritorious request to do so or unless the notice of this proposal generates substantial public interest. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact. The request for a public hearing shall be in writing and shall state the nature of the issues to be raised at the hearing. All comments received by the close of business at 4:30 pm on August 5th, 2022, will be considered by the Department in preparing the final permit.

### **Final Determination and Issuance of the Phase II MS4 Tier I General Permit**

The Delaware Department of Natural Resources and Environmental Control (the Department) has responded to all comments received for the 2022 and 2020 drafts of the Phase II Tier I MS4 General Permit, NPDES permit No. DE0051195. The Tier I GP will become effective on January 1, 2024, following the September 28, 2023, issuance of the Phase II Tier I MS4 General Permit, Fact Sheet and *Summary of Public Comments and Responses for The Phase II MS4 Tier I General Permit* (Appendix A).

The Department provides a complete summary of all written comments received on the Phase II Tier I MS4 General Permit. The proposed permit along with a companion Fact Sheet was offered for public review from July 6, 2022, through August 5, 2022. This document contains a complete summary of the Department's responses to comments received during this period and comments received in 2020 that the Department felt required additional discussion. Comments that were similar in scope were batched and provided a single response. The Department



reviewed red-line edits on the permit for merit but are not specifically addressed in this document unless they were incorporated into the permit to provide significant clarification.

On July 8, 2020, the Department offered a draft permit for public notice and comment. The comment period was extended to 60 days from the original 30 days at the request of commenters. The comment period closed on September 6, 2020, and the Department received extensive comments. The Department considered all comments received and made modifications to the Draft Permit and Fact Sheet. The modifications were substantive enough to justify a second public notice and comment period.

All comments from the first round of the 2020 public review period that were incorporated in the proposed permit received a response from the Department and are detailed in the Fact Sheet. Comments that did not change the draft permit in 2020 did not necessarily receive a response. Responses to comments submitted within the public review period is a requirement under federal regulations once a permit is issued, therefore comments not acted upon may not be specifically addressed in the Department's responses. Comments submitted to the Department within the public comment period are available upon request by contacting the MS4 email address at [stormwaterms4@delaware.gov](mailto:stormwaterms4@delaware.gov).

The second draft of the Phase II Tier I general permit and fact sheet went on public notice July 6, 2022, and comments were accepted till August 5, 2022. The fact sheet addresses the revisions that are new and notably different from the 2020 Draft Permit in Response to Comments. The fact sheet also addresses the modifications to permit language.

The Department has considered all 2020 and 2022 comments and has clarified language in the permit and fact sheet for a third time. The *Summary of Public Comments and Responses for the Phase II MS4 Tier I General Permit* (Appendix A), the Phase II Tier I MS4 General Permit and Fact Sheet will be available for the public to review on the Department's MS4 webpage on September 28, 2023.

The Department has sorted comments received and responses provided by subject such that comments similar in nature or addressing the same portion of the permit are grouped together in sections according to the part of the permit they address. In these sections the commenters are identified by document control number.

### **Summary of Public Comments and Responses for The Phase II MS4 Tier I GP**

See Appendix A, [DNREC MS4 Program](#)

### **Department Contact for Additional Information**

Gordon Woodrow, Program Manager  
State of Delaware  
Department of Natural Resources and Environmental Control  
Division of Water/Commercial Services and Government Section/MS4 Program  
89 Kings Highway  
Dover, DE 19901  
(302) 739-9946  
[stormwaterms4@delaware.gov](mailto:stormwaterms4@delaware.gov)