DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER

Surface Water Discharge Section

7201 Regulations Governing the Control of Water Pollution

1.0 Authority, Purpose and Scope

1.1 Authority. These regulations are adopted by the Secretary of the Department of Natural Resources and Environmental Control under and pursuant to the authorities set forth in 7 **Del.C**. Chapter 60 and the Federal Water Pollution Control Act Amendments of 1972, as amended further, commonly referred to as the Clean Water Act (Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, Pub. L. 100-4; Pub. L. 100-688, Pub. L. 100-581, Pub. L. 102-580, Pub. L. 102-240; 33 U.S.C. 1251 et. seq.).

1.2 Purpose. The purpose of these regulations is to effectuate the policy and purposes of 7 **Del.C.** Ch. 60 and ensure that the surface and ground waters of the State of Delaware exhibit a quality that is consistent with established criteria. To accomplish this, these regulations seek to prevent, manage and/or control the pollution from activities that affect or have the reasonable potential to affect the quality of these waters. These regulations are but a single phase in a program which serves to effectively and reasonably manage the water resources of the State in order to protect the health, safety and welfare of the citizens of the State of Delaware, to provide for full utilization, conservation and protection of the water resources of the State and to provide for the conservation and protection of wildlife and aquatic life.

1.3 Scope. These regulations shall supersede and replace §§1 through 8 and §§10 through 14 of the Department's Regulations Governing the Control of Water Pollution, adopted March 15, 1974, as amended June 23, 1983. The Department's Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems and its Guidance and Regulations Governing the Land Treatment of Wastes supersede and replace the requirements in Section 9 of the referenced regulations.

Regulations adopted June 30, 1993 and revised with an effective date of September 15, 1998, to effectuate the Department's General Permit Program for storm water discharges associated with industrial activities remain in their entirety and are to be incorporated and redesignated herein as Section 9, Subsection 1 - Regulations Governing Storm Water Discharges Associated with Industrial Activities.

All federal and state laws, statutes and regulations, governmental guidance and documents and private publications, standards, rates and documents, as stated and used in these regulations, are incorporated by reference, either as they existed as of the date, edition or version expressly indicated, or if no date, edition or version is expressly indicated, that as of August 29, 2000.

2.0 Definitions

As used in these regulations, the following terms shall be defined as outlined herein.

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act Amendments of 1972); Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, Pub. L. 100-4 (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.

"Activity" means construction, or operation, or use of any facility, property, or device.

"Agricultural Commodity" means any agricultural product, including but not limited to plants and animals and plant and animal products grown, raised or produced within the State for use as food, feed, seed, or any aesthetic, industrial or chemurgic purpose.

"Animal Feeding Operation" means a lot or facility, together with any associated treatment works or waste management systems, where both of the following conditions are met: 1. Animals have been, are, or will be stabled or confined or kept and fed or maintained for a total of 45 days or more in any 12-month period; and 2. Crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

"Animal Waste Management System" means a combination of conservation practices and management measures for the handling, storage, treatment and management of any or all of the following for use on cropland and pastureland: animal wastes, manures, composted dead animals or process wastewater from any animal feeding operation.

"Agricultural Wastes" means any waste material generated from any agricultural practice including, but not limited to, farming, irrigation, manure or fertilizer spreading, aquaculture, aquatic animal production, livestock

and dairy operations. Agricultural wastes may include animal manure, crop residues, dead animals and any agricultural chemicals, fertilizers and pesticides which may find their way into surface and subsurface water.

"Antidegradation Statement" means any provision or policy that has as its basis the prevention of deterioration of water quality or designated uses.

"Applicable Effluent Standards And Limitations" means all State, interstate and Federal standards and limitations to which a discharge or related activity, including the use or disposal of sludge, is subject under the Law or the Act including effluent limitations, water quality standards, standards of performance, toxic effluent standards and prohibitions, best management practices, and pretreatment standards under §§301, 302, 303, 304, 306, 307, 308, 403 and 405 of the Act.

"Aquaculture Facility" means any water system and associated infrastructure constructed or utilized to contain, hold and/or produce cultured aquatic stock.

"Aquaculture Project" means a defined area of State waters which is managed for the maintenance or production of harvestable freshwater, estuarine or marine plants or animals, using discharges of pollutants into such defined area.

"Aquatic Animal Production Facility" means any hatchery, fish farm, or similar system or facility and any associated infrastructure constructed or utilized to contain, hold and/or produce cultured aquatic animal stock.

"Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW which has been approved by the United States Environmental Protection Agency.

"As-built Plans" means any set of engineering drawings delineating the specific permitted facility as actually installed or constructed.

"Average Daily Loading" means the total discharge by weight during a calendar month divided by the number of days in the month that the production or commercial facility was operating. Where less than daily sampling is required, the daily average discharge shall be determined by the summation of all the measured daily discharges by weight divided by the number of days during the calendar month when the measurements were made.

"Average Monthly Discharge" Or "Daily Average Discharge" is the arithmetic mean of all daily discharges during a calendar month, calculated as the sum of all daily discharges sampled and/or measured during the month divided by the number of daily discharges sampled or measured during such month.

"Average Monthly Effluent Limitation" Or "Daily Average Effluent Limitation" means the highest allowable average of daily discharges over a calendar month.

"Best Management Practices" Or "Bmp's" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices or measures to prevent or reduce the discharge of pollutants. BMP's include but are not limited to: structural and nonstructural controls; treatment requirements; operating procedures and practices or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs can be applied before, during and after pollution generating activities to reduce or eliminate the introduction of pollutants into receiving waters.

"Biological Toxicity Testing" refers to the measurement of physiological responses of organisms and/or their systems to environmentally induced conditions.

"Biosolids" refers to the biomass or biological sludge generated or produced by biological wastewater treatment processes.

"Board" means the Environmental Appeals Board.

"Bulk Storage Facility" means any facility used for the express purpose of storage of 40,000 or more gallons of any hazardous material, petroleum product or liquid waste but shall not include Aboveground Storage Tanks as defined in 7 **Del.C.** Ch. 74A and the Delaware Regulations Governing Aboveground Storage Tanks.

"Bulk Transfer Facility" means any facility used for the express purpose of transfer of 20,000 gallons per day or more of any hazardous material, petroleum product, or liquid waste to or from any carrier such as, but not limited to, ships, barges, trains or trucks.

"Bypass" means the intentional diversion of wastes from any portion of a treatment facility.

"Certification" means the issuance of a written statement or document as required under §401 of the Act that any discharge into State waters will comply with the applicable provisions of §§301, 302, 303, 306 and 307 of the Act.

"Cold Water Aquatic Animals" include, but are not limited to, the Salmonidae family of fish, e.g., trout and salmon.

"Composite Sample" means a combination of individual samples obtained at specified intervals over a given time period, generally 24 hours.

In collecting a composite sample of a discharge other than a discharge of storm water or storm runoff (a non-storm water discharge), either: a) the volume of each individual sample is proportional to the discharge flow rate or b) the sampling interval is proportional to the discharge flow rate and the volume of each individual sample is constant. For a continuous non-storm water discharge, a minimum of 24 individual grab samples shall be collected and combined to constitute a 24 hour composite sample. For intermittent non-storm water discharges 4 hours or more in duration, the number of individual grab samples collected and combined to constitute a composite sample shall at a minimum be equal to the duration of the discharge in hours but not less than 12. For intermittent non-storm water discharges of less than 4 hours, the minimum number of individual grab samples collected and combined to constitute a composite sample shall be equal to the duration of the discharge in hours times 3 but not less than 3 samples.

"Concentrated Animal Feeding Operation" Or "CAFO" means an animal feeding operation, feedlot or animal production facility that meets the criteria in Appendix B to 40 CFR Part 122 or which is designated as such by the Secretary in accordance with 40 CFR 122.23(c).

"Concentrated Aquatic Animal Production Facility" means a hatchery, fish farm, or other facility which contains, grows, or holds:

- Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:
    - Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
    - Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
- Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:
    - Closed ponds which discharge only during periods of excess runoff; or
    - Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

"Conservation Practices and Management Measures" means the basic components of a conservation waste management plan which apply the principles of agricultural engineering, economics, research, animal science and crop and soil sciences, as appropriate, to maximize the economic value of wastes, to minimize discharges of pollutants associated with and to minimize any environmental damage resulting from the activity.

"Conservation Waste Management Plan" means a written document that outlines the site-specific conservation and management measures to be implemented and followed on the farm.

"Construction" means any placement, assembly, building or installation of equipment or facilities.

"Continuous Discharge" means a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes, or other similar activities throughout the operating hours of the facility.

"Daily Discharge" means the total discharge measured during a calendar day or any 24-hour period that reasonably represents the calendar day for sampling purposes. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of a pollutant discharged over a calendar day or the equivalent 24-hour period. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over a calendar day or the equivalent 24-hour period.

"Daily Maximum Effluent Limitation" is the highest total mass of a pollutant allowed to be discharged during a calendar day or, in the case of a pollutant limited in terms other than mass, the highest average concentration or other measurement of the pollutant specified during the calendar day, or any 24-hour period that reasonably represents the calendar day for sampling purposes.

"Degradation" means any adverse change in water quality or designated uses.

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

"Designated Project Area" means the portion of State waters within which an owner plans to confine the cultivated species using a method or plan or operation which is expected to ensure that the aquaculture crop will enjoy increased growth attributable to the discharge of pollutants and be harvested within a defined geographic area.

"Designated Uses" means the categories of surface water uses as defined in the water quality standards.

"Direct Discharge" means the "discharge of a pollutant".

"Direct Responsible Charge" Or "DRC" means on-location accountability for, and on-location performance of, active daily operation (including Technical Supervision, Administrative Supervision, or Maintenance

Supervision) for a wastewater facility, an operating shift of a system or a facility, or a major segment of a system or facility.

"Discharge" for the purposes of these regulations when used without qualification means the discharge of a pollutant.

"Discharge Of A Pollutant" means any addition of any pollutant, or combination of pollutants, to state waters or the contiguous zone, or the ocean, from any source or activity other than a vessel or other floating craft when being used as a means of transportation and in compliance with Section 312 of the Act.

This definition includes additions of pollutants into State waters from:

- Surface runoff that is collected or channeled by man;
- Discharges through pipes, sewers, or other conveyances which do not lead to a treatment works; and
- Discharges through pipes, sewers, or other conveyances, leading into a treatment works other than a publicly owned treatment works (POTW).

"Domestic Wastewater" means the liquid and water-borne human and/or household type wastes derived from residential, industrial, institutional or commercial sources.

"Draft Permit" means the document prepared under §6.12 of these regulations which incorporates the Secretary's tentative determinations with respect to any NPDES permit application or any request to modify, revoke and reissue or terminate a NPDES permit. The term, "draft permit", includes a notice of intent to deny a permit and a notice of intent to terminate a permit, as outlined in §6.52 of these regulations. The denial of a request to modify, to revoke and reissue or to terminate a permit is not a "draft permit", however.

"Effluent Limitations" means any restriction imposed by the Secretary on the quantity, discharge rate and concentration of a pollutant discharged from a point source to State waters. Effluent limitations include, but are not limited to, standards of performance for new sources, best management practices or BMPs, effluent standards, discharge prohibitions, "zero discharge" standards and ocean discharge criteria.

"Environmental Protection Agency" ("EPA") means the United States Environmental Protection Agency.

"Existing Source" means any source which is not a new source or a new discharger.

"Existing Uses" means any use of State waters which has occurred, or which likely has occurred, or which the water quality at any time has been satisfactory to support, on or after November 28, 1975.

"Facility" means any building, any structure, any complex of buildings or structures, or any process, production equipment or machinery, which makes it possible for an activity to be conducted.

"Facility Plan" means a report which the owner of a treatment works submits to the Department that consists of those necessary plans and studies directly relating to the construction of proposed sewage treatment facilities or additions to existing sewage treatment facilities where additional treatment capacity is proposed.

"Feasible Alternatives" are those alternatives that are available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Feedlot" means a confined animal feeding operation or a poultry growing operation for meat, milk or egg production, or for stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth is not sustained in the area of confinement.

"Filtration" means a mechanical or physical straining process whose principal action is the removal of undissolved matter and shall include, but not be limited to, the following: diatomaceous earth filter, microstrainer, sand, dual and multi-media beds, or other processes capable of equivalent treatment.

"General NPDES Permit" means an authorization granted to a category of point source discharges pursuant to §9 of these regulations.

"Grab Sample" is an individual sample collected in less than 15 minutes.

"Groundwater" means any water naturally found under the surface of the earth.

"Hazardous Material" means any element or compound which when discharged onto land or into surface or groundwater, presents an imminent and substantial danger to public health and welfare, aquatic organisms, including but not limited to, fish, shellfish, terrestrial life, shorelines and beaches.

"Indirect Discharge" means the discharge or introduction of pollutants from any nondomestic source into a municipal or publicly-owned treatment works.

"Industrial User" - means any industry, manufacturer or business whose liquid waste is discharged to a municipal or publicly owned treatment works; an industrial user is also an indirect discharger.

"Industrial Wastes" means any liquid, gaseous, solid or other wastes or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.

"Intake Pollutant" means an amount of a pollutant that is present in State waters (including groundwater) at the time it is withdrawn from such waters by the discharger or other facility supplying the discharger with intake water. "Intake water" means the water used by a facility generally for cooling or process-related purposes from any source: surface water, groundwater, commercial purveyor or other sources.

"Interstate Agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by EPA under the Act.
"Law" means Title 7**, Del.C.** Ch. 60.
"Liquid Waste" means any sewage, industrial waste or other wastes or any combination thereof which may potentially alter the chemical, physical, biological or radiological integrity of surface and/or groundwater from its natural state. The term, "liquid waste", does not mean storm runoff or storm water.
"Load" Or "Loading" means an amount of matter or thermal energy that is introduced into a receiving water; as a verb, "load or loading" means to introduce matter or thermal energy into a receiving water. Loading may be either man-caused (pollutant loading) or natural (natural background loading).
"Load Allocation" Or "LA" means the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending upon the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.
"Loading Capacity" means the greatest amount of loading that a water can receive without violating water quality standards.
"Log Sorting And Log Storage Facilities" means facilities whose discharges result from the holding of unprocessed wood, i.e., logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).
"Maximum Instantaneous Concentration" or "MIC" is the highest allowable measured concentration of a pollutant, obtained by analyzing a grab sample of the discharge.
"Medical Wastes" means isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical wastes and potentially contaminated laboratory wastes; dialysis wastes and other disposable medical equipment and material.
"Method Detection Limit" or "MDL" means the lowest concentration of a substance which can be measured with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.
"Minimum Analytical Level" Or "MAL" means the lowest concentration of a substance that can be quantified within specified limits of interlaboratory precision and accuracy under routine laboratory operating conditions in the matrix of concern. When there is insufficient interlaboratory study data, the "MAL" may be determined through the use of a multiplier of 5 to 10 times the method detection level or "MDL".
"Mitigation" means the following sequence: (a) avoiding the impact altogether by not taking a certain action or part of an action, (b) minimizing impacts by limiting the magnitude of the action to the minimum necessary to effectuate the project need, and (c) in those cases where impacts cannot be avoided or where minimization has occurred, compensating for the affected resource.
"Municipality" means a city, town, county, district, association, or other political subdivision created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under §208 of the Act.
"NPDES" ("National Pollutant Discharge Elimination System") means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits for the discharge of any pollutant or combination of pollutants and imposing and enforcing pretreatment and sludge requirements pursuant to §307, 402, 318, and 405 of the Act.
"NPDES Application" means the forms recognized nationally, duly promulgated by EPA pursuant to the Act, including any modifications to such forms required by the Secretary, for application for a NPDES permit.
"NPDES Discharge Monitoring Report" ("DMR") means any EPA approved form, used to summarize and report the results of the permittee's self-monitoring activities.
"NPDES Form" means any issued NPDES permit and any uniform national form developed for use in the NPDES program, including any addition to such form required by the Secretary, and prescribed in regulations promulgated by EPA including the NPDES application and the NPDES Discharge Monitoring Report (DMR) forms.
"NPDES Permit" means any permit authorizing the potential or actual point source discharge of pollutants to State waters, under prescribed conditions, pursuant to §6 of these regulations.
"National Pretreatment Standard" or "Pretreatment Standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with §307 (b) and (c) of the Act, which applies to industrial users.
"New Discharger" means any building, structure, facility or installation:

- Which prior to August 13, 1979, had not discharged pollutants;
- Which had never received a final effective NPDES permit for discharges at that site;
- From which there is or may be a new or additional discharge of pollutants;
- Which is an indirect discharger that commences a discharge to State waters; and
- Which does not fall within the definition of "new source".

"New Source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commences:

- After promulgation of standards of performance under §306 of the Act which are applicable to such source; or
- After proposal of standards of performance under §306 of the Act which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

"Non-contact Cooling Water" is that which is contained within a leak-free system, i.e. has no contact with any gas, liquid or solid other than the container used for transport.

"Normal Corrosion" refers to the electrochemical reaction that results in the dissolution or removal of metal from a solid metal surface. For specific applications considered by the Department, normal corrosion rates shall be as published by the National Association of Corrosion Engineers (Reference: *Corrosion Data Survey - Metals Section*, National Association of Corrosion Engineers, 1985, as updated through August 29, 2000, or, for applications not specifically addressed in the above reference, such other reliable data.

"Normal Erosion" is the progressive loss of original material from a solid surface due to mechanical interaction between that surface and a fluid, a multi-component fluid or an impinging liquid or solid particle. (Reference: *Standard Practice for Liquid Impingement Erosion Testing*, ASTM Designation G73-82, 1987; or other authoritative source for materials or conditions not covered by the referenced standard.)

"Nuisance Condition" is any condition that, as a result of pollutant addition to a surface water, causes unreasonable interference with the designated uses of the waters or the uses of the adjoining land areas.

"Nutrient Management Plan" means a plan or program to manage the amount, placement, timing and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turfgrass.

"Nutrient Removal" means any method of treatment specifically designed to remove nutrients including, but not limited to, phosphorus, nitrogen or carbon.

"Nutrients" means nitrogen, nitrate, phosphorus, organic matter, and any other elements necessary for or helpful to plant growth.

"Operations and Maintenance Manual" means a written document setting forth a step by step procedure for operating and maintaining the treatment facility.

"Operator" means any person employed or appointed by any owner, and who is designated by such owner to be the person controlling the operations of the treatment works, including direct actions, decisions or evaluations which affect the quality of the discharge, and whose duties include testing or evaluation to control treatment works operations.

"Other Wastes" means decayed wood, sawdust, shavings, bark, sand, lime, garbage, refuse, cinders, ashes, offal, tar, oil, chemicals, and all other substances, except industrial wastes and sewage, which may cause pollution in any State waters.

"Owner" means the State or any of its political subdivisions, including, but not limited to, sewer or sanitation district commissioners and authorities; any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country; or any person or group of persons acting individually or as a group, and shall include any permittee under a NPDES permit. For the purposes of this regulation, "owner" shall also mean any responsible corporate officer so designated in the permit application. "Owner" may also mean an industrial user as identified or controlled by the requirements of Section 6, Part VII.

"Permit" means the authorization, license or equivalent control document issued by the Secretary or his duly authorized representative to implement the requirements of these regulations.

"Permittee" means any person to whom a permit has been issued by the Secretary.

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

"Pipeline" means any pipe or system of pipes including, but not limited to, pump stations and other appurtenances utilized for the conveyance of any liquid, gas or solid.

"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" means any substance, radioactive material, or waste heat which causes or contributes to, or may cause or contribute to, pollution. The term includes dredged spoil and other dredged materials, fill material, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil, product chemicals, and industrial, municipal, agricultural and other wastes discharged into water.

The term, "pollutant", does not mean: "sewage from vessels" within the meaning of §312 of the Act; or water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by the Secretary, and if the Secretary determines that such injection or disposal will not result in the degradation of ground or surface water resources. This definition encompasses drinking water contaminants that are regulated under §1412 of the Safe Drinking Water Act and may be discharged to State waters that are source waters of one or more public water systems. For public water systems served by surface water, source water is any water reaching the intake.

"Pollution" or "Water Pollution" means man-made or human-induced alteration of the physical, chemical, biological or radiological properties of any state waters as will create or is likely to create a nuisance or render such waters:

- Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life;
- Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or
- Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses;
- For the purposes of these regulations, the following are "water pollution":
  - An alteration of the physical, chemical, or biological properties of State waters or a discharge of sewage, industrial wastes, other wastes or materials to State waters by any person which by itself is not sufficient to cause water pollution but which in combination with such alteration or discharge to State waters by other persons is sufficient to cause water pollution,
  - The discharge of untreated sewage by any person into State waters, and
  - The discharge of any pollutant, contaminant or substance that causes or contributes to the contravention of water quality standards duly established by the Secretary.

"Pollution Control Strategy" or "PCS" means a plan that specifies the necessary pollutant load reductions and actions that must be taken through voluntary and regulatory means to ensure the resultant pollutant loadings are less than or equal to the "total maximum daily load" or "TMDL" for a given waterbody. Pollution trading between different sources of pollution, geographic targeting and pollution prevention may all be considered as part of a "Pollution Control Strategy" or "PCS".

"Pollution Prevention" means any practice which results in a lesser quantity of emissions released or discharged prior to out-of-process recycling, treatment or control, as measured on a per-unit-of-production basis.

"Ponds" means all natural and/or man-made lakes or other bodies of water fed directly by springs, groundwater, tidal or non-tidal streams.

"Pretreatment" means the reduction or elimination of pollutants, or altering the nature of the pollutants prior to discharging or otherwise introducing such pollutants to a treatment works. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or by other means.

"Pretreatment Program" means the legal, technical and administrative framework for effectively controlling the introduction of pollutants into a publicly owned treatment works (POTW).

"Pretreatment Requirement" means any substantive or procedural condition, obligation or requirement related to pretreatment, other than a national pretreatment standard, imposed on any industrial user.

"Pretreatment Standard" means any pollutant discharge limitation promulgated by the EPA in accordance with §307(b) and (c) of the Act, or by the Secretary, which applies to industrial users. This term includes the prohibitions and discharge limitations outlined in Section 6.71 of these regulations.

"Process Wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

"Professional Engineer" means a person who has been duly registered as a Professional Engineer by the Council of the Delaware Association of Professional Engineers.

"Public Hearing" means any fact-finding proceeding pursuant to §6006 of the Law, held by the Secretary to afford interested persons an opportunity to submit factual data or evidence, views, and arguments to the Secretary.

"Publicly owned treatment works" ("POTW") means a treatment works as defined herein, which is owned by the State or a municipality, city, town, county, district or other public body created by or pursuant to the laws of the State, including any sewers, pipes or other conveyances that connect to such treatment works.

"Radioactive Material" means those radioactive materials not encompassed in the definitions of source, byproduct or special nuclear materials in the Atomic Energy Act of 1954, as amended through August 29, 2000.

"Residues" Or "Residuals" means the solids, sludges, and precipitates separated from or created by the unit processes of a treatment works.

"Rock Crushing And Gravel Washing Facilities" means facilities which process crushed and broken stone, gravel and riprap.

"Schedule Of Compliance" means a listing of necessary measures with target dates, including an enforceable sequence of interim requirements, actions or operations, leading to compliance with an effluent limitation, other limitation or requirement, prohibition, regulation, performance standard, or water quality standard.

"Secondary Treatment" means any combination of unit processes that will consistently remove 85% or more of the organic and suspended material in domestic sewage and produce an effluent of sufficient quality to satisfy the requirements of §7 of these regulations.

"Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or his duly authorized designee.

"Severe Property Damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Sewage" means the water-carried human or animal wastes from septic tanks, water closets, residences, buildings, industrial establishments or other places together with such groundwater infiltration, subsurface water, storm inflow, admixture of industrial wastes, or other wastes as may be present.

"Sewage From Vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under §312 of the Act.

"Sewage Sludge" means any solid, semi-solid or liquid residue removed during the treatment of municipal wastewater or domestic sewage, including but not limited to, solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet pumpings and sewage sludge products.

"Significant Industrial User" means that (industrial user) which reasonably has the potential to adversely affect a POTW's operation; that which reasonably has the potential for violating any pretreatment standard or requirement; that which discharges an average of 25,000 gallons per day or more of process wastewater to a POTW; that which discharges process wastewater in such an amount or strength that constitutes 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW; that which is designated as such by the POTW; that which is subject to federal categorical pretreatment standards as outlined in 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N.

"Silvicultural Point Source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into State waters.

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge" means the accumulated semi-liquid suspension, settled solids, or dried residue of these solids removed by any surface water or groundwater treatment facility or any liquid waste treatment facility or works, whether or not such solids have undergone treatment.

"Source" means any building, structure, facility, installation or establishment from which there is or may be a discharge of pollutants.

"State" means the State of Delaware.

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

- Waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean;

- All interstate waters, including interstate wetlands;
- 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;
- All impoundments of waters otherwise defined as waters of the State under this definition;
- Wetlands adjacent to waters (other than waters that are themselves wetlands) identified above.

Waste and stormwater treatment systems including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds which otherwise meet the requirements of subsection (1) of this definition) are not "State waters" or "Waters of the State".

"Stream" means the natural watercourse flowing in a defined bed or channel with bank and sides having permanent sources of supply, uniform or interrupted, temporarily diminished or suspended, but usually containing running water.

"Surface Water" means water occurring generally on the surface of the earth.

"Technology-based" generally refers to those requirements or limitations, established by these regulations or in accordance with §301 of the Act, that reflect the achievable performance or pollutant removal capability of the technology, treatment process or equipment employed.

"Total Maximum Daily Load" Or "TMDL" means the amount of a given pollutant that may be discharged to a waterbody from point, nonpoint and natural background sources and still allow attainment or maintenance of the applicable narrative and numerical water quality standards. A "TMDL" is the sum of the individual wasteload allocations or WLAs for point sources and load allocations or LAs for nonpoint sources of pollution and natural background. A “TMDL” may include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a "TMDL" attempts to match the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact.

"Toxic Pollutant" means any pollutant listed as toxic in Delaware's Surface Water Quality Standards.

"Treatment Works" means any devices and systems used in the storage, treatment, recycling, and/or reclamation of sewage or industrial wastes, or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances, extension, improvement, remodeling, additions, and alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; however, "treatment facilities" shall include only those mechanical devices necessary for the transmission and treatment of wastes (e.g., unit treatment processes and pump stations).

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. The basis for specific effluent limitations can be found in the fact sheet, as provided for in Section 6.18. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means a permitted deviation from an established rule, regulation, plan, standard or procedure. With respect to the NPDES program, it means any mechanism or provision under Sections 301 or 316 of the Act, or in the applicable effluent limitation guidelines which allow modification to or waivers of the effluent limitation requirements or time deadlines of the Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors, the establishment of alternative discharge limitations, treatment requirements or control measures pursuant to §§301(c), 301(g), 301(h) or 316(a) of the Act, or extensions of compliance deadlines pursuant to §§301(i) or 301(k) of the Act, where appropriate.

"Warm Water Aquatic Animals" include, but are not limited to, the Ameiuride, Centrarchidae, and Cyprinidae families of fish, e.g., respectively catfish, sunfish, and minnows.

"Wasteload Allocation" Or "WLA" means the portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

"Water Quality" means the physical, chemical and biological characteristics of water with respect to its suitability for a particular use.

"Water Quality-based" generally refers to those requirements or limitations designed to achieve a given water quality objective, e.g. compliance with any applicable water quality standard, without regard to treatment technology.

"Water Quality Criterion" is an element of water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular designated use.

"Water Quality Standard" means any rule or limit established by the Secretary which consists of a designated use or uses for waters of the State and the water quality criteria for such waters based upon such designated uses.

"Wetlands" are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetland areas are as delineated under and through 7 **Del.C.** Ch. 66 and the "Corps of Engineers Wetlands Delineation Manual", dated January, 1987.

"Wetlands Creation" means the establishment, through human intervention, of wetlands at a site where wetlands did not historically exist.

"Wetlands Enhancement" means the net increase, through human intervention, of wetland function or value within an existing wetland.

"Wetlands Restoration" means the reestablishment, through human intervention, of wetlands at a site where wetlands historically existed but were subsequently lost.

"Whole Effluent Toxicity" means the aggregate toxic effect of an effluent or discharge measured directly by a toxicity test.

"Work Plan" means a list of all necessary actions and corresponding time schedule which is included in the facility plan or operations and needs review to ensure that an owner's sewage system maintains effluent limits.

8 DE Reg. 1189 (2/1/05)

3.0 Coverage, Prohibitions, Exemptions and Exclusions

3.1 Coverage

3.1.1 These regulations apply throughout the State of Delaware and govern the following activities:

3.1.1.1 Construction, installation, replacement, modification, operation or use of any water pollution control facility or device intended to manage or control the discharge of pollutants to surface or ground waters; construction, installation, replacement, modification, operation or use of any liquid waste collection, conveyance or treatment facilities (§4).

3.1.1.2 Surface water impoundments for the waste treatment, storage or disposal of nonhazardous liquid wastes (§ 4).

3.1.1.3 Physical, chemical or biological alterations of surface waters subject to the Water Quality Certification Program (§5).

3.1.1.4 Point source discharges of pollutants governed by the National Pollutant Discharge Elimination System (NPDES) permit program (§6).

3.1.1.5 Discharges of pollutants to surface waters that are substantially similar and regulated as a group, class or category of discharge under the General Permit Program, e.g. stormwater discharges associated with industrial activity (§9).

3.1.1.6 Operation of aquaculture or aquatic animal production facilities that discharge pollutants to surface or groundwaters (§9).

3.1.1.7 Discharges from the clean up of gasoline and fuel oil released from underground storage tanks (§9).

3.1.1.8 Discharges of pollutants associated with car washes and other motor vehicle washing operations (§9).

3.1.1.9 Discharges of pollutants associated with the operation and maintenance of swimming pools, spas and similar facilities (§9).

3.1.1.10 Pollution prevention/compliance assurance at municipal wastewater treatment plants (§10).

3.2 Prohibitions

3.2.1 No person shall undertake any activity that causes or contributes to the discharge of a pollutant to any surface water or groundwater except as authorized pursuant to a permit or equivalent authorization, issued by the Secretary or as prescribed by these regulations (e.g. General Permit Program requirements of §9).

3.2.2 No person shall construct, install, replace, modify, or use any equipment or device or other article which is intended to control the discharge of pollutants into surface water or groundwater except as authorized pursuant to a permit or equivalent authorization issued by the Secretary or as prescribed by these regulations (e.g. General Permit Program requirements of §9).

3.2.3 No person shall discharge any pollutant from a point source into surface or ground water, directly or indirectly, except as authorized pursuant to a permit granted under these regulations, unless such discharge is specifically exempted from such permit regulations.

3.2.4 No person shall discharge liquid waste from an existing septic tank or other system where such liquid waste flows to the surface of the ground or into surface water.

3.2.5 No person shall operate any existing pipeline or bulk transfer facility which causes or contributes to the discharge of pollutants onto the surface of the ground or into surface or ground water.

3.2.6 No person shall cause or permit to be discharged, thrown, or dumped into any waters or any drainage ditch in the State any garbage, refuse, dead animal, poultry, trash, carton, bottle, container, box lumber, timber, paper, or light material or other solid waste.

3.2.7 Any discharge of untreated or inadequately treated vessel sewage, by any means, into or upon the waters of any marina, boat docking facility or tidal water of the State is prohibited.

3.2.8 No permit pursuant to these regulations shall be issued for the following:

3.2.8.1 Any discharge of any radiological, chemical or biological warfare agent or high level radioactive material into State waters; and

3.2.8.2 Any discharge that would substantially impair anchorage and navigation in or on any waters of the State and

3.2.8.3 Any discharge that is in conflict with any area-wide or basin-wide water quality control and waste management plan or policy, or plan amendment, approved under §208(b) of the Act. This subsection shall not be construed to prevent private sector treatment and disposal of domestic wastewater; and

3.2.8.4 Any discharge that is in conflict with any Total Maximum Daily Load (TMDL) or Pollution Control Strategy, if applicable, established by the Secretary pursuant to the Law; and

3.2.8.5 Any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

3.2.8.5.1 Prior to the promulgation of the guidelines under §403(c) of the Act, unless the Secretary determines permit issuance to be in the public interest; or

3.2.8.5.2 After promulgation of the guidelines under §403(c) of the Act, where insufficient information exists to make a reasonable judgement as to whether the discharge complies with any such guidelines; and

3.2.8.6 Any discharge of liquid wastes or the construction and operation of any pollution control device or equipment unless the county or municipality having jurisdiction has first approved the activity by zoning procedures provided by law pursuant to 7 **Del.C.** § 6003(c); and

3.2.8.7 Any discharge of liquid wastes to a well. No well shall be used for recharge, injection, or disposal purposes, except as provided under the Department's Regulations Governing Underground Injection Control. This subsection shall not be construed to prevent recharge of treated liquid wastes for the purpose of water resources management.

3.2.8.8 Any discharge or disposal of medical waste.

3.2.9 No permit pursuant to these regulations shall be issued unless the conditions of such permit:

3.2.9.1 provide for compliance with the applicable requirements of the Act or the Law, or regulations promulgated under the Act or the Law; and

3.2.9.2 ensure compliance with the applicable State surface water quality standards and the applicable water quality requirements of all other affected states.

3.2.10 No permit pursuant to these regulations shall be issued to a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of any applicable surface water quality standard(s).

No permit pursuant to these regulations shall be issued to a new source or a new discharger proposing to discharge to waters that do not meet the applicable surface water quality standards and that are not expected to meet those standards even after the application of the technology-based controls required of point sources under §§301(b)(1)(A) and 301(b)(1)(B) of the Act, unless:

3.2.10.1 The Secretary has established a Total Maximum Daily Load (TMDL) and a Pollution Control Strategy for the receiving waters and the conditions in the permit are consistent with that TMDL and Pollution Control Strategy; or

3.2.10.2 The permit includes a "zero discharge" limitation or similar prohibition against discharging the pollutant or pollutants responsible for the violations; or

3.2.10.3 In cases where the Secretary has yet to establish a Total Maximum Daily Load (TMDL) and a Pollution Control Strategy for the pollutant or pollutants responsible for the violations in the receiving waters, the new source or new discharger offsets the proposed discharge by reducing existing point source and nonpoint source pollutant loads to the impaired waterbody by an amount greater than the proposed discharge. Any offsets shall be obtained before the discharger begins

discharging and shall be maintained until the TMDL and Pollution Control Strategy are established and implemented.

This subsection shall not be construed as to preclude the issuance of a permit for the discharge of any pollutant or pollutants for which the applicable surface water quality standards or criteria are being met or are expected to be met in the receiving waters, even though other applicable surface water quality criteria or standards are not being met or are not expected to be met.

3.2.10.3.1 No permit pursuant to these regulations shall be issued when the EPA has objected to such issuance as provided in 40 CFR 123.44. A permit may be issued in such cases where EPA fails to follow the provisions of 40 CFR 123.44.

3.3 Exemptions (Activities Not Requiring a Permit)

3.3.1 The following activities do not require a permit under these regulations:

3.3.1.1 Existing ditches used for the express purpose of draining water from the surface of the land.

3.3.1.2 Storm water discharges not regulated under the NPDES or the General Permit Program. (Refer to §6 and §9 of these regulations for details.)

3.3.1.3 Application of organic or inorganic fertilizer to the land for agricultural or horticultural purposes where accomplished using recognized methods in accordance with all applicable regulatory requirements (e.g., the Department's Guidance and Regulations Governing the Land Treatment of Wastes, nutrient management regulations promulgated by the Secretary of Agriculture with the guidance, advice and consent of the Delaware Nutrient Management Commission pursuant to 3 **Del.C.,** Ch. 22, and so forth).

3.3.1.4 Transportation of organic or inorganic fertilizers.

3.3.1.5 Application of herbicides, pesticides, and plant growth regulators for agricultural or horticultural purposes.

3.3.1.6 The sewer connection from any single family or multi-family dwelling, office building, store or other commercial building which generates less than 2,000 gallons of liquid waste per day, provided the connection will be made prior to use and to a sewer system that has a permit for discharge.

3.3.1.7 Plowing or cultivating for agricultural or horticultural purposes.

3.3.1.8 Irrigation practices utilizing uncontaminated surface or groundwater for agricultural or horticultural purposes.

3.3.1.9 Acid cleansing of masonry, provided such activity does not constitute a point source discharge of a pollutant to State waters or involve the point source discharge of a pollutant to State waters. (Such cases require a NPDES permit under §6.)

3.3.1.10 Movement or regrading of less than five acres of earth for building excavation, foundations or footings.

3.3.1.11 Construction and operation of potable water transmission lines and storage tanks.

3.3.1.12 Construction, installation or operation of any pipe or system of pipes which does not convey liquid waste and which is located wholly on the property of the owner where processing, manufacturing, commercial or business operations occur.

3.3.1.13 Replacement of any pollution control equipment or facility if a permit authorizing the construction or installation of that pollution control equipment or facility had been issued previously, and if the replacement is equivalent to what was originally designed and constructed or installed.

3.3.1.14 Discharges incidental to the normal operation of a vessel, excluding sewage, when such vessel is operating as a means of transportation.

3.4 Exclusions

3.4.1 The following activities do not require a permit under these regulations unless the Department determines that the activity is a source of pollutants to State waters, involves a discharge of pollutants to State waters or has the potential to discharge pollutants to waters of the State. To qualify for the exclusion herein, either the activity must be conducted in such a way as to preclude the discharge of pollutants or the quantity and quality of the discharge or the constituents in the discharge are such that the discharge will not alter the physical, chemical, biological or radiological properties of the receiving waters.

3.4.1.1 Condensate from any cooling system used for air temperature control;

3.4.1.2 Steam trap blowdown from any steam tracing system;

3.4.1.3 Feedlot or animal feeding operations that do not meet the criteria outlined in Section 6.61 of these regulations or Appendix B of 40 CFR Part 122;

3.4.1.4 Aquaculture or aquatic animal production facilities producing less than 2,000 lbs harvest weight fish or aquatic animals per year;

3.4.1.5 Well or pump testing;

3.4.1.6 Pipe and tank cleaning operations;
3.4.1.7 Dewatering of construction site(s) or wellpointing;
3.4.1.8 The operation of a quarry, gravel pit or borrow pit operation;
3.4.1.9 Water line flushing;
3.4.1.10 Landscape or lawn irrigation;
3.4.1.11 Diverted stream flows;
3.4.1.12 Uncontaminated ground water infiltration to separate storm sewers;
3.4.1.13 Discharges from potable water sources;
3.4.1.14 Discharges from foundation drains;
3.4.1.15 Individual residential car/vehicle washing;
3.4.1.16 Dechlorinated backwash from a filter used for an individual dwelling swimming pool;
3.4.1.17 Snow and ice removal;
3.4.1.18 Salting and sanding of roadways for the express purpose of snow and ice removal;
3.4.1.19 Discharges or flows from emergency fire fighting activities.

4.0 Pollution Control Facilities Construction and Operation

4.1 Introduction. This section of the regulations governs the construction, installation, replacement, modification, operation or use of any equipment or device or other article which may cause or contribute to the discharge of a pollutant into any surface water. This includes sewers, wastewater collection and transmission facilities, wastewater treatment systems and similar facilities intended to prevent or control the discharge of pollutants into surface waters, but excludes service plumbing and fixtures (sinks, toilets, drain pipes, etc.). Persons wishing to undertake this activity must apply for and receive a permit from the Division of Water Resources prior to initiating work.

4.2 Prohibitions

4.2.1 No person shall commence construction, installation, replacement, modification, operation or use of any of the following without first having obtained a permit from the Department:

4.2.1.1 Any sewer;
4.2.1.2 Any liquid waste collection or conveyance facilities, e.g. wastewater pump stations and force mains;
4.2.1.3 Any liquid waste treatment facilities;
4.2.1.4 Any surface impoundment for liquid waste; or
4.2.1.5 Any bulk storage, bulk transfer or pipeline facility.

4.2.2 No person shall commence construction, operation or use of any structure or facility (including, but not limited to, a single or multi-family dwelling, an office building, a store or other commercial building, a factory or other industrial building), the occupancy or use of which will generate liquid waste until said person has obtained a permit from the Department for the construction, installation, operation or use of the liquid waste collection, conveyance or treatment facilities servicing the structure or facility.

4.3 Exemption

4.3.1 No permit is required for the replacement of any pollution control equipment or facility provided that:

4.3.1.1 A permit authorizing the construction or installation of that pollution control facility had been issued previously, and
4.3.1.2 The replacement is equivalent to what was originally designed and constructed or installed.

4.3.2 No permit is required for the sewer connection from any single family or multi-family dwelling, office building, store or other commercial building which generates less than 2,000 gallons of liquid waste per day, provided the connection will be made prior to use and to a sewer system that has a permit for discharge.

4.3.3 No permit is required for the construction or installation of piping and plumbing fixtures within any single family or multi-family dwelling, office building, store or other commercial building or industrial facility, that collect liquid wastes and service the dwelling, building or facility.

4.4 Application Requirements. Persons desiring a permit shall submit a complete application to the Department in accordance with this section. The permit application must include the appropriate permit fee, established through a duly adopted fee schedule. For privately-owned systems, the applicant shall also provide a notarized affidavit consenting to the personal jurisdiction of the Delaware courts, and in the event process cannot be served by other means, consent to service of process as provided for in 10 **Del.C.** §3104.

The applicant must demonstrate that the facility will be constructed and operated in such manner as to protect Delaware's surface waters and comply with the applicable design standards, technology requirements and water quality standards.

All applications must be accompanied with the following:

4.4.1 Two sets of construction plans and specifications signed and sealed by a Delaware registered Professional Engineer. For gravity collection systems only, plans may be sealed by a professional land surveyor registered in Delaware;

4.4.2 A summary of the intended purpose and design of the proposed facility(ies);

4.4.3 Evidence that provisions have been made for emergency operation, including alternative or back-up power sources;

4.4.4 Description of intended operation and maintenance of the facility; and

4.4.5 Pump/performance curves for all pump/lift stations and force mains.

In addition, applications for extensions to existing wastewater collection and transmission systems must include:

4.4.5.1 Plans drawn to scale showing slope, inverts, pipe size, groundline and tops of manholes, utilities, water mains, storm water and stream crossings and encasements shown in profile.

4.4.5.2 A letter from the owner/municipality/authority responsible for the operation and maintenance of the central wastewater collection, transmission and treatment facilities authorizing and approving this project. The letter must include statements that the project has the proper zoning approval and that the existing wastewater conveyance and treatment system has the capacity to accommodate the additional flows.

The Department may require the submission of additional information after a permit application has been filed and may suspend processing of the application until such time as the owner or applicant has supplied the missing or deficient information and the Department considers the application complete. Further, where the owner or applicant becomes aware that he failed to submit any relevant facts or submitted incorrect information in a permit application or in any report to the Department, the owner shall submit such facts or information as soon as possible.

4.5 Public Notice Requirements. All applications submitted under this section, except those applications for the construction of municipal or publicly owned sewage collection systems that do not have pumps or a lift station (i.e. gravity systems), are subject to the provisions regarding public notice and opportunity for a hearing pursuant to 7 **Del.C.** §6004(b).

4.6 Review of Design Plans for Wastewater Conveyance and Treatment Facilities

Design plans for and specifications for wastewater collection, conveyance and treatment facilities will be reviewed in accordance with the 1997 edition of "Recommended Standards for Wastewater Facilities: Policies for the Design, Review and Approval of Plans and Specifications for Wastewater Collection and Treatment Facilities", published by: Health Education Services, Albany, N.Y.

At the Department's discretion, other published references that provide guidance or recommendations for the design and construction of wastewater conveyance and treatment facilities may be used in reviewing the design.

4.7 Minimum Design Standards for Surface Impoundments

Surface impoundments for the storage, handling or treatment of any liquid waste shall be designed, constructed and operated in such manner as to protect Delaware's surface and groundwaters. All surface impoundments constructed or reconstructed after January 1, 2003 must have impermeable liners to restrict the migration of liquids from the impoundment and to prevent contamination of underlying groundwater. Liners may be constructed of either synthetic or natural materials provided the permeability, durability and integrity of the proposed material can be satisfactorily demonstrated for the anticipated conditions. The base or bottom of the impoundment shall be at least two feet above the seasonal high water table. Adequate freeboard shall be provided and maintained to accommodate any anticipated variability in design flow and the accumulated precipitation from a 10 year, 24 hour storm.

At its discretion, the Department may require more stringent liner requirements when deemed necessary to protect human health and the environment. In addition, the owner or operator of a surface impoundment may be required to develop and maintain a groundwater monitoring program to evaluate the facility's impact upon groundwater.

4.8 Final Determinations - Permit Issuance/Denial. After the close of the comment period specified either in the public notice or at the hearing (if a hearing was held), the Secretary shall make a final determination on the permit application and either issue a permit or deny the application. If the decision is to deny the application, the Secretary shall notify the applicant and provide an explanation of the reasons for denying the application.

4.9 Permit Suspension and Revocation. A permit may be revoked or suspended for violation of any condition of the permit or any requirement of these regulations, in accordance with 7 **Del.C.** Ch. 60.

4.10 Duration of Permits, Continuation of Expiring Permits and Transferability of Permits

4.10.1 Duration of Permits. A permit shall be issued for a specific duration which will be determined by the Department. In no case shall a permit be valid for more than five years.

4.10.2 Continuation of Expiring Permits. Any person wishing to extend or renew an existing permit shall, not less than 90 days prior to the expiration date of that permit, submit a written request to the Department for such permit extension or renewal. At its discretion, the Department may require the submission of a new permit application including any applicable fees. In the event that the permittee submits a timely request to extend or renew the current permit, and the Department through no fault of the permittee, is unable to make a final determination on the request before the expiration date of the current permit, the terms and conditions of that permit shall be continued and remain fully effective and enforceable until the Department makes a final determination on the request.

4.10.3 Transferability of Permits. An existing permit may be transferred if the Secretary agrees and if a written request is submitted to the Department, signed by both parties, the transferor and the transferee, at least ten (10) days prior to the proposed date of transfer. Such requests shall specify the date for the proposed transfer and outline the responsibilities of both parties including acknowledgement that the existing permittee is liable for compliance with the terms and conditions of the permit up to the date of transfer and the transferee or new permittee is liable for compliance from that date on. At its discretion, the Department may require the submission of a new application rather than agreeing to the transfer of the existing permit.

4.11 Conditions Applicable to All Permits. The terms and conditions of each permit issued by the Secretary for the construction, installation, modification, operation or use of the pollution control facilities specified in §4.1 shall include but not be limited to, the following:

4.11.1 The legal basis for issuance of the permit;

4.11.2 The issuance date and the effective date of the permit;

4.11.3 The name and address of the permittee;

4.11.4 The activity permitted and its location;

4.11.5 If the permitted activity involves construction, installation or modification of a pollution control facility or device, a description of the plans and specifications submitted with the permit application;

4.11.6 The permit expiration date and a statement that the permit may be renewed or a new permit issued, after notice and opportunity for public hearing as required under the Law, upon the condition that the activity meets or will meet all applicable state and federal laws, regulations and requirements;

4.11.7 A specific list of requirements which may include the following:

4.11.7.1 Discharge limitations; and

4.11.7.2 Performance standards; and

4.11.7.3 Monitoring and reporting requirements; and

4.11.7.4 A requirement that the permittee conduct the authorized activity in accordance with the terms and conditions of the permit and that failure to do so constitutes a violation of the permit which is punishable as provided in 7 **Del.C.** §6005; and

4.11.7.5 Management requirements, such as notification of intent to initiate operation at least ten (10) days in advance of start up, notification of any changes in authorized activities, notification of noncompliance and a requirement to minimize adverse impacts to State waters resulting from the permitted activities; and

4.11.7.6 Conditions outlining the permittee's responsibilities:

4.11.7.6.1 Within ninety (90) days following completion of construction, submitting an "as built" set of plans for the pollution control facility or device as constructed, installed or modified, which is signed and sealed by a professional engineer licensed in Delaware; and

4.11.7.6.2 That the permittee shall allow the Secretary or his authorized representatives, upon the presentation of credentials:

4.11.7.6.2.1 To enter upon the permittee's premises for inspection of any records, flow measurements, construction or other authorized activity or any condition required under the terms of the permit; and

4.11.7.6.2.2 At reasonable times, to have access to and copy any records required to be kept under the terms and conditions of the permit; to inspect any monitoring equipment or method required in the permit; and to sample any discharge of pollutants; and

4.11.7.6.3 That the permit is transferable with the Department's consent, provided that a written request is submitted to the Department, signed by both parties, the transferrer and the transferee, at least ten (10) days prior to the proposed date of transfer; and

4.11.7.6.4 That all reports submitted with the application and those required by the terms of the permit shall be available for public inspection and that knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided in 7 **Del.C.** §6013; and

4.11.7.6.5 That any person who causes or contributes to the discharge of a pollutant into State waters either in excess of any condition specified in the permit or in the absence of a specific permit condition shall report such an incident to the Department as required under 7 **Del.C.** §6028;

4.11.8 A schedule of compliance if deemed appropriate in the judgement of the Secretary;

4.11.9 A statement that the permit may be modified, suspended or revoked in whole or in part during its term for cause, including but not limited to the following:

4.11.9.1 Violation of any condition of the permit;

4.11.9.2 Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

4.11.9.3 A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized activity;

4.11.9.4 Information that the permitted activity poses a threat to human health or the environment;

4.11.10 A statement that the permittee at all times shall maintain and operate any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit;

4.11.11 A statement that nothing in the permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under 7 **Del.C.** Ch. 60 or under any other applicable state law or regulation; and

4.11.12 A statement that the issuance of the permit does not convey any property rights in either real or personal property, 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.

5.0 Water Quality Certification

Part I - General

5.1 Introduction. Under federal law, §401 of the federal Clean Water Act, 33 U.S.C. §1341, et seq., any applicant for a federal license or permit to conduct any activity which may result in a discharge of pollutants into State waters (e.g. a NPDES discharge permit or a federal permit for the discharge of dredged or fill material) is to provide a certification from the state or interstate water pollution control agency having jurisdiction (i.e. the Department) that any such discharge will comply with the applicable provisions of §§301, 302, 303, 306 and 307 of the Act. This section of the regulations outlines the application requirements and administrative procedures to be followed in connection with any such water quality certification issued by the Secretary. These administrative procedures encourage and provide opportunities for public involvement in the decision-making process.

Potential applicants are encouraged to contact the Department prior to submitting an application. Federal law provides that no federal license or permit is to be granted until such certification has been obtained; no license or permit is to be granted if certification has been denied.

5.2 Applicability. This section of the regulations applies to all activities requiring a federal license or permit that affect State waters.

5.3 Penalties. Violations of these regulations shall be punishable in accordance with 7 **Del.C.** §§ 6005, 6013, 6617 and 7214 and all other applicable laws.

5.4 Other Regulatory Agencies. Compliance with these regulations does not relieve any person from complying with the laws, rules, regulations and requirements imposed on the same lands, uses, structures, facilities or other appurtenances by local, state and federal government agencies, or other divisions within the Department.

5.5 Public Information. All material submitted in connection with any application shall be deemed public record subject to disclosure in accordance with 7 **Del.C.** §6014 and 29 **Del.C.** Ch. 100 unless designated by the applicant and accepted by the Department as covered by one or more of the exceptions enumerated in 29 **Del.C.** §10002(d) or 7 **Del.C.** §6014.

5.6 Site Access. The Department may decide that a site visit is necessary to evaluate or verify the information provided in the application or collect additional data to process an application for certification. In such cases, the Department shall notify the applicant and schedule the site visit. In addition, the Department may conduct

an inspection of the activity or site for which certification was provided to determine compliance with any certification conditions.

In accordance with 7 **Del.C.** §6024, the Secretary, or his duly authorized representative, shall be provided access to and shall be allowed to enter any public or private property where any activity subject to certification is, or will be, conducted, after giving verbal notice and presentation of official identification.

5.7 Enforcement. Certification decisions, including conditions of federal permits or licenses, are subject to the enforcement mechanisms available to the Department and/or the federal agency issuing the permit or license. In the case of Federally authorized or delegated state programs such as the NPDES, certification decisions including conditions of permit or licenses, are subject to the enforcement mechanisms available to both the Department and the federal agency granting delegation. Other mechanisms under State law may also be used to correct or prevent adverse water quality impacts from construction or operation of activities for which certification has been issued.

Part II - Application and Public Notice

5.10 Application Procedure. Any application for certification must include complete information and be presented on a form provided by the Department:

5.10.1 As a minimum, the application must contain the information outlined in §5.10.1.1 through 5.10.1.7 and, if applicable, §5.10.2.1 and 5.10.2.2. The application forms required by the federal permitting agency will be accepted provided they contain the minimum information required.

5.10.1.1 The name, address, phone number of the applicant and, if applicable, the name and address and telephone number of the agent for the applicant.

5.10.1.2 A complete description of the proposed activity, including the location, affected water(s), purpose, and intent of the project; maps, drawings, and plans sufficient for review purposes.

5.10.1.3 A description of all proposed activities reasonably associated with the proposed project either directly or indirectly, including planned or proposed future development that relate to water quality considerations.

5.10.1.4 An assessment of existing resources which fully considers ecological functions and values tailored to the site.

5.10.1.5 Plans for monitoring water quality in the area(s) affected by the proposed activity, e.g. the dredge area and the overflow from the disposal site(s).

5.10.1.6 The names and mailing addresses of adjacent property owners.

5.10.1.7 A description of feasible alternatives considered to avoid, minimize or compensate for impacts to or loss of State waters, e.g. clustering development on upland parcels, considering alternative layouts that avoid or minimize impacts to waters of the State, replacement of State waters lost due to activity where such loss can neither be avoided nor minimized. Such discussion shall justify the selection of the proposed activity as the most practicable alternative.

An alternative is feasible if it is available at the time of application, if it is capable of being carried out and if it would eliminate or reduce impacts to State waters after taking into consideration cost, existing technology and logistics in light of overall project purposes. This may include an area which is not owned by the applicant, but which could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity. Feasible alternatives that do not involve waters of the State are presumed to be available unless clearly demonstrated otherwise.

The applicant shall use the following mitigation sequence in evaluating feasible alternatives:

5.10.1.7.1 Avoidance - The Secretary shall consider whether the applicant has provided sufficient information on practicable alternatives to the proposed activity that would eliminate the need for conducting such activity, e.g. whether upland sites exist to meet the needs of the applicant.

5.10.1.7.2 Minimization - The Secretary shall consider whether the applicant has provided sufficient information on minimizing activities in waters of the State. Consideration shall be given to such measures as the identification of wetland areas as an element of the project, clustering of development on upland parcels, and alternative layouts that avoid waters of the State.

5.10.1.7.3 Compensation - The Secretary shall require the applicant to provide for replacement of waters of the State lost due to the activity where they can neither be avoided nor minimized.

5.10.1.7.3.1 Methods of compensation shall include the creation of new waters or the restoration of previously impacted or degraded waters. Compensation may also include establishing compensation banks where waters are established in one location to compensate for losses in several locations.

5.10.1.7.3.2 The compensation of waters on site and within the same watershed is given preference over compensation off site and in a different watershed.

5.10.1.7.3.3 Compensation for waters shall provide functional replacement of acres impacted not to exceed a ratio of three times the area of impacted waters.

5.10.1.7.3.4 To the extent practicable, compensation will be implemented prior to the activity for which such compensation is required. In the event compensation banks have not been established, this provision shall not apply.

5.10.1.7.3.5 When waters are created or restored as part of any antidegradation requirements, the Secretary may require conservation easements or other similar means to protect such waters from adverse alterations in perpertuity.

5.10.1.7.3.6 All certifications requiring wetlands creation or restoration shall include monitoring, functional assessment, maintenance and reporting programs to document timely achievement of a fully functional ecological system.

5.10.2 If the proposed activity involves the discharge of dredged or fill material, the application must contain the following additional information:

5.10.2.1 A description of the composition, source, and quantity of any material to be dredged or used as fill and a description of the area to be impacted, including the area of fill in acres. If the proposed activity involves dredge or fill at multiple sites, the applicant must identify the location for each site and specify the area to be dredged or filled at each location.

5.10.2.2 The method of dredging or filling and specific plans for disposal and control of dredge spoils.

5.10.3 For any activity which is covered in its entirety by Department regulations adopted pursuant to 7 **Del.C.** Chs. 60, 66 or 72 (i.e. NPDES permits issued by the Secretary, wetlands permits, or subaqueous lands permits or leases), the applicant need not submit a separate application for water quality certification.

5.10.4 By agreement with either federal or state agencies, the Department may develop a joint application for a federal license or permit and State water quality certification in order to facilitate the certification process.

5.10.5 Upon receipt of an application, the Department may require additional information to make the application complete. If the Department does not request additional information within 30 working days of receipt of the application or joint public notice, the application will be deemed complete for processing. However, the Department may request additional information anytime prior to issuing the Notice of Decision per §5.22.

5.10.6 The Department may require the applicant to provide water quality monitoring data, water quality modelling results, or other environmental assessments prior to accepting or processing the application and assessing the impacts of the proposed activity.

5.10.7 When the Department requests additional information, it will specify a deadline for submittal of such information. The applicant will be given a reasonable period of time, not to exceed 30 working days unless the Department finds that unusual circumstances warrant a longer timeframe, to provide any requested information. If the information requested is not submitted within the timeframe specified and is necessary for reaching a certification decision, the application will be considered inactive and may be returned to the applicant. Any subsequent resubmittal will be considered a new application.

5.11 Public Notification

5.11.1 The Department shall follow the public notice provisions of 7 **Del.C.** §6004(b) in processing applications for certification; i.e. the Department shall advertise receipt of and provide an opportunity for the public to comment on the application.

5.11.2 Public notice shall be given by the following methods:

5.11.2.1 Publication in a daily newspaper of general circulation statewide and a newspaper of general distribution in the county(ies) in which the activity is proposed; or

5.11.2.2 Joint notice with the federal permitting agency or with other state agencies, when consistent with the procedures herein and practical to facilitate processing of the application; and

5.11.2.3 Selected mailings of a copy of the public notice of application to state, county, or municipal authorities and other parties known to be interested in the matter, including the applicant, any agency with jurisdiction over or interest in the activity or disposal site and the owners or residents of property who would be reasonably affected by the proposed activity, as identified in the application.

5.11.3 The public notice of application shall provide a reasonable period of time, not less than 15 days from the date of notice, within which interested persons may submit additional information and comments on the application for certification to the Department.

5.11.4 The public notice shall:

5.11.4.1 Give a brief description of the location and nature of the proposed activity;

5.11.4.2 Provide instructions for submission of written comments and requesting a public hearing, if a hearing has not been scheduled; and

5.11.4.3 Specify the expiration date for the opportunity to comment.

5.12 Determination of Need for Public Hearing

5.12.1 The Department may hold a public hearing before issuing any water quality certification if:

5.12.1.1 The Secretary determines the activity requiring certification is of broad, general interest; or

5.12.1.2 The application for certification generated substantial public interest as indicated by written comments concerning water quality issues; or

5.12.1.3 The Secretary determines that such a hearing will be useful in reaching a decision on an application; or

5.12.1.4 The Secretary receives a written meritorious request to hold a public hearing; the request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the activity's probable impact.

5.12.2 Any person may request a public hearing during the public comment period. Requests shall be in writing and shall state the nature of the issues to be raised at the hearing.

5.13 Procedures for Public Hearing

5.13.1 Notice of Public Hearing. The notice of public hearing shall be published in a newspaper of general circulation in the county(ies) in which the activity is proposed and in a daily newspaper of general circulation statewide not less than 20 days before the hearing. The notice of public hearing shall include:

5.13.1.1 A brief description of the project or activity;

5.13.1.2 Information concerning the date, time and location of the public hearing; and

5.13.1.3 A brief description of the nature of the written comments received or issues raised during the public comment period.

5.13.2 Any interested person shall be given an opportunity to present evidence for or against the granting of water quality certification at the public hearing.

5.13.3 Written comments shall be received by the Department until the close of the public hearing, unless the comment period is specifically extended at the hearing.

5.13.4 All public hearings shall be recorded. A copy of the transcript, if any, shall be made available for public inspection.

5.13.5 The public comment period on an application shall automatically be extended to the date of the hearing. Further extensions may be granted at the discretion of the hearing officer.

5.13.6 The Department will coordinate with other regulatory agencies and conduct joint public hearings where feasible.

5.13.7 All reasonable costs for proceedings held pursuant to these regulations shall be assessed to the applicant.

Part III - Certification Determinations

5.20 Criteria for Certification

5.20.1 The Department shall provide water quality certification where the applicant has provided reasonable assurance that the activity will be conducted in a manner which will not violate State water quality standards. Certification will be denied if such assurance cannot be provided. The Department may issue a certification with conditions, including effluent or other limitations and monitoring requirements, that will provide such assurances.

5.20.2 Where appropriate, any certification issued by the Department shall specify that the discharge will comply with the applicable provisions of §301, 302, 303, 306, and 307 of the federal Clean Water Act.

5.20.3 It is the applicant's responsibility to provide information to the Department to show that State water quality standards will be met.

In assessing a project's compliance with water quality standards, the applicant shall address and consider all potential environmental impacts of the project, both direct and indirect, present and future, including but not limited to:

5.20.3.1 impact on existing or designated uses;

5.20.3.2 impacts on the physical, chemical, and biological characteristics of the receiving waters' aquatic ecosystem;

5.20.3.3 effects on hydrology, circulation patterns and water movement;

5.20.3.4 secondary impacts; and

5.20.3.5 cumulative effects.

5.21 Issuance of Certification

5.21.1 Issuance of water quality certification does not relieve the applicant of his responsibility to comply at all times with federal and state law.

5.22 Notice of Decision

5.22.1 The Department shall prepare a document which summarizes its certification decision, including any conditions. The Department shall provide notice of its decision by mailing a copy of the certification, including any conditions, to the following: the applicant, the EPA Regional Administrator or other federal official responsible for issuing the federal license or permit and those persons who provided comments on the application.

5.23 Conditions. Pursuant to §401(d) of the federal Clean Water Act, any certification conditions shall become conditions of the federal permit or license.

5.24 Timing. Pursuant to §401(a)(1) of the federal Clean Water Act, the Department is required to issue or deny certification for federal permits or licenses within a reasonable period of time not to exceed one (1) year of acceptance of a completed application unless processing of the application is suspended by the federal permitting or licensing agency. If the federal permitting or licensing agency suspends processing of the application, suspension of processing of application for certification will also occur unless specified otherwise in writing by the Department.

5.25 Appeal of Final Decision

5.25.1 Any person whose interest is substantially affected by any action of the Secretary pursuant to these regulations may appeal to the Environmental Appeals Board as per 7 **Del.C.** §7210 or §6008. The appeal shall:

5.25.1.1 Be filed within 20 days of the publication or announcement of the final decision; and

5.25.1.2 Specify, in writing, the reason why the final determination should be reconsidered.

5.25.2 Any further appeal shall be in accordance with 7 **Del.C.** Ch. 60, §6009.

Part IV - Statewide Water Quality Certification For Specified Categories Of Activities Requiring A Federal License Or Permit (Reserved)

6.0 The National Pollutant Discharge Elimination System (NPDES) Program 1

Part I - General

6.1 Purpose and Scope

6.1.1 The following regulations delineate the authority and general procedures to be followed in connection with the Department's administration of the National Pollutant Discharge Elimination System (NPDES) Program and specifically, the processing of any NPDES permits issued by the Secretary authorizing discharges of pollutants into State waters during the periods that the Secretary may be authorized to issue such permits pursuant to §§402, 318, and 405 of the Act. During any periods in which the Secretary may not be authorized to issue such permits pursuant to §§402, 318, and 405 of the Act, these regulations shall remain in full force and effect with respect to any certificates or permits authorizing discharges of pollutants into State waters issued by the Secretary pursuant to 7 **Del.C.** Ch. 60.

6.1.2 The NPDES Program requires a permit for the discharge of a "pollutant" or combination of pollutants from any "point source" to "State waters". The terms "pollutant", "point source" and "State waters" or "waters of the State" are defined in §2.0. The following are point sources and require NPDES permits for any discharge(s) therefrom:

6.1.2.1 Animal feeding operations that meet the criteria for a concentrated animal feeding operation (CAFO) specified in Appendix B to 40 CFR Part 122;

6.1.2.2 Aquaculture or aquatic animal production facilities that meet the criteria specified in Appendix C to 40 CFR Part 122; (Aquaculture or aquatic animal production facilities that product 2,000 lbs or more harvest weight fish or aquatic animals per year must secure a permit under State law for any discharge to State waters.)

6.1.2.3 Discharges into aquaculture projects as set forth in §6.63;

6.1.2.4 Storm water discharges associated with industrial activities as set forth in §9;

6.1.2.5 Storm water discharges from the municipal separate storm sewer system located in New Castle County;

6.1.2.6 Silvicultural point sources as defined in §2.123.

6.2 Prohibition of Discharges into State Waters

6.2.1 No person shall discharge any pollutant, including sewage, industrial wastes, solid wastes, other wastes or any noxious or deleterious substance, into, or adjacent to waters of the State or otherwise alter the physical, chemical, or biological properties of State waters and make them detrimental to the public health,

or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation or for other uses, without a permit or equivalent authorization from the Secretary.

6.2.2 Any discharge of untreated or inadequately treated vessel sewage, by any means, into or upon the waters of any marina, boat docking facility or tidal water of the State is prohibited.

6.3 Exclusions

6.3.1 The following discharges do not require a NPDES permit:

6.3.1.1 Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility or when secured to a storage facility or a seafood processing facility, or is secured to the bed of the ocean, contiguous zone, or State waters for the purpose of mineral or oil exploration or development;

6.3.1.2 Discharges of dredged or fill material that are regulated under §404 of the Act;

6.3.1.3 The introduction of sewage, industrial wastes or other pollutants into a treatment works by indirect dischargers, unless the Secretary determines that such permit is necessary to protect the treatment works' interests and to ensure compliance with the Act, with 7 **Del.C.** Ch. 60, or with these regulations;

6.3.1.4 Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR Part 153, §153.10(e) (Pollution by Oil and Hazardous Substances);

6.3.1.5 Return flows from irrigated agriculture; and

6.3.1.6 Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures and forest lands, but not discharges from aquaculture or aquatic animal production facilities that produce 2,000 lbs or more harvest weight fish or aquatic animals per year, discharges to aquaculture projects, discharges from concentrated animal feeding operations (CAFOs) or discharges from silvicultural point sources.

6.3.2 Nothing herein shall affect the authority of the Secretary to require a permit, certification or equivalent authorization under any applicable provisions of the Law or Act.

Part II - NPDES Permit Application and Issuance

6.10 Application for NPDES Permits

6.10.1 Any person who discharges or proposes to discharge pollutants from any point source subject to NPDES program requirements and who does not have an effective permit or equivalent authorization from the Secretary shall submit a complete application to the Department in accordance with this section. Application for a NPDES permit shall be made by the person responsible for the overall operation of the facility or activity generating the discharge, in the manner and form prescribed by the Secretary. Applications are not required for NPDES permit coverage under the General Permit Program (§9).

6.10.2 Persons currently discharging who have:

6.10.2.1 Existing permits shall submit a new NPDES application as specified under subsectin 6.10.3 when facility expansions, production increases, or process modifications will:

6.10.2.1.1 Result in significantly new or substantially increased discharges of pollutants or a significant change in the nature of the discharge of pollutants, or

6.10.2.1.2 Violate the terms and conditions of the existing permit;

6.10.2.2 Expiring permits shall submit new applications at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Secretary. The Secretary shall not grant permission for applications to be submitted later than the expiration date of the expiring permit.

6.10.3 Any person proposing:

6.10.3.1 an increased discharge or a change in the nature of the permitted discharge as outlined in paragraph b.1;

6.10.3.2 a new discharge; or

6.10.3.3 a new source

6.10.3.4 Shall submit an application for a NPDES permit at least 180 days prior to commencing the new, changed or increased discharge or the erection, construction, facility expansion, increased production or employment of new processes associated with such application. Within that 180 day

period, the Secretary may prohibit such commencement until a NPDES permit is issued or the existing permit modified, or revoked and reissued. In no case, however, shall any discharge from said facilities commence prior to the issuance of a NPDES permit.

6.10.4 Any application for a NPDES permit to discharge any pollutant or combination of pollutants, including sewage, industrial wastes, or other wastes, to State waters shall be accompanied by plans, specifications, maps, quantitative data and such other relevant information as may be required to describe the nature of the activity(ies) generating the proposed discharge(s) and the characteristics thereof. At a minimum, the applicant shall provide the information outlined in 40 CFR 122.21 or 122.26, as appropriate.

6.10.5 The Secretary may require the submission of additional information after a NPDES application has been filed, and may suspend processing of any application until such time as the owner has supplied missing or deficient information and the Secretary considers the application complete. Further, where the applicant or permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Secretary, he shall submit such facts or information as soon as possible.

6.11 Identity of Signatories to NPDES Forms

6.11.1 All permit applications shall be signed as follows:

6.11.1.1 For a corporation, by a principal executive officer of at least the level of vice president or other person who performs similar policy or decision-making functions for the corporation;

6.11.1.2 For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

6.11.1.3 For a municipality, State, Federal or other public facility, by either a principal executive officer or ranking elected official.

6.11.2 In addition to the signatories required in paragraph a above, any NPDES permit application for the operation of and discharge from any wastewater facility or treatment works shall be signed by the operator in direct responsible charge of the wastewater facility or treatment works. In the event of multiple operators in direct responsible charge (DRC) of a given facility (for example, operators in direct responsible charge of an operating shift, or of a major segment of the system or facility), the signatory shall be the person in direct responsible charge of the entire wastewater facility, or that person's designee.

6.11.3 All other forms or requests for information required by the Secretary shall be signed by a person designated in paragraph a or a duly authorized representative or agent of such person (either an individual or position), if:

6.11.3.1 The representative so authorized is responsible for the overall operation of the facility from which the discharge originates, e.g., a plant manager, superintendent or person of equivalent responsibility; and

6.11.3.2 The authorization is made in writing by the person designated under paragraph a and submitted to the Secretary.

6.11.4 In addition to the signatories required in c above, any NPDES discharge monitoring report (DMR) submitted to the Secretary for any discharge(s) from a wastewater facility or treatment works shall be signed by the operator in direct responsible charge of the wastewater facility or treatment works. In the event of multiple operators in direct responsible charge (DRC) of a given facility (for example, operators in direct responsible charge of an operating shift, or of a major segment of the system or facility), the signatory shall be the person in direct responsible charge of the entire wastewater facility, or that person's designee.

6.11.5 Any changes in the written authorization submitted to the Secretary under paragraph c which occur after the issuance of a permit, shall be reported to the Secretary by submitting a copy of a new written authorization which meets the requirements of §6.11.3.1 and 6.11.3.2 above prior to or together with any forms or other information required by the Secretary which are to be signed by said authorized representative.

6.11.6 Any person signing any document under §6.11.1, 6.11.2, 6.11.3 or 6.11.4 shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

6.12 Tentative Determinations and Draft Permit Formulation. After reviewing the complete application (i.e. the NPDES permit application forms and any additional information requested by the Department), the Secretary shall tentatively decide whether to prepare a draft permit in anticipation of issuing a NPDES permit or to deny

the application. Such tentative determinations shall be made in advance of the public notice of the Department's receipt of a permit application pursuant to 7 **Del.C.** §6004.

6.12.1 If the determination proposed is to issue the NPDES permit, the following additional tentative determinations shall be made and incorporated into a draft permit:

6.12.1.1 All conditions, limitations, or requirements, specified in §6.14;

6.12.1.2 Proposed discharge or effluent limitations, restrictions, prohibitions, standards for residuals use or disposal and any other conditions identified pursuant to Sections 6.15 and 6.16;

6.12.1.3 Schedules of compliance, if applicable, under §6.17;

6.12.1.4 Monitoring requirements under §6.40; and any

6.12.1.5 Special conditions, if deemed appropriate.

6.12.2 A statement of basis (per §6.19) or a fact sheet (per §6.18) that briefly describes the reasoning behind the tentative determinations made shall be prepared and shall accompany each draft NPDES permit developed. The NPDES permit application, the draft NPDES permit and the statement of basis or fact sheet shall be publicly noticed and made available for public comment. The Secretary shall advertise the Department's receipt of an application and any tentative determinations made, offer an opportunity for the public to request a hearing, issue a final decision and respond to any comments made.

6.12.3 If the determination proposed is to deny the application, the Secretary shall prepare a notice of intent to deny the application. A notice of intent to deny the application is to be considered a draft permit and the same procedures followed as any other draft permit prepared under this section (i.e. public notice and an opportunity for requesting a public hearing as outlined in paragraph b. and Part III).

In addition, the Secretary shall advise the applicant of his or her intent to deny the application, the basis for that decision and the requirements, if any, necessary to modify that determination. Before the Secretary publishes the notice of his or her intent to deny the application, the applicant may be given an opportunity either to withdraw the application or to revise and resubmit the application.

If the application is not withdrawn and the conditions necessary for modifying the Secretary's tentative decision to deny the application have been satisfied, the Secretary shall provide notice and opportunity for a public hearing prior to taking further action on the application, i.e. making the additional tentative determinations and preparing a draft permit as outlined in paragraph a.

6.12.4 The Secretary may formulate a draft permit without having received an application from a discharger.

6.13 Prohibitions. No ***NPDES*** permit shall be issued in the following circumstances:

6.13.1 When the terms or conditions of the permit do not comply with the applicable requirements of the Law or the Act or any regulations promulgated under the Law or the Act;

6.13.2 For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into State waters;

6.13.3 For any discharge that would substantially impair anchorage and navigation in or on any waters of the State;

6.13.4 When the EPA has objected to the issuance of the permit as provided in 40 CFR 123.44. A NPDES permit may be issued in such cases where EPA fails to follow the provisions of 40 CFR 123.44;

6.13.5 For any discharge that is in conflict with any area-wide or basin-wide water quality control and waste management plan or policy, or plan amendment, approved under §208(b) of the Act. This subsection shall not be construed to prevent private sector treatment and disposal of domestic wastewater;

6.13.6 Any discharge that is in conflict with any Total Maximum Daily Load (TMDL) or Pollution Control Strategy, if applicable, established by the Secretary pursuant to the Law;

6.13.7 For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

Before the promulgation of guidelines under §403(c) of the Act, unless the Secretary determines permit issuance to be in the public interest; or

After promulgation of guidelines under §403(c) of the Act, where insufficient information exists to make a reasonable judgement as to whether the discharge complies with any such guidelines;

6.13.8 For a facility which is a new source or a new discharger, if the discharge from the construction or operation of the facility will cause or contribute to the violation of water quality standards and the imposition of conditions (e.g. effluent limitations or other restrictions) on the discharge cannot ensure compliance with the applicable surface water quality standards;

6.13.9 For a facility which is a new source or a new discharger proposing to discharge to waters that do not meet the applicable surface water quality standards and that are not expected to meet those standards even after the application of the technology-based controls required of point sources under §§301(b)(1)(A) and 301 (b)(1)(B) of the Act, unless:

6.13.9.1 The Secretary has established a Total Maximum Daily Load (TMDL) and a Pollution Control Strategy for the receiving waters and the conditions in the permit are consistent with that TMDL and Pollution Control Strategy; or

6.13.9.2 The permit includes a "zero discharge" limitation or similar prohibition against discharging the pollutant or pollutants responsible for the violations; or

6.13.9.3 In cases where the Secretary has yet to establish a Total Maximum Daily Load (TMDL) and a Pollution Control Strategy for the pollutant or pollutants responsible for the violations in the receiving waters, the new source or new discharger offsets its proposed discharge by reducing existing point source and nonpoint source pollutant loads to the impaired waterbody by an amount greater than the proposed discharge. Any offsets shall be obtained before the discharger begins discharging and shall be maintained until the TMDL and Pollution Control Strategy are established and implemented.

This subsection shall not be construed as to preclude the issuance of a permit for the discharge of any pollutant or pollutants for which the applicable surface water quality standards or criteria are being met or are expected to be met in the receiving waters, even though other applicable surface water quality criteria or standards are not being met or are not expected to be met.

6.13.10 When the imposition of conditions on any discharge cannot ensure compliance with the applicable water quality laws and regulations of all affected states;

6.13.11 For the disposal of pollutants into wells; or

6.13.12 For the discharge or disposal of medical waste.

6.14 Conditions Applicable to All Permits

In addition to the requirements of §§6.15, 6.16, and 6.17, the terms and conditions of each NPDES permit issued by the Secretary shall require the following:

6.14.1 That the permittee must comply with all the conditions of the permit and that all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit;

6.14.2 That the discharge of any pollutant more frequently than, or at a level in excess of, that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit. The violation of any effluent limitation or of any other condition specified in the permit is a violation of 7 **Del.C.** Ch. 60, and the Act and is grounds for enforcement as provided in 7 **Del.C.** §§6005 and 6013, for permit termination or loss of authorization to discharge pursuant to the permit, for permit revocation and reissuance, or permit modification, or denial of a permit renewal application. The Department may seek voluntary compliance by way of warning, notice or other educational means, pursuant to 7 **Del.C.** §6019, or any other means authorized by law. However, the Law does not require that such voluntary means be used before proceeding by way of compulsory enforcement;

6.14.3 Reapplication for a Permit

6.14.3.1 That the permittee must apply for and obtain a new permit if the permittee wishes to continue the activity regulated by the permit;

6.14.3.2 That at least 180 days before the expiration date of the permit, a new application is to be submitted or the Department notified of the permittee's intent to cease discharging by the expiration date;

6.14.3.3 That in the event that a timely and sufficient reapplication has been submitted and the Department is unable, through no fault of the permittee, to issue a new permit before the expiration date of the permit, the terms and conditions of the permit are continued and remain fully effective and enforceable;

6.14.4 Permit Transfer

6.14.4.1 That the permit is not transferable to any person, except after notice to and with the concurrence of the Secretary;

6.14.4.2 That in the event of a change in ownership or control of the facilities from which the authorized discharge(s) emanate(s), the permit may be transferred if the permittee:

6.14.4.2.1 Notifies the Department, in writing, of the proposed transfer, in advance; and

6.14.4.2.2 Submits to the Department a written agreement signed by all parties to the transfer, containing a specific date for transfer of permit responsibility, coverage and liability to the new permittee; the written agreement shall expressly acknowledge the current permittee is responsible and liable for compliance with the terms and conditions of the permit up to the date of transfer and the new permittee is responsible and liable for compliance from that date on; and

6.14.4.2.3 The Department within thirty (30) days of receipt of the notification of the proposed transfer does not notify the current permittee and the new permittee of its intent to modify, to revoke and reissue or to terminate the permit and require that a new application be submitted;

6.14.4.3 That the permittee is encouraged to provide as much advance notice as possible of any proposed transfer, to allow sufficient time for the Department to modify the permit to identify the new permittee and incorporate such other requirements as may be necessary under the Law or the Act;

6.14.5 That the permit may be modified, terminated or revoked and reissued in whole or in part, during its term, for cause as provided in Part V. The filing of a request for permit modification, or revocation and reissuance, or termination, or a notification of any planned changes or anticipated noncompliance does not stay any permit condition;

6.14.6 That, if the permit is for a discharge from any treatment works, the permittee shall promptly provide notice to the Secretary of the following:

6.14.6.1 Any new discharge of pollutants into such treatment works, from any facility, treatment works, discharge(s), or source which would be subject to §§6.15, 6.16, and 6.17 of these regulations, if such facility, treatment works, discharge(s), or source were directly discharging pollutants to State waters; and,

6.14.6.2 Any substantial change, whether permanent or temporary, in the volume or character of pollutants being introduced into such treatment works by any facility, treatment works, discharge(s) or source introducing pollutants into such treatment works at the time of issuance of the permit.
Such notice shall include information on:

6.14.6.2.1 The characteristics and quantity of effluent to be introduced into such treatment works;

6.14.6.2.2 Any anticipated impact of such change in the quantity or characteristics of effluent to be discharged from such treatment works; and,

6.14.6.2.3 Any additional information that may be required by the Secretary;

6.14.7 That the permittee shall notify the Department in writing of any anticipated expansion or alteration of the permitted facility, any production increases, process modifications, or other changes which could result in new, different or increased discharges of pollutants. Notice is required only when such alteration, addition or change:

6.14.7.1 may justify the application of permit conditions that are different from those specified in the permit, or

6.14.7.2 may justify the application of permit conditions that are absent from the permit, or

6.14.7.3 meets any one of the following criteria:

6.14.7.3.1 The alteration or addition to the permitted facility may meet one of the criteria for determining whether a facility is a new source; or

6.14.7.3.2 As a result of the alteration or addition, the nature of the discharge is or could be substantially different from that represented in the application originally submitted for the discharge, upon which the permit is based; or

6.14.7.3.3 The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, including any uses or disposal sites not identified in the permit application or during the permit issuance process; or

6.14.7.3.4 The planned change in permitted facility or activity may result in noncompliance with the requirements of this permit;
That upon notification of a planned change, the Department may require the submission of a new application. The permittee is encouraged to notify the Department and submit any application well in advance of the scheduled date for the anticipated alteration or addition to allow sufficient time to process any modifications of the permit necessitated by the change and to avoid any resultant project delays;

6.14.8 Noncompliance Notification. That the permittee shall report all instances of noncompliance with the permit to the Department as outlined herein:

6.14.8.1 That if, for any reason, the permittee does not comply with or will be unable to comply with any daily maximum effluent limitation or maximum instantaneous concentration specified in the permit, the permittee shall report such incident within 24 hours and provide the Department with the following information, in writing, within five (5) days of becoming aware of such conditions:

6.14.8.1.1 A description of the discharge and cause of noncompliance;

6.14.8.1.2 The period of noncompliance, including exact dates and times and if the noncompliance has not been corrected, the anticipated time when the discharge will return to compliance; and

6.14.8.1.3 Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge;

6.14.8.2 That if, for any reason, the permittee does not comply with any daily average or average monthly effluent limitation or standard specified in the permit, the permittee shall provide the information

outlined in §6.14.8.1 with the discharge monitoring report (DMR) in accordance with the requirements of §6.42;

6.14.8.3 That in the case of any upset or unanticipated bypass that exceeds any permitted effluent or discharge limitation, the Department shall be notified within 24 hours; if this notification is provided orally, a written report is to be submitted within 5 days;

6.14.8.4 That in the case of any discharge subject to any toxic pollutant effluent standard under §307(a) of the Act, the Department shall be notified within 24 hours from the time the permittee becomes aware of a noncomplying discharge. Notification shall include the information outlined in §6.14.8.1. If this information is provided orally, a written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph;

6.14.8.5 That in the case of other discharges which could constitute a threat to human health, welfare, or the environment, the information required in §6.14.8.1 shall be provided as quickly as possible upon discovery and after activating the appropriate emergency site plan, unless circumstances exist which make such a notification impossible. A delay in notification shall not be considered a violation of the permit when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment. A written submission covering these points must be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph;

6.14.8.6 That the permittee shall report all instances of noncompliance not otherwise reported under the preceding paragraphs at the time the discharge monitoring report (DMR) is submitted. The report shall contain the information outlined in paragraph h.1;

6.14.8.7 That the Department may waive the written report as required herein on a case-by-case basis, if an oral report was provided within 24 hours;

6.14.9 That 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 the permit or in absence of a specific permit condition shall report such an incident to the Department as required under 7 **Del.C.** §6028.

6.14.10 That the permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine compliance with the permit or to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit. The permittee shall also furnish, upon request, copies of records required to be kept by the permit;

6.14.11 That when the permittee discovers that it failed to submit any relevant facts in a permit application or submitted any incorrect information in any permit application or in any report to the Department, it shall promptly submit such facts or information;

6.14.12 That the permittee shall allow any authorized State or Federal representative, upon the presentation of his or her credentials:

6.14.12.1 To enter upon the permittee's premises where the regulated facility, treatment works, or discharge(s) is located or the regulated activity is conducted or where any records required to be kept under the terms and conditions of the permit are located;

6.14.12.2 To have access to and copy, at reasonable times, any records required to be kept under the terms and conditions of the permit;

6.14.12.3 To inspect at reasonable times any monitoring equipment or monitoring method required in the permit;

6.14.12.4 To inspect at reasonable times any facilities, equipment, management or control practices, or operations regulated or required under the permit; and

6.14.12.5 To sample at reasonable times any discharge or substance at any location for the purpose of assuring compliance with the permit or otherwise determine whether a violation of the Law or these regulations exists, as provided in 7 **Del. C.** §6024;

6.14.13 That the permittee shall at all times maintain in good working order and operate as efficiently as possible all collection and treatment facilities and systems (and related appurtenances) installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes but is not limited to, effective performance (based upon the facilities' design), adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, when necessary, to achieve compliance with the terms and conditions of the permit;

6.14.14 That the permittee shall take all reasonable steps to minimize any adverse impact to State waters resulting from noncompliance with the permit, including such accelerated or additional monitoring as necessary to determine the nature and extent of the noncomplying discharge;

6.14.15 That the permittee, in order to maintain compliance with its permit, shall control production and all discharges as necessary upon reduction, loss, or failure of the treatment facility until the treatment facility is restored or an alternative method of treatment is provided. The need to halt or reduce the permitted activity in order to maintain compliance with the permit shall not be a defense for a permittee in any enforcement action;

6.14.16 That, in order to ensure compliance with the terms and conditions of the permit, the Department may require that the permittee provide an alternative power supply which is sufficient to operate the permittee's wastewater collection, conveyance and treatment facilities;

6.14.17 That any solids, sludges, filter backwash, or other pollutants removed in the collection, conveyance or treatment of wastewater shall be disposed of in such manner as to prevent any pollutant from such materials from entering surface waters or groundwaters;

6.14.18 Bypass

6.14.18.1 Prohibition of bypass. The Secretary may prohibit bypass in consideration of the adverse effect of the proposed bypass or where the proposed bypass does not meet the conditions set forth in §6.14.18.2.

6.14.18.2 Conditions necessary for bypass. The intentional diversion of waste streams from any portion of a treatment facility is prohibited unless:

6.14.18.2.1 The bypass is necessary to perform essential maintenance and auxiliary equipment, a redundant or back-up system or an alternate mode of operation is utilized to maintain treatment performance; or

6.14.18.2.2 The following four conditions are met:

6.14.18.2.2.1 Bypass is unavoidable to prevent loss of human life, personal injury or severe property damage;

6.14.18.2.2.2 There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, plant shutdown or maintenance during normal periods of equipment down-time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent the bypass;

6.14.18.2.2.3 The permittee notifies the Department of the bypass or of the need to bypass as outlined in 6.14.18.3; and

6.14.18.2.2.4 The permittee is utilizing or will utilize all available alternative operating procedures or interim control measures to reduce the impact of the bypass on State waters.

6.14.18.3 Notice

6.14.18.3.1 If the permittee knows in advance of the need for a bypass, the permittee shall notify the Secretary, in writing, at least ten days before the date of the bypass, if possible;

6.14.18.3.2 In the event of an unanticipated or unintentional bypass, the permittee shall notify the Department within twenty-four hours of discovery. Notice may be provided orally, but shall be followed up with submission of a written report that provides the information outlined in §6.14.8.1 within five (5) days;

6.14.18.3.3 The public shall be notified and given an opportunity to comment on bypass incidents of significant duration, to the extent feasible.

6.14.19 Upset.

6.14.19.1 Effect of an upset. An upset shall constitute an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of §6.14.19.2 are met.

6.14.19.2 Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed and authenticated, contemporaneous operating logs, or by other relevant evidence that:

6.14.19.2.1 An upset occurred and that the permittee can identify the specific cause(s) of the upset;

6.14.19.2.2 The permitted facility was at the time being operated in a prudent and workman-like manner and in compliance with proper operation and maintenance procedures;

6.14.19.2.3 The permittee submitted notice of the upset as required in §6.14.8.3 (within 24 hours of becoming aware of the upset); and

6.14.19.2.4 The permittee took all reasonable measures necessary to minimize any adverse impact to State waters.

6.14.19.3 Burden of proof. The permittee shall have the burden of proving an upset in any case where an upset is claimed as a defense.

6.14.20 That all applications, reports, or information submitted to the Department shall be signed and certified as outlined in §6.11 of these regulations;

6.14.21 That the permittee shall comply with effluent standards or prohibitions established under §307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement;

6.14.22 That the permit does not convey any property rights of any sort, or any exclusive privilege;

6.14.23 That nothing in the permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under 7 **Del.C.** Ch. 60, or any other State law or regulation; and

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

6.15 Application of Effluent Standards and Limitations, Water Quality Standards, and Other Requirements

Each NPDES permit shall provide for and ensure compliance with all applicable requirements of the Law and the Act and any regulations promulgated under the Law and the Act. Permits shall require compliance with the following as applicable:

6.15.1 Effluent limitations and standards under §§301, 302, 303, 304, 307, 318, and 405 of the Act, or established by the Secretary, including any interim final limitations and standards;

6.15.2 Standards of performance for new sources under §306 of the Act or established by the Secretary, including any promulgated interim final effluent limitations and standards;

6.15.3 Guidelines promulgated by the EPA pursuant to §403 of the Act or established by the Secretary;

6.15.4 Any more stringent limitation, including those necessary to meet water quality standards, treatment requirements, or schedules of compliance, established by the Secretary pursuant to the Law, or required to implement all applicable water quality standards established pursuant to the Act or required by any other Federal law or regulation;

6.15.5 Any more stringent requirement necessary for compliance with any area-wide or basin-wide water quality control and waste management plan or policy established pursuant to the Law;

6.15.6 Prior to the promulgation by the EPA of applicable effluent standards and limitations pursuant to §§301, 302, 306, 307 of the Act, such conditions as the Secretary determines are necessary to carry out the provisions of the Act and the Law;

6.15.7 Limitations established under §§6.15.1, 6.15.2, 6.15.4, 6.15.5, and 6.15.6 to control pollutants meeting the criteria listed in §6.15.7.1. Limitations will be established in accordance with §6.15.7.2. An explanation of the development of these limitations shall be included in the fact sheet under §6.18 or the Statement of Basis under §6.19.

6.15.7.1 Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional or toxic pollutants) which:

6.15.7.1.1 Are added or which may be added by the discharger, those which result from or are otherwise associated with the regulated activity; or

6.15.7.1.2 The Department determines are an effective measure of treatment performance; or

6.15.7.1.3 The Department determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including any narrative criteria for water quality.

6.15.7.2 The requirement that the limitations control the pollutants meeting the criteria of §6.15.7.1 will be satisfied by:

6.15.7.2.1 Limitations on those pollutants; or,

6.15.7.2.2 Limitations on other pollutants or indicator parameters which, in the Department's judgement, will result in the implementation of controls on the pollutants or parameters to be limited under §6.15.7.1 that:

6.15.7.2.2.1 will provide the required level of treatment or pollution control technology; or

6.15.7.2.2.2 are sufficient to attain and maintain the applicable water quality standards.

Where the Department has adopted a numeric water quality criterion for an individual pollutant or for whole effluent toxicity, limitations must be established for the individual pollutant or for

whole effluent toxicity; limitations on indicator parameters may not be established in such cases.

6.15.7.3 Whenever effluent limitations are established in accordance with §6.15.7.2.2. (limitations on indicator parameters):

6.15.7.3.1 The permit shall identify which pollutant or pollutant parameters are intended to be controlled by establishing limitations on the indicator parameter;

6.15.7.3.2 The statement of basis or fact sheet prepared in accordance with §§6.18 or 6.19 shall include a finding that compliance with the effluent limitations on the indicator parameter will result in controls on the pollutant of concern as outlined in §6.15.7.2.2.;

6.15.7.3.3 The permit shall require sufficient effluent (or discharge) and ambient monitoring to show that limits on the indicator parameter continue to:

6.15.7.3.3.1 provide the required level of treatment or pollution control technology; or

6.15.7.3.3.2 attain and maintain applicable water quality standards; and

6.15.7.3.4 The permit shall contain a reopener clause that allows the Department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer meet the criteria outlined in §6.15.7.2.2.

6.15.8 If the NPDES permit is for the discharge of pollutant(s) into State waters from a vessel or other floating craft, any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, and storage of pollutants;

6.15.9 Best management practices to control or abate the discharge of pollutants where:

6.15.9.1 Authorized under §304(e) of the Act for the control of toxic and hazardous pollutants from ancillary industrial activities;

6.15.9.2 Numeric effluent limitations are inappropriate, inapplicable, or infeasible; or

6.15.9.3 The practices are reasonably necessary, in the Secretary's opinion, to achieve effluent limitations and standards, including water quality standards, or otherwise to carry out the purposes of the Act and the Law;

6.15.10 Requirements governing the beneficial use or disposal of residuals from treatment facilities in accordance with applicable regulations;

6.15.11 Where a permit is renewed, reissued or modified, interim limitations, final limitations, standards or conditions which are at least as stringent as the final limitations, standards or conditions in the previous permit, with the following exceptions:

6.15.11.1 The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under Part V;

6.15.11.2 Where the effluent limitations in the previous permit were established to ensure compliance with any applicable water quality standards, a permit may be renewed, reissued or modified to contain less stringent effluent limitations, if in compliance with §303(d)(4) of the Act;

6.15.11.3 Where the effluent limitations in the previous permit were established based on §402(a)(1)(B) of the Act, a permit may be renewed, reissued or modified to contain less stringent effluent limitations on the basis of effluent guidelines subsequently promulgated under §304(b) of the Act if:

6.15.11.3.1 Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

6.15.11.3.2

6.15.11.3.2.1 Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

6.15.11.3.2.2 The Secretary determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under §402(a)(1)(B) of the Act;

6.15.11.3.3 A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

6.15.11.3.4 A variance was granted and the permit modified pursuant to §301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the Act; or

6.15.11.3.5 The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities with all reasonable diligence, but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the renewed, reissued, or modified permit may reflect the level of

pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

§6.15.11.3.2 shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the Law or the Act or for reasons otherwise unrelated to water quality.

6.15.11.4 In no event may a permit with respect to which §6.15.11.3 applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard applicable to such waters.

6.15.12 Any conditions that are deemed necessary to ensure that navigation and anchorage will not be substantially impaired with due consideration given to comments provided by the Secretary of the Army;

6.15.13 With respect to any point source otherwise subject to the foregoing limitations, standards, prohibitions, schedules, and/or requirements, whenever the person responsible for such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Secretary that any effluent limitations proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is, or is to be made, the Secretary may impose an alternative effluent limitation which controls the thermal component of the discharge from such source (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water. Notwithstanding any other provision of these regulations, any point source discharge having a thermal component, the modification of which point source is commenced after October 18, 1972, and which as modified meets effluent limitations established under these regulations and which effluent limitations will assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during either a ten-year period, or the IRS period of depreciation, whichever is shorter, beginning on the date of completion of such modification.

6.15.14 In any case where a NPDES permit issued by the Secretary contains the effluent standards and limitations described in paragraphs a and b above, the Secretary will state his or her finding that the discharge authorized by the permit will not violate applicable water quality standards and will prepare a written statement setting forth the basis for such finding. Whenever a NPDES permit issued by the Secretary contains any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation will be prepared for all pollutants or pollutant parameters of concern to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

6.15.15 In cases where it can be definitively demonstrated that natural conditions prevent the attainment of water quality standards, the Department will make a determination that a discharge will not violate the applicable surface water quality standards if the resultant change in water quality is consistent with the deviations allowed under §§3.0, 5.0 and 11.0 of the State of Delaware Surface Water Quality Standards, as amended August 11, 1999.

6.16 Calculation and Specification of Effluent Limitations and Standards

6.16.1

6.16.1.1 All permits shall impose final, and where necessary, interim or interim final effluent limitations, standards and prohibitions under §§6.14 and 6.15 for each outfall or discharge point of the permitted facility, except as otherwise provided under §6.15.9. and §6.16.8.

6.16.1.2 Except in the case of sewage treatment works, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of the previous year, or the monthly average for the highest of the previous 5 years. For new sources or new dischargers, actual production shall be estimated using projected production. The time period for the measure of production used (to calculate the permit limitation) shall correspond to the time period of the

calculated permit limit, e.g. monthly production shall be used to calculate average monthly discharge limitations.

6.16.1.2.1 The Secretary may include a condition establishing alternate permit limitations, standards or prohibitions based upon anticipated increases (not to exceed maximum production capability) or decreases in production.

6.16.1.2.2 If the Secretary establishes permit conditions under §6.16.1.2.1:

6.16.1.2.2.1 The permit shall require the permittee to notify the Department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. Notification is required for each period of operation at an alternate level of production. New notice is required if, during two consecutive months otherwise covered by a notice, the production level does not in fact meet the higher level designated in the notice;

6.16.1.2.2.2 The permittee shall comply with the limitations, standards or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee notified the Secretary as outlined in §6.16.1.2.2.1, in which case the permittee shall comply with those that correspond with whichever is lower: the actual level of production or that specified in the notice; and

6.16.1.2.2.3 The permittee shall submit with the monthly discharge monitoring report or DMR the level of production that actually occurred and the limitations, standards, or prohibitions applicable to that level of production.

6.16.1.3 In the case of sewage treatment works, permit limitations, standards, or prohibitions shall be calculated based on design flow.

6.16.2 All interim and final permit effluent limitations, standards, or prohibitions established under §§6.14 and 6.15 for a metal shall be expressed in terms of the "total recoverable metal" as defined in 40 CFR Part 136 (i.e., the sum of the dissolved and suspended fractions of the metal) unless:

6.16.2.1 The promulgated effluent limitation and standard under the Act specifies the limitation for the metal in the dissolved or valent form; or

6.16.2.2 In establishing permit limitations on a case-by-case basis, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Act; or

6.16.2.3 All approved analytical methods inherently measure only its dissolved form (e.g. hexavalent chromium).

6.16.3 For continuous discharges all interim and final permit effluent limitations, standards, and prohibitions established under §§6.14 and 6.15, including those necessary to achieve water quality standards, shall be stated as maximum daily and average monthly discharge limitations, except as provided in §6.16.5. Such effluent limitations, standards and prohibitions shall be expressed in units of mass or concentration or both mass and concentration, as deemed appropriate. In cases where pollutants are limited in terms of both mass and concentration, the permit shall require the permittee to comply with both limitations.

6.16.4 Permit effluent limitations, standards and prohibitions may be expressed as maximum instantaneous concentrations and established in conjunction with maximum daily and average monthly discharge limitations. Such maximum instantaneous concentration effluent limitations shall account for the variability experienced in comparable, well-operated, properly functioning, systems.

6.16.5 Paragraph c is not applicable for pH, residual chlorine, temperature, radiation, dissolved oxygen or other pollutants when the Department determines it would be more appropriate to express such permit effluent limitations, standards and prohibitions as minimum or maximum instantaneous concentrations, daily minimum or daily maximum concentrations, a range of concentrations or other units of measurement.

6.16.6 Except as provided in paragraph g, effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

6.16.7

6.16.7.1 Upon request of the discharger, technology-based effluent limitations or standards imposed in a permit may be adjusted to reflect credit for pollutants in the facility's intake water if:

6.16.7.1.1 The applicable effluent limitations and standards specifically provide for such adjustments (for example, that they are to be applied on a net basis); or

6.16.7.1.2 The discharger demonstrates that the control system it proposes or uses to meet the applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

6.16.7.2 Permit effluent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the permittee. Adjustments under this paragraph shall be made only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the permittee.

6.16.7.3 Adjustments may be made only in the absence of a TMDL (in which case, effluent limitations must be based upon the wasteload allocation (WLA) established in the TMDL for the discharger) and only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Intake credit determinations shall be made on a pollutant-by-pollutant and outfall-by-outfall basis. Influent, effluent and/or ambient monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

6.16.7.4 Adjustments may be made only if the Secretary determines that the timing and location of the discharge would not cause adverse water quality impacts. If the discharge is to non-attainment waters (i.e., waters that do not meet the applicable surface water quality standards), adjustments may be made only for that portion of the intake water drawn from the receiving waters.

6.16.7.5 Adjustments for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) shall not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limitations are placed on process water pollutants either at the outfall or elsewhere.

6.16.7.6 This paragraph does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

6.16.8 Discharges which are not continuous, as defined in §6.16.3.1, shall be particularly described and limited, considering the following factors, as appropriate:

6.16.8.1 Frequency;

6.16.8.2 Total mass;

6.16.8.3 Maximum rate of discharge of pollutants during the discharge; and

6.16.8.4 Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

6.16.9 Where imposition of permit effluent limitations or standards at the point of discharge is impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams prior to their mixing with other waste streams or cooling water streams. In such instances the monitoring required by Part IV shall also be applied to the internal waste streams.

6.16.10 When calculating effluent limitations, standards and prohibitions, credit shall not be given for process wastes or pollutant discharges that are land applied or that are discharged somewhere other than to State waters (e.g. discharged to a POTW or to underground injection wells). In cases where a discharger utilizes a portion of its process wastes or pollutant discharges or discharges to a POTW or to an underground injection well(s) thereby reducing the flow or level of pollutants being discharged to State waters, the applicable effluent limitations and standards in the NPDES permit shall be adjusted accordingly.

6.17 Schedules of Compliance

6.17.1 When appropriate, permits may contain schedules of compliance that require the permittee to take specific steps to bring its discharge into compliance with applicable standards and limitations and other requirements. Schedules of compliance shall require compliance as soon as possible, but in no case later than an applicable statutory deadline.

6.17.2 If any permit allows a time for achieving final compliance which exceeds one year from the date of permit issuance, the schedule of compliance in the permit shall set forth interim requirements and the dates for their achievement.

6.17.2.1 In no event shall more than one year elapse between dates specified for interim requirements.

6.17.2.2 If the time necessary for completion of any interim requirements (such as the construction of a treatment facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates not more than one year apart for the submission of reports of progress toward completion of the interim requirements.

6.17.2.3 Interim and final compliance dates shall, to the extent practicable, fall on the last day of the month.

6.17.3 A permittee may terminate its direct discharge by cessation of operation or discharge to a treatment works rather than achieve applicable standards and limitations by the final date for compliance established in its permit or in the Act under the following circumstances:

6.17.3.1 If the decision to terminate a direct discharge is made after issuance of a permit:

6.17.3.1.1 The permit may be modified or revoked and reissued to contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline; or

6.17.3.1.2 The permittee shall terminate direct discharge before noncompliance with any interim requirement specified in the schedule of compliance in the permit.

6.17.3.2 If the decision to terminate a direct discharge is made before issuance of the permit, the permit shall contain a schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline.

6.17.3.3 If the permittee contemplates but has not made a final decision to terminate the direct discharge before the issuance of the permit, the permit shall contain alternative schedules leading to compliance as follows:

6.17.3.2.1 The schedule shall contain an interim requirement requiring such a final decision no later than a date which allows sufficient time to comply with applicable limitations and standards in accordance with §6.17.3.3.3, (i.e., a milestone event for commencement of construction of control equipment); and

6.17.3.2.2 A subsequent schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline; and

6.17.3.2.3 A subsequent alternative schedule leading to compliance with applicable standards and limitations, no later than the statutory date; and

6.17.3.2.4 A requirement that after the permittee has made a decision pursuant to §6.17.3.3.1, it shall so notify the Secretary and shall:

6.17.3.2.4.1 Follow the schedule required by §6.17.3.3.2 if the decision is to terminate its discharge; or

6.17.3.2.4.2 Follow the schedule required by §6.17.3.3.3 if the decision is not to terminate its discharge.

6.17.4 The Secretary may, upon request of the permittee and subject to the provisions of Part V, modify a schedule of compliance in an issued permit if the Secretary determines good and valid cause (such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control or remedy) exists for such modification under §6.5. In no case shall the compliance schedule be modified to extend beyond an applicable statutory deadline.

6.17.5 New sources, new dischargers, sources which recommence discharging after terminating operations and those sources which had been indirect dischargers which commence discharging into State waters do not qualify for compliance schedules under this section and are subject to §6.64.

6.17.6 Within 14 days following each interim date, and the final date of compliance, the permittee shall provide the Secretary with written notice of the permittee's compliance or non-compliance with the interim or final requirement or shall submit progress reports specified per §6.17.2.2.

6.18 Fact Sheet

6.18.1 A fact sheet shall be prepared for every draft permit for a major discharger, (as defined in the Memorandum of Agreement between the State and EPA), any draft permit which incorporates a variance, and every draft permit which the Secretary finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological, and policy questions considered in setting the terms of the draft permit. The Secretary shall send this fact sheet to the applicant and to any other interested person on request.

6.18.2 The fact sheet shall include:

6.18.2.1 A brief description of the type of facility or activity which is subject of the draft permit;

6.18.2.2 A quantitative description of the discharge described in the application;

6.18.2.3 A brief explanation of the express statutory or regulatory provisions on which permit requirements are based, including an identification of the designated uses for which the receiving waters have been classified;

6.18.2.4 Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable guideline or development documents or standard provisions, as required under §6.15 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

6.18.2.5 When appropriate, a sketch or detailed description of the location of the discharge described in the application;

6.18.2.6 Reasons requested variances or modifications do or do not appear justified;

6.18.2.7 When appropriate, a discussion of any consideration given to intake pollutants (either when adjusting technology-based effluent limitations or when assessing reasonable potential under §8);

6.18.2.8 A description of the procedures for reaching a final decision on the draft permit including:

6.18.2.8.1 The beginning and ending dates of the comment period under §6.30 and the address where comments will be received;

6.18.2.8.2 Procedures for requesting a hearing and the nature of that hearing; and

6.18.2.8.3 Any other procedures by which the public may participate in the final decision;

6.18.2.9 When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

6.18.2.9.1 Limitations to control toxic pollutants under §6.15.7;

6.18.2.9.2 Limitations on internal wastestreams under §6.16.8; or

6.18.2.9.3 Limitations on indicator pollutants under §6.15.7; and

6.18.2.10 Name and telephone number of a person who can provide additional information.

6.19 Statement of Basis

6.19.1 A statement of basis shall be prepared for every draft permit for which a fact sheet under Sections 6.18 is not prepared.

6.19.2 The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for their inclusion in the draft permit or, in the case of notices of intent to deny the permit application or to terminate the permit, reasons supporting the tentative decision.

6.19.3 The Secretary shall send the statement of basis to the applicant and, on request, to any other interested person.

6.20 Effect of Permit

6.20.1 Compliance with a permit during its term constitutes compliance with the Law and the Act except for any standard or prohibition imposed under §307 of the Act for a toxic pollutant injurious to human health. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as described in Part V.

6.20.2 The issuance of a permit does not:

6.20.2.1 Convey any property rights of any sort, or any exclusive privileges;

6.20.2.2 Authorize, or relieve the permittee from liability for, any injury to private property or invasion of private rights, or any infringement of Federal, State or local laws or regulations; or

6.20.2.3 Preempt, or relieve the permittee from, any duty to obtain any required State or local approval for the activity from which the discharge results.

6.21 Duration of Permits, Continuation of Expiring Permits, and Transferability of Permits

6.21.1 Duration of Permits. All permits shall be issued for fixed terms not to exceed five years. Permits of less than five years duration may be issued in appropriate circumstances. Permits may be modified, revoked and reissued, or terminated as specified in Part V. Except for the continuation provisions of §6.21.2 for expiring permits, the term of a permit shall not be extended beyond five years from its original date of effectiveness by modification, extension or other means.

6.21.2 Continuation of Expiring Permits.

6.21.2.1 The terms and conditions of an expired permit are automatically continued pending issuance of a new or reissued permit if:

6.21.2.1.1 The permittee has submitted a timely and sufficient application for a new or reissued permit under §6.10 (at least 180 days prior to the permit expiration date); and

6.21.2.1.2 The Department is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

6.21.2.2 Permits continued under §6.21.2.1 remain fully effective and enforceable against the discharger.

6.21.3 Transferability of Permits.

6.21.3.1 A permit may be transferred to another person by a permittee if:

6.21.3.1.1 The permittee notifies the Secretary, in writing, prior to the proposed transfer;

6.21.3.1.2 A written agreement is submitted to the Secretary, signed by all parties to the transfer, containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgement that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on); and

6.21.3.1.3 The Department within 30 days of receipt of the notification of the proposed transfer does not notify the current permittee and the new permittee of its intent to modify, revoke and reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

6.21.3.1.4 The permittee shall provide as much advance notice of a proposed transfer to allow sufficient time for the Department to modify the permit to identify the new permittee and incorporate such other requirements as may be necessary under the Law or the Act.

6.21.3.2 Such a transferred permit shall, as of the date of transfer, be as fully effective as if it had been issued directly to the new permittee.

6.22 Variances

6.22.1 The Secretary may grant or deny requests for extensions under §301(i) or §301(k) and variances under §316(a) of the Act (subject to EPA objection pursuant to 40 CFR 123.44).

6.22.2 The Secretary may deny, or forward to EPA with a written concurrence, or without recommendation, completed requests for variances under §301(c) of the Act, based on the economic capability of the applicant, and variances based on water quality related effluent limitations under §302(b)(2) of the Act.

6.22.3 The Secretary may deny, or forward to EPA with a written concurrence, completed requests for variances based on the presence of fundamentally different factors from those on which an effluent limitation guideline was based and variances based on certain water quality factors under §301(g) of the Act.

6.22.4 The decisions made by the Secretary on variance requests shall be governed by the same procedures as requests for permit modifications under §6.53. In evaluating variance requests the Secretary will apply the applicable criteria set forth at 40 CFR Part 125.

Part III - Public Comments and Hearings

6.30 Public Notice of Permit Application. In addition to the public notice provisions of 7 **Del.C.** Ch. 60, §6004(b), the Department shall follow the procedures outlined herein when processing an application for a NPDES permit.

6.30.1 Every complete application for a NPDES permit, including any request for permit modification, revocation and reissuance or termination, shall be given public notice by publication in a newspaper of general circulation in the county, city or town in which the discharge is located and in a daily newspaper of general circulation throughout the state. Notice shall be provided when the tentative determinations have been made pursuant to §6.12 and a draft permit prepared. A copy of the notice shall be mailed to the applicant, the agencies listed in §6.31 and any person or group who have asked to be notified. The Secretary will maintain a mailing list of persons and groups who will be sent copies of notices for all NPDES applications. The Secretary will add the name of any person or group to that list upon written request.

6.30.2 No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under §6.12. The Secretary shall provide written notice of such decision to the person who filed the request. In cases where the request was filed by someone other than the permittee, the permittee shall be notified as well.

6.30.3 The Secretary shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations made with respect to the NPDES application. All written comments submitted during the 30-day comment period will be retained by the Department and considered in the formulation of its final determinations with respect to the NPDES application.

6.30.4 The contents of the public notice of any application for a NPDES permit shall include the following minimum information:

6.30.4.1 Name and address of the permittee or permit applicant and if different, of the facility or activity regulated by the permit;

6.30.4.2 A brief description of the activities or operations that result in the discharge described in the permit application;

6.30.4.3 The type of discharge, the name of the receiving water and a general description of the location of each discharge point indicating whether such discharge is a new or an existing discharge;

6.30.4.4 A statement of the tentative determination to issue or deny a NPDES permit for the discharge(s) described in the NPDES application;

6.30.4.5 A brief description of the procedures by which the public may participate in the final permit decision, including the timeframe for providing comments, a description of the procedure for requesting a hearing or if the Secretary has determined to hold a public hearing, the date and time for such hearing; and

6.30.4.6 Address and phone number of the Department office at which interested persons may obtain further information, request copies of the draft permit, the statement of basis or the fact sheet and inspect and/or arrange to receive copies of the NPDES application, forms and related documents.

6.30.5 Copies of the draft permit and the statement of basis or fact sheet shall be sent to the applicant along with the copy of the public notice as outlined herein.

6.30.6 Public notices may describe more than one permit or application.

6.31 Notice to Other Government Agencies. The Secretary will notify other appropriate government agencies of each complete application for a NPDES permit and will provide such agencies an opportunity to submit their written views and recommendations.

6.31.1 At the time public notice is issued pursuant to §6.30, a copy of the notice will be transmitted to any other State whose waters may be affected by the issuance of a NPDES permit. Upon written request, a copy of the NPDES application, a copy of the proposed draft permit prepared pursuant to §6.12 and a copy of the statement of basis or the fact sheet will be provided. Each affected State will be afforded an opportunity to submit written recommendations to the Secretary which the Secretary may then incorporate into the permit, if issued. If the Secretary does not incorporate such written recommendations into the permit, a written explanation of the reasons for not incorporating such written recommendations shall be provided to the affected state or states, and to the EPA.

6.31.2 At the time the public notice is issued, pursuant to §6.30, any interstate agency, which has water quality control authority over waters which may be affected by the issuance of a NPDES permit, will be provided a copy of the notice, and will be afforded an opportunity to submit its written recommendations. Copies of the complete NPDES permit application, the draft permit and the statement of basis or the fact sheet shall be provided, upon written request.

6.31.3 At the time the public notice is issued pursuant to §6.30, a copy of the notice will be mailed to the following:

6.31.3.1 the appropriate District Engineer of the U.S. Army Corps of Engineers;

6.31.3.2 the U.S. Fish and Wildlife Service;

6.31.3.3 the National Marine Fisheries Service;

6.31.3.4 the Advisory Council on Historic Preservation;

6.31.3.5 the State Historic Preservation Officer;

6.31.3.6 the State of Delaware Department of Natural Resources and Environmental Control Division of Fish and Wildlife;

6.31.3.7 the county or local government having jurisdiction in the area where the facility or activity is located; and

6.31.3.8 any other Federal, State or local agency, if requested.

Each of the entities listed will be provided an opportunity to respond, comment and request a public hearing pursuant to §6.33.

Copies of the NPDES permit application, the proposed draft permit and the statement of basis or the fact sheet will be provided, upon written request.

6.31.4 The agencies listed herein shall be afforded a minimum of 30 calendar days from receipt of the notice to provide comments and submit recommendations to the Secretary. In the event additional materials are requested (i.e. copies of the permit application, draft permit and statement of basis or fact sheet), the 30-day comment period shall be extended accordingly, to allow sufficient time for the agency to review the additional materials provided.

6.31.5 Any person otherwise entitled to be notified under this section may waive his or her rights to receive such notice.

6.32 Public Access to Information

6.32.1 All information pertaining to permit issuance, reissuance, modification, revocation or termination, including permit applications and attachments thereto, effluent data, comments on permit application, and draft permits and statements of basis or fact sheets, shall be available to the public. The Secretary shall not at any time disclose to any person other than appropriate officials of EPA pursuant to the requirements of the Act any information that would divulge methods or processes entitled to protection as trade secrets or that would otherwise be considered confidential business information pursuant to 29 **Del.C.** §10002(d)(2). Any claims that the information is confidential must be asserted at the time of submission and the information clearly identified and denoted as such. Such trade secrets or confidential business information transmitted by the Secretary to EPA shall be subject to appropriate Federal regulations governing confidentiality of such information. If no claim is made at the time of submission, the Secretary may make the information available to the public without further notice.

6.32.2 Claims of confidentiality for the following information will be denied:

6.32.2.1 The name and address of any permittee or permit applicant;

6.32.2.2 Permit applications and any information submitted in support of the application (other than any information entitled to protection as trade secrets pursuant to State law), permits and effluent data.

6.33 Public Comments and Hearings

6.33.1 A comment period of at least 30 days following the date of public notice of the formulation of a draft permit shall be provided. During this period any interested persons may submit written comments on the draft permit and may request a public hearing by submitting a meritorious request. 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 shall be considered by the Secretary in preparing the final permit and shall be responded to as provided in §6.35.

6.33.2 The Secretary may hold a public hearing, at his or her discretion, whenever there is significant public interest relevant to the proposed application. The Secretary may also hold a hearing whenever such a hearing might clarify one or more issues involved in the permit decision. Public notice of that hearing shall be given as specified in §6.34. Nothing in this paragraph shall relieve the Secretary of the requirement to hold a hearing where a hearing is required by any applicable law or regulation.

6.33.3 Any hearing held by the Secretary shall be conducted in accordance with 7 **Del.C.** Ch. 60, §6006. All persons shall be given the opportunity to submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements. The submission of written statements may be required. The public comment period under §6.30.2 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing and otherwise exercise discretion in the conduct of the hearing.

6.33.4 All persons, including the applicant, who believe any condition in the draft permit is inappropriate or that the Secretary's tentative decision to deny the application, terminate the permit or prepare a draft permit is inappropriate, must raise the issues and submit all arguments supporting their position by the close of the public comment period.

6.34 Public Notice of Hearing

6.34.1 Public Notice of any hearing held pursuant to §6.33 shall be circulated as follows:

6.34.1.1 Notice shall be published in a newspaper of general circulation in the county or city where the discharge is located and in a daily newspaper of general circulation throughout the state;

6.34.1.2 Notice of the hearing shall be sent to all persons and government agencies which received a copy of the notice of the NPDES application;

6.34.1.3 Notice of the hearing shall be sent to all persons who requested the hearing and/or provided comments on the draft permit.

6.34.2 Notice shall be effected pursuant to §§6.34.2.1 and 6.34.2.2 above at least 30 days in advance of the hearing.

6.34.3 In addition to the requirements of §6.30.3, the public notice of any hearing held pursuant to §6.33 shall include the following:

6.34.3.1 A brief reference to the public notice issued for the NPDES application, including date of issuance unless the public notice includes the hearing notice;

6.34.3.2 Information regarding the date, time and location for the hearing;

6.34.3.3 The purpose of the hearing;

6.34.3.4 A concise statement of the issues raised by the persons requesting the hearing;

6.34.3.5 A brief reference to the rules and procedures to be followed at the hearing.

6.35 Responses to Comments

6.35.1 If the District Engineer of the Corps of Engineers advises the Secretary in writing during the 30-day public comment period that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the owner so notified. If the District Engineer advises the Secretary that imposing specified conditions upon the permittee is necessary to avoid any substantial impairment of anchorage or navigation, then the Secretary shall include the specified conditions in the permit. Review or appeal of a denial of a permit under this section or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this regulation.

6.35.2 If during the 30-day public comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any State or other Federal agency with jurisdiction over fish, wildlife, or public health advises the Secretary in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial risk to public health, impairment of fish, shellfish, or wildlife resources, the Secretary may

include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Law or the Act.

6.35.3 The Secretary may consult with one or more of the agencies referred to in this section before preparing a draft permit and may reflect their views in the fact sheet or the draft permit.

6.35.4 The Secretary shall ensure, to a reasonable extent, that the comments on any draft permit have been addressed. The Secretary shall prepare a written response, indicating which provisions of the draft permit have been changed in the final permit, and the reason for the change, or, if the requested change is not made, the reason for denying the change. Any and all responses shall be available to the public, at the time the notice of a final permit decision is given as provided in §6.36.

6.35.5 At his or her discretion, the Secretary may reopen or extend the comment period under §6.30.2 to give interested persons the opportunity to comment on any provisions in the draft permit that were modified or on additional conditions that were to be included in response to the data, information or arguments presented during the initial comment period. Comments filed during such reopened or extended comment period shall be limited to those new or modified provisions. The public notice shall define the scope of the reopening or extension of the comment period.

6.36 Permit Issuance

6.36.1 After the close of the public comment period, the Secretary shall consider all comments made including any additional data, information or arguments presented during the public comment period and render a final permit decision. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

6.36.2 The Secretary shall notify the applicant and each person who submitted comments or requested notice of the final permit decision. The notice shall include the Secretary's response to comments (per §6.35.4) and a reference to the procedure for appealing the Secretary's decision to the Environmental Appeals Board pursuant to 7 **Del.C.** Ch. 60, §6008.

6.36.3 The final NPDES permit shall become effective on the first day of the month following the issuance date, unless the issuance date is the 16th day of the month, or later. When the issuance date is the 16th day of the month or later, the final NPDES permit shall become effective on the first day of the second month following the issuance date. The effective date for any permit amendment or permit modification shall be the issuance date for the amended or modified permit.

Part IV - Permit Compliance

6.40 Monitoring

6.40.1 To assure compliance with permit terms and conditions, all permittees shall monitor as specified in the permit:

6.40.1.1 The amount, concentration, or other measurement specified in Section 6.16 for each pollutant specified in the permit;

6.40.1.2 The volume of effluent discharged from each point source; and

6.40.1.3 As otherwise specifically required in the permit, e.g., as required under Section 6.16.

6.40.2 For purposes of §6.40.1, the Secretary shall specify the following monitoring requirements in the permit:

6.40.2.1 Requirements concerning the proper installation, use, and maintenance of monitoring equipment or methods (including biological monitoring methods when appropriate);

6.40.2.2 Monitoring frequency, type, and intervals sufficient to yield data that are representative of the volume of effluent flow and the quality and/or quantity of pollutants discharged. Variable effluent flows and pollutant quantities shall be required to be monitored at more frequent intervals than relatively constant effluent flows and pollutant quantities; and

6.40.2.3 Test procedures for the analysis of pollutants meeting the requirements of regulations issued by EPA pursuant to the Act.

6.41 Recording of Monitoring Activities and Results

The terms and conditions of any NPDES permit that require monitoring of the authorized discharge shall include the following recording requirements:

6.41.1 The permittee shall maintain records of all information resulting from any monitoring activities required in the permittee's NPDES permit;

6.41.2 Any records of monitoring activities and results shall include at least the following for all samples:

6.41.2.1 The date, place, and time of sampling or measurements;

6.41.2.2 The individual(s) who performed the sampling or measurements;

6.41.2.3 The date(s) analyses were performed;

6.41.2.4 The individual(s) who performed the analyses;

6.41.2.5 The analytical techniques/methods used; and

6.41.2.6 The results of such analyses; and

6.41.3 The permittee shall be required to maintain for a minimum of 3 years any records of monitoring activities and results, including all original strip chart recordings for continuous monitoring and instrumentation, calibration, and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee, or upon request of the Secretary or EPA.

6.42 Reporting of Monitoring Results and Compliance by Permittees

6.42.1 Periodic reporting shall be required by the terms and conditions of every NPDES permit issued by the Secretary. The Secretary, after giving reasonable notification to the permittee, may require more frequent reporting than that contained in the permit. Reports shall contain monitoring results obtained by the permittee pursuant to the monitoring requirements in the NPDES permit, and shall be submitted to the Secretary using the DMR.

6.42.2 If the permittee monitors its discharge for any pollutant more frequently than required by the permit, using approved analytical methods (§6.40.2.3), the results of this monitoring shall be reported in the DMR. For purposes of this paragraph, "approved analytical methods" are those test procedures for the analysis of pollutants which conform to EPA promulgated regulations or are specified in the permit.

6.42.3 If the permittee monitors his discharge for any pollutant that is not required to be monitored by the permit, and uses approved analytical methods (§6.40.2.3), the results of this monitoring shall be reported in the DMR unless the Secretary approves an alternate reporting procedure. For purposes of this paragraph, "approved analytical methods" are those test procedures for the analysis of pollutants which conform to EPA promulgated regulations.

6.42.4 Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

6.42.5 Within 14 days after each interim or final permit compliance schedule date, the permittee shall provide the Secretary with written notice of the permittee's compliance or noncompliance with the interim or final requirements.

6.43 Duty to Provide Information. The permittee shall furnish to the Secretary within a reasonable time, any information which the Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the Secretary, upon request, copies of records required to be kept by the permittee.

6.44 Toxics Reporting and Notification Levels

6.44.1 In addition to the reporting requirements specified under §6.42 and in the Department's regulations governing the "Reporting of a Discharge of a Pollutant or an Air Contaminant" pursuant to 7 **Del.C.** Ch. 60, §6028, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Secretary as soon as they know or have reason to believe:

6.44.1.1 That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

6.44.1.1.1 One hundred micrograms per liter (100 ug/L);

6.44.1.1.2 Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;

6.44.1.1.3 Five (5) times the maximum concentration value reported for that pollutant in the permit application; or

6.44.1.1.4 The level established by the Secretary in accordance with §6.44.2; and

6.44.1.2 That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

6.44.2 The Secretary may include in a permit a "notification level" which exceeds the notification level of §§6.44.1.1.1, 6.44.1.1.2, or 6.44.1.1.3, upon a petition from the permittee or on the Secretary's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

Part V - Permit Modification, Revocation and Reissuance, and Termination

6.50 General

6.50.1 Permits shall be modified, revoked and reissued, or terminated only as authorized in this section.

6.50.2 In order to have filed a timely application for the purposes of §6.20.2.1, any permittee with an expiring permit shall submit an application for reissuance to the Secretary at least 180 days before the expiration date of the permit, unless permission for a later date has been granted by the Secretary.

6.51 Modification, Revocation and Reissuance, and Termination

6.51.1 An issued permit may be modified in whole or in part, revoked and reissued, or terminated during its term for cause as specified in this section.

6.51.2 Permit modifications shall not be used to extend the term of a permit beyond 5 years from the original date of issuance.

6.51.3 Modification, revocation and reissuance, or termination of an issued permit may be initiated by the Secretary under applicable provisions of this regulation. Any interested person may petition the Secretary to modify, revoke and reissue, or terminate an issued permit. All requests shall be in writing and shall contain facts or reasons supporting the request.

6.51.4 Causes for modification, revocation and reissuance, or termination include the following:

6.51.4.1 Violation of any term or condition of the permit;

6.51.4.2 Failure of the permittee to disclose fully all relevant facts in the application or during the permit issuance process or the permittee's misrepresentation of any relevant facts at any time;

6.51.4.3 A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (e.g., plant closure, termination of discharge by connection to a POTW, the promulgation of any applicable effluent standard or prohibition under §307 of the Act, any change in State law that requires the reduction or elimination of the discharge, etc.);

6.51.4.4 Information indicating that the permitted discharge poses a threat to human health or the environment; or

6.51.4.5 A change in ownership or control of a source which has a permit, where required by the Secretary in accordance with §6.21.3.

6.51.5 In addition to the provisions of §6.51.4, the following are causes for modifying a permit; the following are also causes for revoking and reissuing a permit when requested by the permittee or when the permittee agrees:

6.51.5.1 Material and substantial alterations or additions to the permitted facility or activity which are not covered in the effective permit (e.g, production changes, re-location or combination of discharge points, changes in the nature or mix of products produced), provided that such alterations do not constitute total replacement of the process or production equipment causing the discharge which converts it into a new source;

6.51.5.2 The existence of a factor or factors which, if properly and timely brought to the attention of the Secretary, would have justified the application of limitations or other requirements different from those required by applicable standards or limitations, but only if the requestor shows that such factor or factors arose after the final permit was issued. For new sources or new discharges, this cause shall include any significant information derived from any effluent testing that is conducted after permit issuance;

6.51.5.3 Revision, withdrawal, or modification of water quality standards or EPA promulgated effluent limitations guidelines (including interim final effluent limitations guidelines), but only when:

6.51.5.3.1 The permit term or condition requested to be modified or revoked was based on promulgated effluent limitations guidelines or State or EPA approved or promulgated water quality standards; and

6.51.5.3.2 EPA has revised, withdrawn, or modified that portion of the effluent limitations guidelines on which the permit term or condition was based; or EPA has approved a State action with regard to a water quality standard on which the permit term or condition was based; and

6.51.5.3.3 A request for modification, or revocation and reissuance, is filed in accordance with §6.52 within ninety (90) days after Federal Register notice of:

6.51.5.3.3.1 Revision, withdrawal, or modification of that portion of the effluent limitations guidelines; or

6.51.5.3.3.2 EPA approval of State action regarding a water quality standard;

6.51.5.3.4 Judicial remand and stay of EPA promulgated effluent limitations guidelines, if the remand and stay concerns that portion of the guidelines on which the permit term or condition was based and the request is filed within ninety (90) days of the judicial remand;

6.51.5.3.5 Any modification, or revocation and reissuance of permits specifically authorized by the Act, e.g., §§301(c), 301(g), 301(h), 301(i), 301(k) or 316(a);

6.51.5.3.6 To comply with any applicable standard or limitation promulgated or authorized under the Act, if the effluent standard or limitation so issued or approved:

6.51.5.3.6.1 Contains different conditions or is otherwise more stringent than any effluent limitations in the permit; or

6.51.5.3.6.2 Controls any pollutant not limited in the permit.

6.51.5.3.6.3 The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable;

6.51.5.3.7 To modify a schedule of compliance in an issued permit for good and valid cause by a date which is no later than the statutory deadline;

6.51.5.3.8 To contain a schedule of compliance leading to termination of the discharge by a date which is no later than the applicable statutory deadline;

6.51.5.3.9 To correct any technical mistakes made in determining permit conditions, such as errors in calculation or mistaken interpretations of law;

6.51.5.3.10 When required by any "reopener" clause included in the permit;

6.51.5.3.11 As necessary under §§6.14, 6.17.3 and 6.17.5, and 6.73 of this regulation;

6.51.5.3.12 When the discharger has installed the treatment technology considered by the Department in setting the effluent limitations imposed under §402(a)(1) of the Act, has properly operated and maintained the facilities with reasonable diligence, but nevertheless has been unable to achieve those effluent limitations. In such cases, the limitations in the modified permit may reflect the level of pollutant control technology actually achieved, but shall not be less stringent than required by an applicable effluent limitations guideline;

6.51.5.3.13 Failure to notify a State whose waters may be affected by the discharge, as required by §402(b)(3) of the Act;

6.51.5.3.14 Establishment of "notification level" as provided in §6.44.1.1; or

6.51.5.3.15 Modification of a schedule of compliance for a publicly owned treatment works (POTW) to reflect the time lost during construction of an innovative or alternative facility. In no case shall the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

6.51.6 The following permit modifications shall not require public notice and opportunity for hearing under Part III unless they would render the applicable standards and limitations in the permit less stringent, or unless contested by the permittee:

6.51.6.1 Correction of typographical errors;

6.51.6.2 A change requiring more frequent monitoring or reporting by the permittee;

6.51.6.3 A change in an interim compliance date, but not beyond 120 days and not where the change would interfere with the attainment of a final compliance date;

6.51.6.4 A change in ownership or control of a source which has a permit where no other change in the permit is necessary and where transfer is accomplished in accordance with §6.21.3; or

6.51.6.5 Deletion of a point source outfall, where the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

6.52 Permit Modification, Revocation and Reissuance, and Termination Initiated by the Secretary

6.52.1 When the Secretary determines that cause exists to modify, to revoke and reissue, or to terminate an issued permit as outlined in §6.51, the Secretary shall make the tentative determinations outlined in §6.12 and either formulate a draft permit that incorporates the changes proposed or issue a notice of intent to terminate the permit. If additional information is needed to prepare a draft permit, the Secretary may request it under §6.10.5 or in appropriate cases, may require the submission of a complete new permit application under §6.10.1. In the case of revoked and reissued permits, the Secretary shall require the submission of a new application.

6.52.2 When a permit is modified, only those conditions being modified are reopened. All other aspects of the permit shall remain in force until the expiration of the permit. If the permit is revoked and reissued, the entire permit is reopened and subject to revision. The draft permit in such cases, is subject to the same procedures as if the permit had expired and was being reissued. During the revocation and reissuance, the permittee shall comply with all conditions of the existing permit until a new permit is issued.

6.52.3 If the changes proposed satisfy any of the criteria for minor permit modifications in §6.51.6, the Secretary may modify the permit without preparing a draft permit or following the procedures for public comments and an opportunity for a hearing under Part III.

6.53 Requests for Modification, Revocation and Reissuance, or Termination

6.53.1 If any person believes that a permit modification, revocation and reissuance, or termination is justified under the standards of §6.51, he or she may request such modification, revocation and reissuance, or

termination from the Secretary in writing. The request shall set forth all facts or reasons known to the permittee which may be relevant to a decision on the modification request.

6.53.2 If the Secretary agrees that the request to modify, or revoke and reissue, or terminate the permit appears to meet the requirements of §6.51, the Secretary shall make the tentative determinations outlined in §6.12 and either formulate a draft permit that incorporates the changes proposed or issue a notice of intent to terminate the permit. If additional information is needed to prepare a draft permit, the Secretary may request it under §6.10.5 or in appropriate cases may require the submission of a complete new permit application under §6.10.1. In the case of revoked and reissued permits, the Secretary shall require the submission of a new application.

6.53.3 When a request for a modification under this section is granted and a new draft permit is formulated, only those terms dependent on the request will be reopened. All other aspects of the permit will remain in force until the expiration of the permit. If the permit is revoked and reissued, the draft permit is subject to the same procedures as if the permit had expired and was being reissued. During the revocation and reissuance, the permittee shall comply with all conditions of the existing permit until a new permit is issued.

6.53.4 If the Secretary decides that the request for permit modification, revocation and reissuance, or termination does not appear to meet the requirements of §6.51, the Secretary shall reply in writing to the requestor briefly setting forth the reasons for that decision. Denials of requests for modification, revocation and reissuance or termination are not subject to public notice, comment or hearings. Such denials may be appealed to the Environmental Appeals Board as outlined in 7 **Del.C.** §6008.

Part VI - Special NPDES Program Requirements

6.60 General. The following sections describe NPDES program coverage for certain categories of point source discharges.

6.61 Animal Production Operations

6.61.1 Discharges of pollutants resulting from feedlot, animal feeding operations or animal production facilities shall be managed or controlled in accordance with the applicable provisions of 40 CFR Part 412 - Feedlots Point Source Category and the Delaware Guidelines for animal waste management and supplements as published by the University of Delaware, College of Agricultural Sciences, Agricultural Experiment Station, Cooperative Extension (i.e. "Manure Management for Environmental Protection", Cooperative Bulletin #27, and its supplements), or any regulations promulgated by the Secretary of the Department of Agriculture, with the guidance, advice and consent of the Delaware Nutrient Management Commission, pursuant to Title 3**, Del.C.** Ch. 22, Nutrient Management.

6.61.2 The Delaware Guidelines for animal waste management and supplements outline the conservation practices and management measures that were determined to be technically, economically and institutionally effective methods for preventing or reducing pollutant discharges resulting from the production and use of animal wastes. The guidelines provide recommended practices that comply with Department regulations for animal waste management.

6.61.3 Animal feeding operations that meet the criteria for a concentrated animal feeding operation specified in Appendix B to 40 CFR Part 122 are point sources subject to the NPDES permit program.

6.62 Concentrated Aquatic Animal Production Facilities

6.62.1 Concentrated aquatic animal production facilities as defined in §2.0 are point sources subject to the NPDES permit program.

6.62.2 Any warm or cold water aquatic animal production facility not otherwise falling within the definitions may be designated as a concentrated aquatic animal production facility that is subject to the NPDES permit program where the facility is determined by the Secretary to be significant contributor of pollution to State waters. In making this designation, the Secretary shall consider the following factors:

6.62.2.1 The location and quality of the receiving waters;

6.62.2.2 The holding, feeding, and production capacities of the facility;

6.62.2.3 The quantity and nature of the pollutants reaching State waters; and

6.62.2.4 Other relevant factors. A permit application shall not be required from an aquatic animal production facility designated under this paragraph until the Department has conducted an on-site inspection of the facility and under the NPDES permit program has made a determination that the facility should be regulated.

6.63 Aquaculture Projects. These regulations are intended to authorize, on a selective basis, controlled discharges which would otherwise be unlawful under the Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially. While such projects are to be encouraged, the other beneficial uses of the water must be protected as well.

6.63.1 Discharges of pollutants into aquaculture projects, as defined in §2.0, are subject to the NPDES permit program.

6.63.2 Permits issued for discharges into aquaculture projects shall include such conditions as are necessary to comply with the applicable provisions of these regulations. Technology-based effluent limitations shall not be applied to discharges into the approved project except with respect to toxic pollutants.

6.63.3 No NPDES permit shall be issued to an aquaculture project unless:

6.63.3.1 The Secretary determines that the aquaculture project:

6.63.3.1.1 Is intended to produce a crop which has significant direct or indirect commercial value (or is intended to be operated for research into possible production of such a crop); and

6.63.3.1.2 Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

6.63.3.2 The applicant has demonstrated to the Department's satisfaction that the use of the pollutant to be discharged to the aquaculture project will result in an increased harvest of organisms under culture over what would naturally occur in the area;

6.63.3.3 The applicant has demonstrated to the Department's satisfaction that there will be minimal adverse effects on the biota indigenous to the area and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous biota;

6.63.3.4 The Secretary determines that the crop will not have a significant potential for human health hazards resulting from its consumption;

6.63.3.5 The Secretary determines that migration of pollutants from the designated project area to water outside of the aquaculture project will not cause or contribute to a violation of the applicable State water quality standards or the applicable effluent standards and limitations that would govern if the aquaculture project itself were considered a point source. The approval of an aquaculture project shall not result in the enlargement of any mixing zone established by the Department for the original discharge of pollutants.

6.63.4 No NPDES permit shall be issued for any aquaculture project located in the territorial sea, the waters of the contiguous zone, or the ocean, except in conformity with guidelines issued under §403 (c) of the Act.

6.63.5 Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area. For example, the designated project area shall not include the entire width of a watercourse.

6.63.6 Any pollutants not required by or beneficial to the aquaculture crop shall not exceed the applicable standards and limitations when entering the designated project area.

6.64 New Sources and New Dischargers

6.64.1 "New source" and "new discharger" are defined in §2.0.

6.64.2 Except as otherwise provided in an applicable new source performance standard, a building, structure, facility or installation from which there is or may be a discharge of pollutants is a "new source" if:

6.64.2.1 It is constructed at a site at which no other source is located; or

6.64.2.2 It totally replaces the process or production equipment that causes the discharge of pollutants at an existing facility; or

6.64.2.3 Its processes are substantially independent of an existing source at the same site. In determining whether the processes are substantially independent, the Department shall consider such factors as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source.

6.64.3 A source meeting the requirements of section 6.64.2 is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

6.64.4 Construction at a site or facility where an existing source is located is cause for permit modification under Part V rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility or installation meeting the criteria in §6.64.2, but otherwise alters, replaces or adds to existing process or production equipment.

6.64.5 Construction of a new source as defined in §2.0 has commenced if the owner or operator has:

6.64.5.1 Begun, or caused to begin as part of a continuous construction program:

6.64.5.1.1 Any placement, assembly or installation of facilities or equipment; or

6.64.5.1.2 Significant site preparation work including clearing, excavation or removal of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment; or

6.64.5.1.3 Entered into a binding contract obligation for the purchase of facilities or equipment which are intended to be used in its operation. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering or design studies do not constitute a contractual obligation under this paragraph.

6.64.6 Effect of compliance with new source performance standards.

6.64.6.1 Except as provided in §6.64.2, any new discharge on which construction commenced after October 18, 1972, or any new source, which meets the applicable promulgated new source performance standards before the commencement of discharge, shall not be subject to any more stringent new source performance standards, or to any more stringent technology-based standards under §301(b)(2) of the Act for the shortest of the following periods:

6.64.6.1.1 Ten years from the date that construction is completed;

6.64.6.1.2 Ten years from the date the source begins to discharge process or other non-construction related wastewater; or

6.64.6.1.3 The period of depreciation or amortization of the facility for the purposes of §167 or 169 (or both) of the Internal Revenue Code of 1954, as amended through August 29, 2000.

6.64.6.2 The protection from more stringent standards of performance afforded by §6.64.1.1 does not apply to:

6.64.6.2.1 Additional or more stringent permit conditions that are not technology based, e.g., conditions based on water quality standards, or effluent standards or prohibitions under §307(a) of the Act; and

6.64.6.2.2 Additional permit conditions controlling pollutants listed as toxic under §307(a) of the Act or as hazardous substances under §311 of the Act and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic or hazardous where control of those other pollutants has been specifically identified as the method to control the toxic or hazardous pollutant.

6.64.6.3 Where a NPDES permit issued to a source enjoying a "protection period" under §6.64.2.1 will expire on or after the expiration of the protection period, such permit shall require the owner or operator of the source to be in compliance with the requirements of §301 of the Act and any other applicable requirements of the Act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

6.64.6.4 The owner or operator of a new source, a new discharger, a source recommending discharge after terminating operations, or a source which had been an indirect discharger which commences discharging into State waters shall install and have in operating condition, and shall "start- up", all pollution control equipment required to meet the terms and conditions of its permit before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit terms and conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 6.17.

6.64.6.5 After the effective date of new source performance standards it shall be unlawful for any owner of any new source to operate such source in violation of those standards applicable to such source.

6.65 Silvicultural Activities

Silvicultural point sources, as defined in §2.0, are point sources subject to the NPDES permit program.

Part VII - Requirements for Pretreatment and Controlling Discharges to a POTW

6.70 Purpose and Scope

6.70.1 The regulations in this part establish the responsibilities of the Department, local governments, industry and the public in implementing the National Pretreatment Standards and in controlling pollutants that have the potential to upset, pass through or interfere with treatment processes employed at a publicly owned treatment plant (POTW) or residuals (i.e. sewage sludge, biosolids or other residuals) generated at a POTW.

6.70.2 This part applies to:

6.70.2.1 Pollutants from non-domestic sources covered by National Pretreatment Standards that are indirectly discharged into a POTW or transported by truck or rail or otherwise introduced into a POTW;

6.70.2.2 POTWs that receive wastewater from sources subject to National Pretreatment Standards; and

6.70.2.3 Any new or existing source that is subject to National Pretreatment Standards.

Sources that discharge to a sewer which is not connected to a POTW are not subject to National Pretreatment Standards.

6.70.3 The objective of these regulations are threefold:

6.70.3.1 To prevent the introduction of pollutants into POTWs that will upset or interfere with the effective operation of a POTW, including any pollutants that may preclude or otherwise interfere with the beneficial use or disposal of residuals generated at the POTW;

6.70.3.2 To prevent the introduction of pollutants into POTWs that will pass through the treatment works without being treated, or that will otherwise be incompatible with such works; and

6.70.3.3 To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

6.71 Pretreatment Standards and Prohibited Discharges

6.71.1 General Prohibitions. An industrial user or indirect discharger may not introduce into any POTW any pollutant(s) which pass through the POTW without treatment, cause an upset or otherwise interfere with the effective operation of the treatment works or cause a violation of a permitted effluent limitation or applicable water quality standard. These general prohibitions and the specific prohibitions in §6.71.2 apply to each industrial user or indirect discharger introducing pollutants into a POTW, whether or not the industrial user or indirect discharger is subject to other National Pretreatment Standards or any national, state or local pretreatment requirements.

6.71.2 Specific Prohibitions. In addition to the general prohibitions in §6.71.1, the following pollutants shall not be introduced into a POTW:

6.71.2.1 Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21;

6.71.2.2 Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the treatment works is specifically designed to accommodate such discharges;

6.71.2.3 Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;

6.71.2.4 Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;

6.71.2.5 Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the influent to the treatment plant exceeds $40^{o}C$ ($104^{o}F$) unless the Secretary and the EPA Regional Administrator, upon request of the POTW, approves alternate temperature limits;

6.71.2.6 Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

6.71.2.7 Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; or

6.71.2.8 Any trucked or hauled pollutants, except at discharge points designated by the POTW.

6.71.3 POTW-specific Prohibitions or Discharge Limitations

6.71.3.1 Each POTW that develops a pretreatment program under §6.72, shall formulate and enforce specific limitations to implement the prohibitions listed in 6.71 a. and 6.71 b. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and shall effectively enforce such limits.

6.71.3.2 In cases where pollutants introduced by an industrial user or indirect discharger result in upset or interference, pass through or the violation of any applicable water quality standards, and such incidents are likely to recur, the POTW shall develop and enforce specific effluent or discharge limitations for the industrial user or indirect discharger, and all other users, as appropriate, which, together with appropriate operational changes or modifications to the treatment facilities, as are necessary to ensure renewed and continued compliance with the POTW's NPDES permit or sludge use or disposal practices.

6.71.3.3 POTW-specific limitations on indirect discharges shall not be developed and enforced without individual notice to those industrial users or indirect dischargers affected and any persons or groups who have requested such notice and an opportunity to respond.

6.71.3.4 Where specific prohibitions or discharge limitations on pollutants or pollutant parameters are developed by a POTW in accordance with §6.71.3, such prohibitions or discharge limitations shall be deemed Pretreatment Standards for the purpose of §307(d) of the Act.

6.71.3.5 All POTWs with approved pretreatment programs shall provide a written technical evaluation of the need to revise any POTW-specific limitations within one year of reissuance of the POTW's NPDES permit, or within one year of any modifications to the POTW's NPDES permit that result in significant changes in the POTW's permitted effluent limitations, pretreatment operations, sludge use or sludge disposal methods.

6.71.4 Affirmative Defenses. An industrial user or indirect discharger shall have an affirmative defense in any action brought against it alleging a violation of prohibitions listed in §§6.71.1 and 6.71.2.3. through 6.71.2.7 where the industrial user or indirect discharger can demonstrate that:

6.71.4.1 It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

6.71.4.2 A POTW-specific limitation designed to prevent pass through and/or interference, as the case may be, either:

6.71.4.2.1 Was developed in accordance with §6.71.3 for each pollutant in the user's discharge that caused pass through or interference, and the user was in compliance with such POTW-specific limitation directly prior to and during the incident of pass through or interference; or

6.71.4.2.2 Has not been developed in accordance with §6.71.3 for the pollutant(s) that caused the pass through or interference, and the user's discharge directly prior to and during the incident of pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was operating effectively and regularly in compliance with its NPDES permit, including any applicable requirements for residuals use or disposal.

6.72 Pretreatment Program Requirements, Development and Implementation of a Pretreatment Program

6.72.1 POTWs that receive wastes from industrial users or other nondomestic sources shall control such indirect discharges or sources through permit, order or similar means to ensure compliance with the pretreatment standards and prohibitions outlined in §6.71. In addition, such POTWs shall require any industrial users or indirect dischargers within its jurisdiction to comply with all applicable effluent standards, effluent prohibitions, pretreatment standards and other pretreatment requirements established pursuant to §§307 and 308 of the Act.

6.72.1.1 In the case of industrial users that meet the definition of "significant industrial user" in §2.122 or identified as significant under 40 CFR 403.3(t), the control required herein shall be achieved through permits, individual control mechanisms or equivalent authorizations issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

6.72.1.1.1 Statement of duration (in no case more than five years);

6.72.1.1.2 Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing permit, control mechanism or equivalent authorization to the new owner or operator;

6.72.1.1.3 Effluent limits based on the applicable pretreatment standards;

6.72.1.1.4 Self monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable pretreatment standards; and

6.72.1.1.5 Statement of applicable civil and criminal penalties for violation of any pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond the applicable statutory deadlines.

6.72.2 Any POTW with a total design flow greater than five million gallons per day (5 mgd) and receiving wastes from industrial users or other indirect dischargers that contain pollutants that may pass through or interfere with the operation of the POTW or that are otherwise subject to pretreatment standards, shall develop and administer a pretreatment program to control the introduction of such pollutants or indirect discharges as outlined in these regulations. Such pretreatment program shall meet the criteria set forth in 40 CFR Part 403.8(f) and include any other provisions needed to ensure compliance with any applicable pretreatment standards and requirements.

6.72.3 The Secretary may require that a POTW with a design flow of five million gallons per day (5 mgd) or less develop a pretreatment program if he or she finds that the circumstances warrant such requirement in order to prevent interference with the operation of the POTW or pass through (e.g. the nature or volume of the indirect discharge or combination of indirect discharges is such that it affects or may affect the operation of the POTW; incidents of treatment process upsets; violation(s) of the POTW's effluent limitations; contamination of the POTW's sludge; or violations of surface water quality standards).

6.72.4 Timeframes for Pretreatment Submission and Implementation

6.72.4.1 Any POTW identified as being required to develop a pretreatment program under §6.72.3 shall do so and submit such program to the Secretary as soon as possible, but in no case later than one year after being notified of such identification. The Secretary shall then forward the POTW's submission to the EPA Regional Administrator for approval, with or without comments or a recommendation to approve the proposed program.

6.72.4.2 In the event there is insufficient time for the Secretary to review and forward to the EPA Regional Administrator a POTW's submission in advance of the one year deadline specified in 40 CFR 403.8(b) for submitting a pretreatment program for approval, the POTW shall submit its pretreatment program to both the EPA Regional Administrator and the Secretary.

6.72.4.3 The approved pretreatment program shall be implemented within the timeframe established in the POTW's NPDES permit. A reasonable schedule for implementing any newly-approved pretreatment programs or any substantial changes to established programs shall be provided in the permit, but shall not exceed three years.

6.73 The Department's Role in Implementing Pretreatment Standards and Controlling Discharges to a POTW

6.73.1 In order to meet the objectives in §6.70.3 and to ensure POTW and/or industrial user compliance with any applicable pretreatment requirements, discharge standards or prohibitions, the Secretary may:

6.73.1.1 Incorporate the POTW's approved pretreatment program as an enforceable condition in the POTW's NPDES permit;

6.73.1.2 Include in the POTW's NPDES permit any conditions or requirements necessary to prevent or control the introduction of pollutants into the POTW that will pass through the treatment works, upset treatment processes or otherwise interfere with the effective operation of the POTW, or preclude the beneficial use or disposal of residuals generated at the plant;

6.73.1.3 Require any POTW to develop, submit for approval, administer and enforce a pretreatment program;

6.73.1.4 Require compliance by industrial users with pretreatment standards, discharge limitations or prohibitions;

6.73.1.5 Require any POTW or industrial user to submit reports, monitor activities and maintain records to ensure compliance with pretreatment conditions, standards or requirements;

6.73.1.6 Conduct inspections, surveillance and monitoring activities that will determine, independent of any information supplied by the POTW, whether the POTW is in compliance with any pretreatment conditions incorporated into the POTW's NPDES permit;

6.73.1.7 Conduct inspections, surveillance and monitoring activities that will determine, independent of any information supplied by the industrial user, whether the industrial user is in compliance with pretreatment standards; or

6.73.1.8 Seek penalties and injunctive relief as provided under state law, including 7 **Del. C.** §§6005 and 6013, for noncompliance by the POTW with pretreatment conditions incorporated into the POTW's NPDES permit and for noncompliance with pretreatment standards by industrial users, even if a POTW has acted to seek such relief (e.g. if the POTW has sought a penalty which the Secretary finds to be insufficient).

7.0 Technology-based Requirements

7.1 General. At a minimum, any discharge of liquid waste - sewage, industrial waste or other waste - to State waters shall be subject to effluent limitations, discharge requirements and any alternate effluent control strategy that reflect a practicable level of pollutant removal technology. For the purposes of this section, a practicable level of pollutant removal technology is defined as the application of the "best" treatment technology, control measures and practices, including pollution prevention, available to prevent, manage, reduce or remove pollutants taking into account the cost of applying such technology, control measures, pollution prevention or other practices in relation to the effluent reduction benefits to be achieved, the age of equipment and facilities involved, the process(es) employed, the engineering aspects of applying the various types of controls, process changes, pollution prevention measures, non-water quality impacts (e.g. energy requirements) and other factors deemed appropriate. For the parameters, BOD_5 (5-day biochemical oxygen demand) and suspended solids, the degree of removal reflecting an application of a practicable level of pollutant removal technology shall be at least 85% of the BOD_5 and suspended solids contained in the influent to the treatment works or prior to application of the removal technology, control measures or practices. For discharges of sewage to State waters, a practicable level of pollutant removal technology shall be secondary treatment and disinfection.

7.2 Minimum Requirements for Treatment of Sewage Prior to Discharge to a Surface Water

7.2.1 No person shall cause or permit any discharge of liquid waste to the Delaware River, the Delaware Bay, or Atlantic Ocean except liquid waste which has received at least secondary treatment and disinfection.

7.2.2 No person shall cause or permit discharge of liquid waste to a lake or a pond or any tributary thereof, except liquid waste which has received at least secondary treatment, filtration, nutrient removal and disinfection.

7.2.3 No person shall cause or permit any discharge of liquid waste to the Little Assawoman Bay, Indian River Bay, or to Rehoboth Bay, including any tributaries to those waterbodies, except liquid waste which has received at least secondary treatment, filtration, and disinfection.

7.2.4 No person shall cause or permit any discharge of liquid waste to a stream, tidal or non-tidal, except liquid waste which has received at least secondary treatment, filtration, and disinfection. This subsection shall not govern discharge into the Delaware River, the Delaware Bay or the Atlantic Ocean, which shall be governed by paragraph a herein. For existing facilities, filtration may not be required if the existing facility has demonstrated the ability to continuously meet secondary treatment levels.

7.3 Minimum Requirements for Treatment of Any Liquid Waste Prior to Discharge to a Surface Water

7.3.1 At a minimum, any liquid waste or wastewater that contains pollutants added by the discharger or the discharger's activities, or that contains pollutants introduced into the discharger's treatment works by any indirect discharger shall be treated so as not to exceed the following limitations for the parameters listed:

7.3.1.1 BOD_5 30 mg/L
7.3.1.2 Suspended Solids 30 mg/L
7.3.1.3 Cadmium 0.10 mg/L
7.3.1.4 Chromium (total) 0.150 mg/L
7.3.1.5 Lead 0.150 mg/L
7.3.1.6 Mercury 0.005 mg/L
7.3.1.7 Copper 0.50 mg/L
7.3.1.8 Iron (total) 2.0 mg/L
7.3.1.9 Nickel 1.0 mg/L
7.3.1.10 Selenium 0.020 mg/L
7.3.1.11 Silver 0.10 mg/L
7.3.1.12 Zinc 1.0 mg/L
7.3.1.13 Cyanide 0.050 mg/L
7.3.1.14 Fluoride 3.0 mg/L
7.3.1.15 Oil & Grease 10.0 mg/L
7.3.1.16 Phenolics 1.0 mg/L

The concentration levels imposed shall be utilized to establish average monthly or daily average loading limitations. Measurements to determine compliance with the above requirements shall be taken at a point after treatment as designated by the Department.

7.3.2 Any liquid waste or wastewater subject to the limitations herein shall be segregated from discharges that are not subject to such limitations to the maximum practicable extent. Dilution shall not be used to meet the concentration levels outlined in §7.3.1 nor shall it be used as a substitute for treatment or the application of a practicable level of pollutant removal technology.

7.3.3 In situations where the effluent limitations established pursuant to §7.3.1 cannot be achieved through the application of a practicable level of pollutant removal technology, the Secretary shall establish alternate limitations or discharge requirements that do reflect the application of such treatment technology, control measures or practices.

7.4 Minimum Technology-based Requirements for Discharges of Toxic Pollutants

7.4.1 Any effluent or discharge limitations, prohibitions and standards established for the discharge of any toxic pollutant(s) (toxic pollutants are those listed in table 1 of Committee Print No. 95-30 of the House of Representatives' Committee on Public Works and Transportation, included herein as Appendix A) shall reflect the application of the "best available pollution control technology economically achievable".

7.4.2 For the purposes of this section, the "best available pollution control technology economically achievable" is defined as the "best" or most advanced and reasonably cost-effective treatment technology, control measures and practices, including pollution prevention, available to prevent, manage, reduce or remove pollutants taking the following seven factors into account:

7.4.2.1 The age of equipment and facilities involved;
7.4.2.2 The process or processes employed;
7.4.2.3 The engineering aspects of applying the various technologies, types of controls or practices;

7.4.2.4 Process or production changes;

7.4.2.5 Pollution prevention measures (e.g. raw material substitutions, equipment modification, production scheduling, inventory control, housekeeping measures and in-process recycling that returns wastes directly to production as raw materials);

7.4.2.6 The cost of achieving such pollutant removal(s) or effluent reduction(s); and

7.4.2.7 Non-water quality impacts (e.g. energy requirements).

7.5 Methods of Imposing Technology-based Treatment Requirements in Permits

7.5.1 Technology-based treatment requirements may be imposed in permits issued by the Secretary through one of the following methods:

7.5.1.1 The application of the effluent limitations in §7.3;

7.5.1.2 The application of EPA-promulgated effluent or discharge limitations, prohibitions or standards developed under §304, 306 or 307 of the Act, for the category or subcategory of discharger to which the applicant belongs;

7.5.1.3 On a case-by-case basis to the extent that the limitations in §7.3 or EPA-promulgated effluent limitations are inapplicable. In such cases, the permit writer shall take the factors in §7.1 or §7.4, as appropriate, into account and consider:

7.5.1.3.1 The appropriate technology for the category or class of point sources to which the applicant belongs, based upon all available information; and

7.5.1.3.2 Any unique factors relating to the applicant.

7.5.1.4 For sewage treatment works, effluent or discharge limitations, prohibitions and standards that reflect the level of effluent quality attainable by the technologies specified in §7.2.

7.5.1.5 Through a combination of the methods outlined in this section where appropriate, e.g. where promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the Law and the Act;

7.5.2 Technology-based treatment requirements shall be applied prior to or at the point of discharge.

7.5.3 Technology-based effluent limitations shall be established under this section for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or in the exercise of control measures prescribed by these regulations, in the same manner as for other pollutants.

7.6 For a given pollutant parameter, the level of effluent quality attainable shall be based upon actual performance data which is representative of the proper operation and maintenance of the facilities being permitted. Average monthly or daily average effluent or discharge limitations shall be the 95th percentile value for the average monthly or daily average effluent quality achieved by the treatment facilities in a period of at least 2 years, excluding values attributed to upsets, bypasses, operational errors or other unusual conditions. The maximum daily effluent or discharge limitation shall be either: (1) the 99th percentile value for the daily discharge or effluent quality achieved by the treatment facilities in the same period of at least 2 years, excluding values attributed to upsets, bypasses, operational errors or other unusual conditions, or (2) a value equal to 1.5 times the average monthly or daily average. An alternate multiplier may be used to establish the daily maximum effluent limitation where sufficient data exists to define the correlation between the daily and the average monthly values.

7.7 Any technology-based effluent or discharge limitations established as prescribed herein for the discharge from a sewage treatment works shall be no less stringent than the following:

7.7.1 For facilities employing secondary treatment and disinfection:

The average monthly or daily average effluent or discharge limitations shall be: 30 mg/L BOD_5 (5-day biochemical oxygen demand), 30 mg/L total suspended solids and a geometric mean of 200 colonies per 100 mL fecal coliform;

The daily maximum effluent or discharge limitations shall be: 45 mg/L BOD_5 (5-day biochemical oxygen demand), 45 mg/L total suspended solids and 400 colonies per 100 mL fecal coliform; and

The pH of the effluent or discharge shall be maintained between 6 and 9 standard units unless the facility demonstrates that: 1. Inorganic chemicals are not added to the waste stream as part of the treatment process and 2. Contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

The facilities shall remove a minimum of 85% of the influent BOD_5 and total suspended solids on an average monthly basis.

The parameter carbonaceous 5-day biochemical oxygen demand ($CBOD_5$) may be substituted for BOD_5 as follows: the average monthly or daily average effluent or discharge limitation shall be 25 mg/L; the daily

maximum effluent or discharge limitation shall be 40 mg/L; the monthly average percent removal shall not be less than 85%. Alternate $CBOD_5$ effluent or discharge limitations may be established and substituted for BOD_5 in cases where sufficient parallel effluent data are available to define the relationship between BOD_5 and $CBOD_5$.

7.7.2 For facilities employing secondary treatment, filtration, nutrient removal and disinfection:

The average monthly or daily average effluent or discharge limitations shall be: 15 mg/L BOD_5 (5-day biochemical oxygen demand), 15 mg/L total suspended solids, 0.5 mg/L total phosphorus and a geometric mean of 200 colonies per 100 mL fecal coliform;

The daily maximum effluent or discharge limitations shall be: 23 mg/L BOD_5 (5-day biochemical oxygen demand), 23 mg/L total suspended solids, 1 mg/L total phosphorus and 400 colonies per 100 mL fecal coliform; and

The pH of the effluent or discharge shall be maintained between 6 and 9 standard units unless the facility demonstrates that: 1. Inorganic chemicals are not added to the waste stream as part of the treatment process and 2. Contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

The facilities shall remove a minimum of 92.5% of the influent BOD_5 and total suspended solids on an average monthly basis.

The parameter carbonaceous 5-day biochemical oxygen demand ($CBOD_5$) may be substituted for BOD_5 as follows: the average monthly or daily average effluent or discharge limitation shall be 13 mg/L; the daily maximum effluent or discharge limitation shall be 20 mg/L; the monthly average percent removal shall not be less than 92.5%. Alternate $CBOD_5$ effluent or discharge limitations may be established and substituted for BOD_5 in cases where sufficient parallel effluent data are available to define the relationship between BOD_5 and $CBOD_5$.

7.7.3 For facilities employing secondary treatment, filtration and disinfection:

The average monthly or daily average effluent or discharge limitations shall be: 15 mg/L BOD_5 (5-day biochemical oxygen demand), 15 mg/L total suspended solids and a geometric mean of 200 colonies per 100 mL fecal coliform;

The daily maximum effluent or discharge limitations shall be: 23 mg/L BOD_5 (5-day biochemical oxygen demand), 23 mg/L total suspended solids and 400 colonies per 100 mL fecal coliform; and

The pH of the effluent or discharge shall be maintained between 6 and 9 standard units unless the facility demonstrates that: 1. Inorganic chemicals are not added to the waste stream as part of the treatment process and 2. Contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

The facilities shall remove a minimum of 92.5% of the influent BOD_5 and total suspended solids on an average monthly basis.

The parameter carbonaceous 5-day biochemical oxygen demand ($CBOD_5$) may be substituted for BOD_5 as follows: the average monthly or daily average effluent or discharge limitation shall be 13 mg/L; the daily maximum effluent or discharge limitation shall be 20 mg/L; the monthly average percent removal shall not be less than 92.5%. Alternate $CBOD_5$ effluent or discharge limitations may be established and substituted for BOD_5 in cases where sufficient parallel effluent data are available to define the relationship between BOD_5 and $CBOD_5$.

7.8 Dilution or any other "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators shall not be used to satisfy the technology-based treatment requirements specified herein, nor shall such techniques be used as a substitute for treatment or the application of a practicable level of pollutant removal technology.

7.9 If the Department determines that the application of the treatment requirements, control measures and practices or pollution prevention practices or effluent limitations which are specified in this section or promulgated under §§301, 302, 303, 304, 306, 307, 318 and 405 of the Act, is insufficient to attain or maintain any applicable water quality standards for the receiving waters, including any narrative criteria for water quality, the Department shall establish such additional or more stringent effluent limitations, discharge requirements, control measures and practices that will assure compliance with the applicable water quality standards.

APPENDIX A

The following comprise the list of toxic pollutants designated pursuant to section 307(a)(1) of the Act (listed in table 1 of Committee Print Numbered 95-30 of the House of Representatives' Committee on Public Works and Transportation):

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Aldrin/Dieldrin
5. Antimony and compounds
6. Arsenic and compounds
7. Asbestos
8. Benzene
9. Benzidine
10. Beryllium and compounds
11. Cadmium and compounds
12. Carbon tetrachloride
13. Chlordane (technical mixture and metabolites)
14. Chlorinated benzenes (other than di-chlorobenzenes)
15. Chlorinated ethanes (including 1,2-di-chloroethane, 1,1,1- trichloroethane, and hexachloroethane)
16. Chloroalkyl ethers (chloroethyl and mixed ethers)
17. Chlorinated naphthalene
18. Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
19. Chloroform
20. 2-chlorophenol
21. Chromium and compounds
22. Copper and compounds
23. Cyanides
24. DDT and metabolites \1\
25. Dichlorobenzenes (1,2-, 1,3-, and 1,4-di-chlorobenzenes)
26. Dichlorobenzidine
27. Dichloroethylenes (1,1-, and 1,2-dichloroethylene)
28. 2,4-dichlorophenol
29. Dichloropropane and dichloropropene
30. 2,4-dimethylphenol
31. Dinitrotoluene
32. Diphenylhydrazine
33. Endosulfan and metabolites
34. Endrin and metabolites \1\
35. Ethylbenzene
36. Fluoranthene
37. Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
38. Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane
39. Heptachlor and metabolites
40. Hexachlorobutadiene
41. Hexachlorocyclohexane
42. Hexachlorocyclopentadiene
43 Isophorone
44. Lead and compounds
45. Mercury and compounds

46. Naphthalene
47. Nickel and compounds
48. Nitrobenzene
49. Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
50. Nitrosamines
51. Pentachlorophenol
52. Phenol
53. Phthalate esters
54. Polychlorinated biphenyls (PCBs) \1\
55. Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
56. Selenium and compounds
57. Silver and compounds
58. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
59. Tetrachloroethylene
60. Thallium and compounds
61. Toluene
62. Toxaphene \1\
63. Trichloroethylene
64. Vinyl chloride
65. Zinc and compounds

8.0 Water Quality Based Requirements

8.1 General. In the event that Delaware Surface Water Quality Standards are not achieved through application of the technology based requirements of §7.0, additional effluent limitations and treatment requirements shall be imposed to assure compliance with the Surface Water Quality Standards. Such additional effluent limitations and treatment requirements must control all pollutants or pollutant parameters which the Department determines are or may be discharged at a level which will cause, have the reasonable potential to cause or to contribute to an excursion of any numerical or narrative water quality criterion contained within Delaware's Surface Water Quality Standards. The need for additional effluent limitations and treatment requirements shall be based upon the results of chemical and/or biological tests in conjunction with studies or analyses designed to assess the potential of the discharge to cause or contribute to in-stream excursions of Delaware's Surface Water Quality Standards. §8.2 specifies the information and factors to be considered in determining the need for additional effluent limitations and treatment requirements for situations in which a single discharger, in and of itself, causes or has the reasonable potential to cause an excursion of Delaware's Surface Water Quality Standards. §8.3 specifies the requirements for situations in which one or more point source discharges in combination with nonpoint sources of pollution contribute to the excursion of Delaware Surface Water Quality Standards. §8.4 specifies special conditions and exceptions to effluent limitations and treatment requirements developed under §§8.2 and 8.3.

8.2 Water Quality Based Effluent Limitations for Isolated Discharges Based Upon Surface Water Quality Standards

8.2.1 In certain cases, a single discharge may be sufficiently isolated from other discharges and/or nonpoint sources of pollution such that there is no instream interaction of pollutants released from the single discharge and other point and/or nonpoint sources. In such cases, the Department shall consider the information and factors listed in 1 through 5 below in determining whether the discharge, in and of itself, causes or has the reasonable potential to cause an exceedance of numerical water quality criteria contained within Delaware's Surface Water Quality Standards. Furthermore, the development or modification of effluent limitations and treatment requirements based upon the numerical or narrative water quality criteria contained within Delaware's Surface Water Quality Standards shall appropriately reflect the information and factors listed below.

8.2.1.1 Physical, chemical, or biological data on the discharge and receiving water including, but not limited to, the ambient background concentration of pollutants or pollutant parameters in the receiving water and the documented condition of the natural species community in the receiving water;

8.2.1.2 The sensitivity of the test species to toxicity testing (when evaluating whole effluent toxicity data);

8.2.1.3 Instream dilution and dispersion of the discharged pollutant(s) or pollutant parameter(s) in the receiving water;

8.2.1.4 Variability of the pollutant(s) or pollutant parameter(s) in the discharge; and

8.2.1.5 Fate mechanisms of discharged pollutants or pollutant parameters within the receiving water as well as synergistic or antagonistic interactions and any additive impacts.

8.2.2 When it is determined, using the information and factors presented in §§8.2.1.1 through 8.2.1.5 that a single discharge causes or has the reasonable potential to cause an excursion of either a narrative or a numerical water quality criterion contained within Delaware's Surface Water Quality Standards, then the permit must contain effluent limitations and treatment requirements to control the pollutant or pollutant parameter. This includes effluent limitations on whole effluent toxicity where deemed appropriate.

8.2.3 Where the Department has not established a numerical water quality criterion within the State of Delaware Surface Water Quality Standards for a specific pollutant or pollutant parameter that is present in an effluent at levels which cause or have the reasonable potential to cause an excursion of a narrative water quality criterion within Delaware's Surface Water Quality Standards, the Department shall establish effluent limitations and treatment requirements on a case-by-case basis considering relevant ecological, human health effects and other pertinent data for the specific pollutant or pollutant parameter along with the information and factors listed in §§8.2.1.1. through 8.2.1.5.

8.2.4 When establishing any effluent limitations and treatment requirements under §§8.2.2 or 8.2.3, the Department shall demonstrate that such effluent limitations and treatment requirements will attain and maintain all applicable narrative and numerical water quality criteria and will fully protect the receiving waters' designated uses.

8.2.5 Any effluent limitations established by the Department under §8.2.2 or §8.2.3 shall be subject to the public notice and public hearing requirements of §6.0, Part III, of these regulations and 7 **Del.C.** Ch. 60.

8.3 Water Quality Based Effluent Limitations for One or More Discharges in Combination with Nonpoint Source Pollution

8.3.1 In areas where the State of Delaware Surface Water Quality Standards are not achieved as the result of one or more point source discharges in combination with nonpoint sources of pollution, the Department will determine the Total Maximum Daily Load (TMDL) of the pollutant or pollutant parameter which the receiving water can be expected to assimilate without violating the State of Delaware Surface Water Quality Standards. In determining the TMDL, the Department shall:

8.3.1.1 Specify the reach or zone of the waterbody and the pollutant(s) or pollutant parameter(s) for which the TMDL is being developed;

8.3.1.2 Specify the conditions under which the TMDL is being developed;

8.3.1.3 Consider the factors and information listed in §§8.2.1.1. through 8.2.1.5. for the individual point source(s) which discharge to the reach of interest;

8.3.1.4 Consider existing controls on the point and nonpoint sources that discharge to the reach of interest;

8.3.1.5 Specify what portion of the TMDL will be allocated to the point source discharge(s) and what portion of the TMDL will be allocated to nonpoint sources and natural background sources. The portion of the TMDL allocated to the point source discharge(s) shall be known as the Wasteload Allocation (WLA). The portion of the TMDL allocated to the nonpoint source(s) and natural background sources shall be known as the Load Allocation (LA). Wherever possible, a distinction will be made between natural and nonpoint source loads;

8.3.1.6 Consider the influence, if any, of seasonal variation on the relationship between effluent limitations and water quality; and

8.3.1.7 Provide a margin of safety for any lack of knowledge concerning the relationship between effluent limitations and water quality, including any uncertainty in mathematical models utilized to determine this relationship. In the absence of definitive information to the contrary, up to ten percent (10%) of the TMDL shall be reserved as a margin of safety.

8.3.2 When developing effluent limitations and treatment requirements for a discharge to a reach for which a TMDL has been established and approved by the EPA Regional Administrator in accordance with 40 CFR 130.7(d), the Department shall ensure that such limits or requirements are consistent with the TMDL and that portion of the Wasteload Allocation (WLA) assigned to the discharger.

8.3.3 In the case of multiple point source discharges, the wasteload allocation (i.e. that portion of the receiving water's loading capacity which is assigned to the point sources) shall be apportioned equitably among those point source discharges unless the Secretary determines that an alternative allocation scheme is a

more efficient and effective means of achieving water quality objectives for the reach of interest. Alternative allocation schemes may include, but are not limited to, pollution trading agreements between one or more cooperating point source(s) and, if applicable, one or more nonpoint source(s). For such alternative allocation schemes to be considered by the Secretary, a petition and supporting documentation should be submitted to the Department which describes, at a minimum, the following items:

8.3.3.1 The identities of the point source(s) and, if applicable, nonpoint source(s) proposing to cooperate in the alternative allocation scheme;

8.3.3.2 The reach of interest over which the alternative allocation scheme is proposed;

8.3.3.3 The pollutant(s) or pollutant parameter(s) for which the alternative allocation scheme is sought;

8.3.3.4 The point(s) of discharge from the sources identified in §8.3.2.1. to the reach of interest;

8.3.3.5 A complete description of the alternative allocation scheme between the sources identified in §8.3.2.1, including an accounting of current and proposed pollutant loading from all cooperating sources;

8.3.3.6 An assessment of potential water quality impacts and benefits associated with the alternative allocation scheme described in §8.3.2.5, including a comparison of projected water quality conditions to applicable water quality standards;

8.3.3.7 A description of the discharge monitoring and reporting, or other mechanism proposed to assess the success of the alternative allocation scheme;

8.3.3.8 A description of the agreement that will be used between the cooperating point source(s) and, if applicable, nonpoint source(s) in implementing the proposed alternative allocation scheme. The description should include a discussion of the financial and institutional measures that the cooperating entities propose; and

8.3.3.9 A description of corrective actions that will be taken by the cooperating point source(s) and, if applicable, nonpoint source(s) in the event that the alternative allocation scheme fails to achieve the intended water quality objectives for the reach of interest.

8.3.4 The Secretary may request any present or potential discharger(s) of any pollutant for which a TMDL is being determined under this section to supply information concerning the factors specified in this section.

8.3.5 Any TMDL established by the Department under §8.3.1 shall be subject to the public notice and public hearing requirements of 7 **Del.C.** Ch. 60. If the Department determines that the TMDL established under §8.3.1 could result in a change in effluent limitations, then the public hearing(s) for the modified effluent limitations and the TMDL may be held concurrently. In such cases, the Department shall provide separate public notices for the effluent limitation change and the TMDL.

8.4 Conditions Applicable in Specified Cases

8.4.1 Requests for Increased Discharge or Change In Discharge Location

8.4.1.1 Any person who shall apply for a permit to discharge to the waters of the State, and who seeks to either (i) increase the concentration and/or mass loading of pollutants discharged, or (ii) change the discharge location to another waterbody or to an area of less favorable mixing characteristics, must demonstrate that the discharge will not result in violation of Delaware's Surface Water Quality Standards. Such demonstration shall normally take the form of appropriate monitoring, field investigation, and mathematical modeling. A public hearing, pursuant to 7 **Del.C.** Ch. 60 may be held to gather public comment on any such application.

8.4.2 Effluent Limitations Below Quantifiable Levels

8.4.2.1 Where information is available which shows that reliable quantification at concentrations less than any effluent limitation developed in connection with §§8.2 and 8.3 is not feasible using analytical methods required by permit, regulation, or otherwise approved by the Department, then Minimum Analytical Levels (MAL), as defined in §2.0, will be used as a temporary measure by the Department to determine compliance with effluent limitations.

8.4.3 Consideration for Pollutants Corroded and Eroded from Water Distribution Piping and Appurtenances or Noncontact Cooling Water Condenser Tubes

8.4.3.1 For purposes of this section, normal corrosion and erosion shall be determined through site-specific calculations that are performed in accordance with a scientifically defensible methodology, approved by the Department, and that are based on annual average intake concentrations.

8.4.3.2 Variances from Water Quality Criteria

For the purpose of establishing effluent or discharge limitations, a facility may be granted a variance from water quality criteria for pollutants contributed by normal corrosion and erosion associated with the facility's piping and appurtenances or noncontact cooling water condenser tubes where this corrosion and erosion causes or would reasonably be expected to cause

exceedances in the receiving water, as outlined in §5.4 of the State of Delaware Surface Water Quality Standards, as amended, August 11, 1999.

The variance granted in such cases applies only to the discharger requesting the variance and only to the pollutant or pollutants specified in the variance. The discharger will be required to meet the applicable criteria for all other constituents.

8.4.3.2.1 Conditions for Granting a Variance. A variance may be granted if the discharger demonstrates, based upon sound rationale and supported by substantial scientific and technical evidence and analysis, all of the following:

8.4.3.2.1.1 In the absence of pollutants corroded and eroded from the facility's water distribution piping and appurtenances, there would be no violation of the surface water quality criteria in the receiving water; and

8.4.3.2.1.2 The normal corrosion and erosion associated with the intake water used by the facility is sufficient to cause the violation. For purposes of this determination, annual average intake water characteristics shall be used in assessing normal corrosion and erosion; and

8.4.3.2.1.3 No other activity, condition or method of operation, or materials used or produced at the facility, which results in the addition of erosion and corrosion based pollutants into the facility's discharge, significantly contributes to the violations of surface water quality criteria in the receiving waters. Such activities, conditions or methods of operation, or materials used or produced at the facility include entrainment of erosion and corrosion based pollutants previously discharged or disposed by the facility; and

8.4.3.2.1.4 No practicable alternative water supply or treatment methodology or system which would yield statistically significant lower corrosivity or erosiveness is available to the facility; and

8.4.3.2.1.5 No practicable alternative piping or appurtenances are available to the facility; i.e., implementation of the controls needed to assure compliance with the applicable water quality criteria would result in substantial and widespread economic and social impact. The analysis of economic impacts must demonstrate that:

8.4.3.2.1.5.1 The discharge would face substantial financial impacts due to the costs of the necessary pollution controls or water treatment (substantial impacts of which would interfere with development), and

8.4.3.2.1.5.2 The affected community will bear significant adverse impacts if the entity is required to meet existing or proposed water quality standards (widespread impacts of important development).

8.4.3.2.2 Duration of Variance. A variance granted under this Section shall be effective for three years or the life of the NPDES permit, and at the expiration of either time period, the discharger must meet the criteria or make a new demonstration of unattainability and financial impact. Variances considered under this section shall be subject to all applicable public participation requirements and shall be subject to review and approval by the U.S. Environmental Protection Agency.

8.4.3.3 Compliance Schedules to Meet More Restrictive Water Quality-based Effluent or Discharge Limitations for Pollutants Corroded and Eroded from the Facility’s Piping and Appurtenances

Any existing permit that is reissued or modified to include new or more restrictive water quality-based effluent or discharge limitations for pollutants corroded and eroded from the facility's piping and appurtenances or noncontact cooling water condenser tubes, may allow a reasonable period of time for the permittee to comply with that limit. In such cases, the Department shall establish a schedule in the permit for implementing the controls, measures or practices needed to assure compliance with such new or more restrictive limits, in accordance with Section 6.17. For example, the permit may outline a schedule for modifying, replacing or repairing sufficient noncontact cooling water condenser tubes or other piping and appurtenances, a schedule for locating or developing and tapping into an alternative water supply or a schedule for installing a treatment system or methodology that would yield a statistically significant lower corrosivity or erosiveness.

8.4.3.3.1 Conditions. The Department may establish a compliance schedule if the discharger demonstrates, based upon sound rationale and supported by substantial scientific and technical evidence and analysis, all of the following:

8.4.3.3.1.1 In the absence of pollutants corroded and eroded from the facility's water distribution piping and appurtenances, there would be no violation of the surface water quality criteria in the receiving water; and

8.4.3.3.1.2 The normal corrosion and erosion (as defined herein and after corrosion/erosion control has been employed) associated with the intake water used by the facility for noncontact cooling is sufficient to cause the violation; and

8.4.3.3.1.3 No other activity, condition or method of operation, or materials used or produced at the facility, which results in the addition of erosion and corrosion based pollutants into the facility's discharge, significantly contributes to the violations of surface water quality criteria in the receiving waters. Such activities, conditions or methods of operation, or materials used or produced at the facility include entrainment of erosion and corrosion based pollutants previously discharged or disposed by the facility.

8.4.4 Consideration for Pollutants in Intake Waters When Assessing Reasonable Potential

8.4.4.1 When evaluating whether a discharge causes or has the reasonable potential to cause or to contribute to an exceedance of either a narrative or numeric water quality criterion, within an applicable surface water quality standard, the Department may determine there is no reasonable potential for the discharge to cause or contribute to the exceedance of a criterion where the quality of a facility's intake water causes or would reasonably be expected to cause such exceedance in the receiving waters, provided the discharger demonstrates, based upon sound rationale and supported by substantial scientific and technical evidence and analysis, that the following §8.4.4.1.1 through 8.4.4.1.5, and 8.4.4.1.6 if applicable exists:

8.4.4.1.1 In the absence of pollutants in the facility's intake water, there would be no violation of the surface water quality criteria in the receiving waters; and

8.4.4.1.2 No other activity, condition or method of operation, or material used or produced at the facility contributes to the discharge of intake pollutants; or

8.4.4.1.3 No other activity, condition or method of operation, or material used or produced at the facility introduces intake pollutants into the discharge in amounts that, by themselves, would reasonably be expected to cause or contribute to the violation of surface water quality criteria; and

8.4.4.1.4 Upon statistically rigorous analysis of intake water and outfall data representative of various operating conditions and influences over time, there is no discernible difference between the quality of the intake water and the quality of the discharge; and

8.4.4.1.5 Intake pollutants merely pass through the facility; intake pollutants are not altered chemically or physically as they travel through the facility or as intake water is employed for cooling or process-related purposes; and

8.4.4.1.6 No practicable alternative intake water of sufficient quality and quantity is available to the facility; and, if applicable,

8.4.4.1.7 Where a significant percentage of the discharged water is comprised of water purchased from a water utility, water pumped from wells, or water pumped from a stream basin different from that receiving the discharge, the facility must demonstrate that no adverse impact on designated uses may reasonably be expected to occur as a result of the discharge.

In doing so, the facility must demonstrate that existing criteria are more stringent than necessary and that alternative, less-stringent criteria will adequately protect the receiving waters' designated uses. The Department shall in turn, modify the otherwise applicable water quality criterion and adopt a site-specific criterion as outlined in §5.2 of the State of Delaware Surface Water Quality Standards, as amended, August 11, 1999.

As an alternative, the discharger may seek, and be granted, a variance from the otherwise applicable surface water quality criterion, similar to that provided for pollutants corroded and eroded from water distribution piping and appurtenances, as outlined in §8.4.3.2 herein and §5.4 of the State of Delaware Surface Water Quality Standards, as amended, August 11, 1999. In such cases the discharger shall demonstrate that implementation of the controls needed to assure compliance with the applicable water quality criteria would result in substantial and widespread economic and social impact. The analysis of economic impacts must demonstrate that:

8.4.4.1.7.1 The discharger would face substantial financial impacts due to the costs of the necessary pollution controls or water treatment (substantial impacts of which would interfere with development), and

8.4.4.1.7.2 The affected community will bear significant adverse impacts if the entity is required to meet existing or proposed water quality standards (widespread impacts of important development).

A variance granted under this Subsection shall be effective for three years or the life of the NPDES permit, and at the expiration of either time period, the discharger must meet the criteria or make a new demonstration of unattainability and financial impact. Variances considered under this section shall be subject to all applicable public participation requirements and shall be subject to review and approval by the U.S. Environmental Protection Agency.

8.4.4.2 The determinations under §8.4.4.1. shall be made on a pollutant-by-pollutant, outfall-by-outfall basis.

8.4.4.3 The Department shall not be obligated to establish water quality-based effluent limitations in cases where a determination is made under §8.4.4.1. that a pollutant in the discharge does not cause, have the reasonable potential to cause, or contribute to an exceedance of an applicable water quality standard. However, the permit may include appropriate provisions for either or both the intake and discharge to ensure continued compliance with the conditions (ii), (iii) and (iv) in §8.4.4.1. In addition, the permit shall contain a reopener clause that authorizes the modification or revocation and reissuance of the permit if the Department establishes a TMDL or if new information indicates changes in the conditions upon which the determination under Section 8.4.4.1 is made.

8.4.4.4 In cases where a facility meets the conditions in §§8.4.4.1.2, 8.4.4.1.3 and 8.4.4.1.4, the Department may opt to include "no net addition limitations", allowing the facility to discharge a mass and concentration of a pollutant identified in the facility's intake water. The permit shall specify how compliance with mass and concentration limitations shall be assessed.

9.0 The General Permit Program

Introduction. This section of the regulations, the General Permit Program, is designed to provide NPDES permit coverage to a specified group, category or class of discharges that are substantially similar in nature or type of pollutants discharged. These regulations outline the general provisions or requirements that apply to all discharges within the specified category. This approach eases the administrative burden of developing and issuing a large number of individual NPDES permits for essentially the same type of discharge. By issuing general permits, the Department can provide a quicker and less expensive mechanism for the regulated community to obtain permit coverage. It also allows staff resources to concentrate on discharges that may have more significant potential for impacting the quality of Delaware's surface waters.

General NPDES Permits as defined by federal regulations in 40 C.F.R. §122.28, authorize a category of discharges from sources within a defined area that share certain similarities. General NPDES Permits are self-implementing standards applicable to multiple dischargers that the DNREC has determined can best be regulated as a class. Conversely, individual NPDES permits are issued to a potential discharger who applies for a permit with special conditions specifically tailored to the discharger. Thus, a General NPDES Permit is an agency statement of general applicability and future effect that implements and prescribes law and as such is a regulation.

Although no individual permits will be issued to the categories of dischargers covered by this section of the regulations, the subsections dealing with each category may be referred to as "General NPDES Permits" and the entire Section of these regulations may be referred to as the "General NPDES Permit Program."

In order to obtain coverage under this section of these regulations (the General NPDES Permit Program), most persons will be required to file with the Department a Notice of Intent to be covered in accordance with 40 C.F.R. §122.28(b)(2). The Department will consider this the equivalent of an NPDES Permit application for a General NPDES Permit.

§9.1 provides NPDES permit coverage for storm water discharges associated with industrial activity. Industrial activity is that which is directly related to manufacturing, processing, raw material handling or waste handling. The regulations in §1 seek to define a program for controlling material handling and other industrial activities such that the potential for exposing significant materials to precipitation and the subsequent transport of such materials via storm water runoff or infiltration is eliminated or minimized to the maximum extent practicable. Significant materials are those substances, products or wastes that become exposed to precipitation as a result of the industrial activity and potentially contribute pollutants to storm water runoff or storm water infiltration. The types of activities or categories of industries covered under this subsection are listed in §9.1.1.1, as well as in the federal regulations, 40 CFR Part 122.26(b)(14).

§9.1 consists of general provisions that apply to each category of industrial activity specified in §9.1.1.1. Part 2 outlines specific provisions applicable to storm water discharges associated with land disturbing activities (i.e. construction activities). The regulations in Part 2 are designed to mesh NPDES permit program requirements

with existing provisions for sediment and erosion control under 7 **Del.C.** Ch. 40 and the Delaware Sediment and Stormwater Regulations. The remaining Parts under Subsection 1 outline category-specific storm water requirements that are tailored to the activity conducted.

§§9.2 through 9.6 provide NPDES permit coverage for the following categories of discharges: discharges from aquaculture or aquatic animal production facilities; discharges from the clean up of gasoline and fuel oil released from underground storage tanks; discharges from feedlot or concentrated animal feeding operations; discharges associated with car washes and other motor vehicle washing operations; and discharges associated with the operation of swimming pools and spas.

9.1 Definitions

As used in this Subsection, the following terms shall be defined as outlined herein:

Appropriate Plan Approval Agency means the Department, Conservation District, county, municipality, or State agency that is responsible in a jurisdiction for review of a Sediment and Stormwater Management Plan.

Best Available Control Technology (BACT) means the latest stage of development (state of the art) of processes, facilities, measures of operation, indicating the practical suitability of such processes, facilities, and measures and methods for preventing or reducing the discharge of pollutants. In determining the BACT, special consideration is given to comparable measures, technological advances, changes in scientific understanding, economic feasibility, time limitations and harmful effects that are likely as a result of the discharge of pollutants.

Background Concentration means the concentration of a substance that is consistently present and naturally occurring, or that is the result of human activities unrelated to a discharge or release from the facility. Background concentrations can be divided into two (2) classes: naturally occurring background concentrations and anthropogenic background concentrations.

Naturally Occurring Background Concentration means the concentration of a substance present in the environment, which has not been influenced by humans and which existed before any industrial activities occurred at a facility. Because most organic compounds are not naturally occurring, the term background concentration refers to inorganic metals that are commonly found in soil. However, some organic compounds associated with petroleum hydrocarbons may be present at naturally occurring concentrations because of natural events such as decaying organic matter.

Anthropogenic Background Concentration means the concentration of substances present in the environment, which are caused by humans and which originate from off-site sources such as industry, automobiles and agriculture. Anthropogenic concentrations generally result from indirect human activities that are unrelated to waste management and industrial activities at a facility. Common examples of these indirect activities are deposition of hazardous substances from automobile and industrial emissions, and widespread use or application of hazardous substances such as pesticides. The key aspects of anthropogenic concentrations are that they are not specifically related to facility activities and that they occur at uniformly low concentrations across a wide region.

Both classes of background concentrations have equal applicability. At any given site, naturally occurring and anthropogenic concentrations may be present.

Benchmark Concentration: means a pollutant concentration used by Part 1 of this Subsection as a threshold, below which a pollutant is considered unlikely to cause a water quality violation and above which it may. Benchmark concentrations are not water quality criteria and site-specific conditions must still be considered to determine if an actual water quality violation exists.

Best Management Practices (BMP's) means schedules of activities, prohibition of practices, maintenance procedures, and other management practices or measures to prevent or reduce the discharge of pollutants. BMPs include the following, among other practices and measures: structural and non-structural controls; treatment requirements; and operating procedures and practices to control plant site runoff, or sludge disposal, or waste disposal, or spillage, or leaks, or drainage from raw materials storage.

Certified Construction Reviewer (CCR) means those individuals, having passed a Department-sponsored or approved training course, who provide on-site inspection for sediment control and storm water management in accordance with the *"Delaware Sediment and Stormwater Regulations.*"

CFR means the Code of Federal Regulations.

Clean Water Act means 33 U.S.C. 1251 et seq. (formerly known as the Federal Water Pollution Control Act Amendment of 1972).

Clean Water Act, Section 303(d) LIST: means a list of all surface waters in the State for which beneficial uses of the water - such as for drinking, recreation, aquatic habitat, and industrial use – are impaired by pollutants. These are water quality limited estuaries, lakes and streams that fall short of the State's Surface Water Quality Standards (SWQS). Waters placed on the 303(d) list require the preparation of Total Maximum Daily Loads (TMDLs).

Co-Located Industrial Activities means a facility where multiple categories of industrial activities are conducted on-site. An activity at a facility is not considered co-located if the activity, when considered separately, does not meet the description of a category of industrial activities identified in §9.1.01.1. A.

CoPermittee means a discharger of storm water associated with construction activity who is jointly and individually responsible for compliance with all conditions of this Subsection and applicable laws with another entity.

Comparable Level means an estimated level of environmental benefit, related to the quality of the storm water discharges, equivalent to what would be achieved by implementing the requirements described under "Storm Water Plan" (§9.1.5)

Construction Activity means clearing, grading and excavating activities that result in a land disturbance equal to or greater than one (1) acre, including the disturbance of less than one acre of land that is part of a larger common plan of development or sale that will ultimately disturb more than one acre.

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

Discharge of Storm Water Associated with Industrial Activities means storm water runoff that exits any system that is used for collecting and conveying storm water that originates from manufacturing, processing, or raw materials storage areas at an industrial facility. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122. For the categories of industrial activities identified in §9.1.1.1, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. The definition is restricted, for the purposes of this Subsection, to those storm water discharges that qualify for authorization under the provisions of this Subsection (on an outfall by outfall consideration).

Effective Date means the date when these regulations have formally passed through a public comment period, a public hearing and have been formally adopted by the Department and start being operative.

Emergency means a situation in which human safety is at risk and/or significant destruction of property is a possibility.

Enclosed Area means an area which consists of an impervious surface, such as a floor, that is shielded from precipitation and storm water run-on.

Equivalent Best Management Practices (BMP's) means operational, source control, treatment, or innovative BMPs which result in equal or better quality of storm water discharge to surface water or to ground water than BMPs selected from section 9.1.9.

Facility means any building; any structure; any complex of buildings or structures; or any process, production, equipment or machinery which makes it possible for an industrial activity to be conducted.

General Permit means a permit which covers multiple discharges of a point source category within a designated geographical areas, in lieu of individual permits being issued to each discharge.

GRAB Sample means an individual sample collected in less than 15 minutes.

Good Housekeeping Practices means the maintenance of an orderly work environment in order to minimize material losses and prevent unnecessary waste generation through routine procedures. Good housekeeping practices must include measures to eliminate or reduce the exposure of garbage and refuse materials to precipitation or runoff prior to their disposal. Typical good housekeeping practices include activities that are performed on a daily basis by employees during the course of normal work activities. Good housekeeping practices not only contribute to the prevention of accidents, but also support employee health and safety programs, eliminate wastes and generally prevent the deterioration of facility property and equipment.

Inactive Industrial Facility means a facility that is no longer actively engaging in industrial activity (i.e., no longer engaging in business, production, the provision of services or any auxiliary operation) but either still has industrial materials stored on-site or that may resume industrial activity at any time.

Impervious Surface means a hard surface area which either prevents or retards the entry of water into the soil mantle at a rate lower than that present under natural conditions prior to development; and/or a hard surface area which causes water to runoff the surface in greater quantities and at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots, storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, or other surfaces which similarly impeded the natural infiltration of surface and storm water runoff.

Individual Permit means a permit which is written for one specific facility or site.

Industrial Activity refers to the eleven (11) categories of industrial activities included in the definition of "storm water discharges associated with industrial activities", 40 CFR 122.26(b)(14). These activities are indicated in §9.1.1.1. of this Subsection.

Industrial Materials means substances, products, or wastes that are exposed to precipitation and that can potentially contribute pollutants to storm water runoff or storm water infiltration (Materials which cannot contribute pollutants to storm water runoff are not considered Industrial Materials. Industrial materials or activities include, but are not limited to: material handling equipment or activities; industrial machinery; raw materials; intermediate products; by-products; final products; or waste products, however packaged.

Maintenance means the work required to keep vehicles, equipment and/or machinery in proper condition (e.g. painting, paint removal, sanding, grinding, washing, fueling, cleaning, repair, lubrication, replacement of parts or structures, draining or replacing fluids).

Material Handling Activites means the storage, loading, unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on facility lands separate from the facility's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the previous described areas.

Municipal Separate Storm Sewer System means a conveyance system which is not intended to convey anything but storm water and is owned by a municipal or public entity.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of any pollutant or combination of pollutants and imposing and enforcing pretreatment and sludge requirements pursuant to Sections 307, 402, 318, and 405 of the Clean Water Act.

NPDES Permit means any permit authorizing the potential or actual point source discharge of pollutants to State waters, under prescribed conditions, pursuant to Section 6 of the State of Delaware *"Regulations Governing the Control of Water Pollutio*n."

"No Exposure" means a condition where all industrial materials and activities are protected by storm resistant shelters, or equivalent measures, so that they are not exposed to rain, snow, snowmelt, or runoff.

"No Exposure" Certification Form serves as facility affirmation that a condition of "no exposure" exists. By receiving Department approval of the submitted "No Exposure" Certification Form, the facility is covered under this Subsection; however excluded from having to comply with requirements of §9.1.4. (Monitoring) and §9.1.5. (Storm Water Plan) of this Subsection.

Non-Contact Cooling Water means that which is contained within a leak-free system, i.e., has no contact with any gas, liquid or solid other than the container used for transport.

Non-Structural Controls means practices that are specifically intended to reduce the amount of pollution getting into surface waters. Non-structural controls are generally implemented to address the problem at the source. They do not require any structural changes to the facility. Examples of non-structural control practices include good housekeeping practices and preventative maintenance programs.

Notice of Intent Form serves as an application for NPDES permit coverage under this Subsection.

Operator means the owner or person that is responsible for the management of an industrial facility subject to the provisions of this Subsection.

Operational Control means the responsibility for managing a construction activity subject to the provisions of this Subsection.

PART means a component of Subsection 1.

Permit Coverage means an authorization granted to a category of storm water discharges pursuant to this Subsection.

Permittee means any person to whom coverage under this Subsection has been granted.

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

Pervious Surface means a surface area that allows the entry of water into the soil mantle at a rate present under natural conditions.

Qualified Facility Personnel means personnel that are trained and responsible for performing tasks which are related to Significant Material management.

Residual means a solid waste that consists of the accumulated solids and associated liquids which are by-products of a physical, chemical, biological, or mechanical process.

Secretary means the Secretary of the State of Delaware Department of Natural Resources and Environmental Control or his duly authorized designee.

Sediment and Stormwater Plan means an engineered plan developed in accordance with the requirements of the Delaware Sediment and Stormwater Law and *Regulations.*

Significant Quantities means the volume, concentrations, or mass of a pollutant that can cause or threaten to cause pollution, contamination, or nuisance; adversely impact human health or the environment; and/or cause or contribute to a violation of any applicable water quality standard for the receiving water.

Significant Spills means including, but not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act or Section 102 of CERCLA.

Storm-Resistant Shelters means the mechanism(s) by which facilities limit the exposure of industrial materials to precipitation and runoff. Storm resistant shelters include completely roofed and walled buildings or structures, as well as structures with only a top cover but no side coverings, provided material under the structure is not otherwise subject to any run-on and subsequent runoff of storm water.

Storm Water means run-on or runoff of water from the surface of the land resulting from precipitation or snow or ice melt.

Storm Water Associate with Industrial Activities refers to storm water, that if allowed to discharge, would constitute a storm water discharge associated with industrial activities as defined in 40 CFR 122.26(b)(14).

Structural Controls means curbs, dikes, berms, walls, sheds, impervious pads, ditches, diversions or other structures which limit the contribution of Industrial Materials to storm water discharges from a facility.

These Regulations means the State of Delaware *Regulations Governing Storm Water Discharges Associated with Industrial Activity (*Subsection 1*).*

*"***Total Maximum Daily Load"or "TMDL"** means the amount of a given pollutant that may be discharged to a waterbody from point, nonpoint and natural background sources and still allow attainment or maintenance of the applicable narrative and numerical water quality standards. A "TMDL" is the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources of pollution and natural background. A "TMDL" may include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a "TMDL" attempts to match the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact.

Transferee means the person who accepts permit responsibility from the original permittee.

Tranfer of Authorization means to transfer control of permitted activities on a construction site to either a duly authorized person who will control the permitted activities, or a new owner/operator for the site which the permit has been issued.

Transferor means the original permittee who transfers permit responsibility to another entity.

Water Priority Chemicals means the list of chemicals presented in Appendix A of these Regulations. Appendix A is a list of chemicals or chemical categories which:

- are listed at 40 CFR 372.65 pursuant to Section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986; also titled the Emergency Planning and Community Right-to-Know Act of 1986;
- are present at or above threshold levels at a facility subject to SARA Title III, Section 313 reporting requirements; and that meet at least one of the following criteria:
  - are listed in Appendix D of 40 CFR 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances);
  - are listed as hazardous substances pursuant to Section 311(b)(2)(A) of the Clean Water Act at 40 CFR 116.4; or
  - are pollutants for which EPA has published acute or chronic water quality criteria.

Waters of the State 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:

- Waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and
- the Atlantic Ocean;
- All interstate waters, including interstate wetlands;
- 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;
- All impoundments of waters otherwise defined as waters of the State under this definition; and
- Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a) through (d).
- Waste and storm water treatment systems including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds which otherwise meet the requirements of subparagraphs (1) through (5) of this definition) are not "waters of the State."

9.1.1 Permit Coverage

9.1.1.1 Coverage Under This Subsection

Storm water discharges from facilities engaging in industrial activities are point source discharges of pollutants and are subject to the National Pollutant Discharge Elimination System (NPDES) Permit Program requirements of Section 6 of the State of Delaware "*Regulations Governing the Control of Water Pollution*." Section 6 requires storm water discharges associated with industrial activities to comply with the requirements set forth within this Subsection. This Subsection does not include discharges from facilities or activities excluded from the NPDES Program, as identified by Section 6.

9.1.1.1.1 Permit Coverage

Coverage under this Subsection authorizes discharges of storm water associated with industrial activities from regulated facilities to waters of the State or to municipal separate storm sewer systems (MS4s). Private entities, State and local government facilities are required to obtain coverage under this Subsection for both new and existing facilities. Storm water discharges that must be covered under this Subsection include, but are not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling activities; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR §401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and Industrial Materials remain.

This Subsection contains effluent limitations and requirements applicable to industrial activities that are eligible for coverage.

9.1.1.1.2 Permit Applicability

Owners or operators of facilities identified in subparagraphs 9.1.1.1.2.1 and 9.1.1.1.2.2 below must obtain authorization to discharge storm water under this Subsection (The General Permit Program). Unless otherwise precluded, such facilities are eligible for coverage under this Subsection. Commercial facilities that do not perform any of the activities identified in subparagraphs 9.1.1.1.2.1 and 9.1.1.1.2.2 are not required to obtain coverage unless specifically designated in writing by the Director as a Sector "AD" facility.

9.1.1.1.2.1 ConstructionActivities Construction activities including clearing, grading, and excavation activities;

9.1.1.1.2.2 Industrial Activities: Coverage under this Subsection may be obtained to authorize discharges of storm water associated with industrial activities, and certain other non-storm water discharges (see §9.1.7), from the following sectors. Industrial activities are grouped into thirty sectors of similar activities based on either Standard Industrial Classification (SIC) codes or Industrial Activity Codes. References to "sectors" in this Subsection refer to these sectors.

SIC Code or Activity Code	ACTIVITY REPRESENTED
Sector A: Timber Products	
2421	General Sawmills and Planning Mills
2491	Wood Preserving
2411	Log Storage and Handling
2426	Hardwood Dimension and Flooring Mills
2429	Special Product Sawmills, Not Elsewhere Classified
2431-2439 (except 2434)	Millwork, Veneer, Plywood and Structural Wood
2448, 2449	Wood Containers
2451, 2452	Wood Buildings and Mobile Homes
2493	Reconstituted Wood Products
2499	Wood Products, Not Elsewhere Classified
Sector B: Paper and Allied Products	
2611	Pulp Mills
2621	Paper Mills
2631	Paperboard Mills
2652-2657	Paperboard Containers and Boxes
2671-2679	Converted Paper and Paperboard Products, Except Containers and Boxes
Sector C: Chemical and Allied Products	
2812-2819	Industrial Inorganic Chemicals
2821-2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers Except Glass
2833-2836	Medicinal Chemicals and Botanical Products, Pharmaceutical Preparations, Invitro and Invivo Diagnostic Substances and Biological Products Except Diagnostic Substances
2841-2844	Soaps, Detergents and Cleaning Preparations, Perfumes, Cosmetics and Other Toilet Preparations
2851	Paints, Varnishes, Lacquers, Enamels and Allied Products
2861-2869	Industrial Organic Chemicals
2873-2879	Agricultural Chemicals (including facilities that make fertilizer solely from leather scraps and leather dust)
2891-2899	Miscellaneous Chemical Products
3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors
Sector D: Asphalt Paving and Roofing Materials and Lubricants	
2951, 2952	Asphalt Paving and Roofing Materials
2992, 2999	Miscellaneous Products of Petroleum and Coal
Sector E: Glass Clay, Cement, Concrete and Gypsum Products	
3211	Flat Glass
3221, 3229	Glass and Glassware, Pressed or Blown
3231	Glass Products Made of Purchased Glass
3281	Cut Stone and Stone Products
3291-3292	Abrasive and Asbestos Products
3296	Mineral Wool

3299	Nonmetallic Mineral Products, Not Elsewhere Classified
3241	Hydraulic Cement
3251-3259	Structural Clay Products
3261-3269	Pottery and Related Products
3297	Non-Clay Refractories
3271-3275	Concrete, Gypsum and Plaster Products
3295	Minerals and Earth's, Ground or Otherwise Treated
Sector F: Primary Metals	
3312-3317	Steel Works, Blast Furnaces and Rolling and Finishing Mills
3321-3325	Iron and Steel Foundries
3331-3339	Primary Smelting and Refining of Nonferrous Metals
3341	Secondary Smelting and Refining of Nonferrous Metals
3351-3357	Rolling, Drawing, and Extruding of Nonferrous Metals
3363-3369	Nonferrous Foundries (Casting)
3398, 3399	Miscellaneous Primary Metal Products
Sector G: Metal Mining (Ore Mining and Dressing)	
1011	Iron Ores
1021	Copper Ores
1031	Lead and Zinc Ores
1041, 1044	Gold and Silver Ores
1061	Ferroalloy Ores, Except Vanadium
1081	Metal Mining Services
1094, 1099	Miscellaneous Metal Ores
Sector H: Coal Mines and Coal Mining Related Facilities	
1221-1241	Coal Mines and Coal Mining-Related Facilities
Sector I: Oil and Gas Extraction and Refining	
1311	Crude Petroleum and Natural Gas
1321	Natural Gas Liquids
1381-1389	Oil and Gas Field Services
2911	Petroleum Refineries
Sector J: Mineral Mining and Dressing	
1411	Dimension Stone
1422-1429	Crushed and Broken Stone, Including Rip Rap
1481	Nonmetallic Minerals Services, Except Fuels
1442, 1446	Sand and Gravel
1455, 1459	Clay, Ceramic and Refractory Minerals
1474-1479	Chemical and Fertilizer Mineral Mining
1499	Miscellaneous Nonmetallic Minerals, Except Fuels
Sector K: Hazardous Waste Treatment, Storage, or Disposal Facilities	
HZ	Hazardous Waste Treatment, Storage, or Disposal Facilities subject to the "*Delaware Regulations Governing Solid Waste*" (DRGSW)
Sector L: Landfills and Land Application Sites	
LF	Landfills, Land Application Sites and Open Dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this Subsection) subject to the DRGSW.

Sector M: Automobile Salvage Yards*	
5015	Automobile Salvage Yards
Sector N: Scrap Recycling Facilities*	
5093	Scrap Recycling Facilities
Sector O: Steam Electric Generating Facilities	
SE	Steam Electric Generating Facilities
Sector P: Land Transportation and Warehousing**	
4011, 4013	Railroad Transportation
4111-4173	Local and Highway Passenger Transportation
4212-4231	Motor Freight Transportation and Warehousing
4311	United States Postal Service
5171	Petroleum Bulk Stations and Terminals
Sector Q: Water Transportation**	
4412-4499	Water Transportation
Sector R: Ship and Boat Building or Repairing Yards	
3731, 3732	Ship and Boat Building or Repairing Yards
Sector S: Air Transportation	
4512-4581	Air Transportation Facilities
Sector T: Treatment Works***	
TW	Treatment Works
Sector U: Food and Kindred Products	
2011-2015	Meat Products
2021-2026	Dairy Products
2032	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties
2041-2048	Grain Mill Products
2051-2053	Bakery Products
2061-2068	Sugar and Confectionary Products
2074-2079	Fats and Oils
2082-2087	Beverages
2091-2099	Miscellaneous Food Preparations and Kindred Products
2111-2141	Tobacco Products
Sector V: Textile Mills, Apparel, and Other Fabric Product Manufacturing, Leather and Leather Products	
2211-2299	Textile Mill Products
2311-2399	Apparel and Other Finished Products Made From Fabrics and Similar Materials
3131-3199 (except 3111)	Leather Products
Sector W: Furniture and Fixtures	
2511-2599	Furniture and Fixtures
2434	Wood Kitchen Cabinets
Sector X: Printing and Publishing	
2711-2796	Printing, Publishing, and Allied Industries
Sector Y: Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries	

3011	Tires and Inner Tubes
3021	Rubber and Plastics Footwear
3052, 3053	Gaskets, Packing and Sealing Devices, and Rubber and Plastics Hose and Belting
3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified
3081-3089	Miscellaneous Plastics Products
3931	Musical Instruments
3942-3949	Dolls, Toys, Games and Sporting and Athletic Goods
3951-3955 (except 3952 facilities as specified in Sector C)	Pens, Pencils, and Other Artists' Materials
3961, 3965	Costume Jewelry, Costume Novelties, Buttons and Miscellaneous Notions, Except Precious Metals
3991-3999	Miscellaneous Manufacturing Industries
Sector Z: Leather Tanning and Finishing	
3111	Leather Tanning and Finishing
Sector AA: Fabricated Metal Products	
3411-3499	Fabricated Metal Products, Except Machinery and Transportation Equipment and Cutting, Engraving and Allied Services
3911-3915	Jewelry, Silverware and Plated Ware
3479	Coating, Engraving and Allied Services
Sector AB: Transportation Equipment, Industrial or Commercial Machinery	
3511-3599 (except 3571, 3579)	Industrial and Commercial Machinery (Except Computer and Office Equipment – see Sector AC)
3711-3799 (except 3731, 3732)	Transportation Equipment (Except Ship and Boat Building and Repairing – see Sector R)
Sector AC: Electronic, Electrical, Photographic and Optical Goods	
3612-3699	Electronic, Electrical Equipment and Components, Except Computer Equipment
3812-3873	Measuring, Analyzing and Controlling Instrument, Photographic and Optical Goods, Watches and Clocks
3571-3579	Computer and Office Equipment
Sector AD: Non-Classified Facilities	
N/A	Other storm water discharges designated by the Department as needing a permit or any facility discharging storm water associated with industrial activities not described by any of Sectors A-AC. Note: Facilities may not elect to be covered under Sector AD. Only the Department may assign a facility to Sector AD.

* Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers and salvage yards, including but not limited to those classified as Standard Industrial Classification codes 5015 [Motor Vehicle Parts, Used] and 5093 [Scrap & Waste Materials], but not including recycling collection centers consisting solely of "igloos" or similar structures.

** Only those portions of the facility that are involved in vehicle maintenance activities (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations, and/or airport deicing operations are associated with industrial activity.

*** Treatment works with a design flow of one (1) million gallons per day or more treating domestic sewage or any other sewage sludge or waste water treatment device or system, used in the storage, treatment, recycling and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, or required to have an approved pretreatment program under 7 **Del.C.** §6033. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 C.F.R. §503.

9.1.1.1.3 Co-Located Activities

Facilities conducting industrial activities identified by two (2) or more sectors indicated in subparagraph 9.1.1.1.2.2 above, must comply with all applicable sector-specific requirements indicated in this Subsection. The extra sector-specific requirements apply only to areas of the facility where the extra-sector activities occur.

9.1.1.2 Eligibility

The following discharges and activities are eligible for coverage under this Subsection (NPDES General Permit Program).

9.1.1.2.1 All new and existing discharges that are composed in whole or in part of storm water associated with industrial activities. This includes any inactive industrial facility where Industrial Materials remain on-site and are exposed to storm water.

9.1.1.2.2 Facilities with existing individual NPDES permits for discharges other than storm water, may be covered by this Subsection, for any storm water discharges not covered by the existing individual NPDES permit. For those facilities, coverage under this Subsection shall exist until amendments which fully address storm water discharges can be made to the existing individual NPDES permits.

9.1.1.2.3 No person shall discharge storm water associated with an industrial activity except as authorized by an individual NPDES permit or this Subsection. Part 9.1.2.1 of this Subsection shall apply to all discharges of storm water associated with industrial activities. Part 9.1.2.2 of this Subsection shall apply to construction activities and modifies certain parts of Part 9.1.2.1. Coverage under this Subsection can be obtained through by submitting a Notice of Intent (NOI) Form in accordance with the respective Part of this Subsection. Once coverage under this Subsection has been obtained, the person is authorized to discharge storm water only from the location indicated on the submitted NOI form.

9.1.1.3 Limits on Eligibility

The following discharges and activities are not eligible for coverage under this Subsection (General Permit Program).

9.1.1.3.1 Discharges of storm water associated with industrial activities fully addressed by facilities with individual NPDES permits.

9.1.1.3.2 Activities that have been determined by the Secretary to be significant contributors of a pollutant to storm water runoff and required to be covered under an individual NPDES permit.

9.1.1.3.3 Discharges of pollutants occurring in watersheds for which there is a Total Maximum Daily Load (TMDL) allocation for associated water bodies are not eligible for coverage under this Subsection unless the facility has an approved Storm Water Plan (SWP) that is shown to reduce pollutant loading to the level required by the TMDL or to the maximum extent practicable. To be eligible for coverage under this Subsection, the facility must incorporate into their SWP any conditions applicable to their discharges necessary for consistency with any TMDL implementation plan for achieving State surface water quality standards. For discharges not eligible for coverage under this Subsection, the discharger must apply for and receive an individual NPDES Permit.

9.1.1.3.4 Discharges of pollutants in quantities that would cause or contribute to an exceedance of any applicable surface water quality standard for the receiving waters, the discharger must apply for and receive an individual NPDES Permit, including:

9.1.1.3.4.1 Discharges of substances or materials in amounts that are toxic, or that would be toxic to humans, fish, aquatic life, or wildlife;

9.1.1.3.4.2 Discharges of floatable debris, oils, scum, foam, or grease in other than trace amounts. Excluded from this are naturally occurring substances such as leaves and twigs provided no person has placed such substances in or near the discharges; and

9.1.1.3.4.3 Discharges that cause or contribute to degradation or loss of State designated beneficial uses of the receiving waters and violation of State water quality standards.

9.1.1.3.5 Discharges of materials other than storm water are prohibited and are not authorized by this Subsection.

9.1.1.4 Individual NPDES Permit Coverage

9.1.1.4.1 Any person covered by this Subsection may request to seek coverage under an individual NPDES permit by submitting an individual application (Form 1 and Form 2F[1]) as prescribed in Section 6 of the "*Regulations Governing The Control of Water Pollution*." Coverage under this Subsection will continue until authorization for coverage under an individual permit has been issued to the person making the request.

9.1.1.4.2 The Secretary may require any person covered by this Subsection to submit an application and seek coverage under an individual NPDES permit as described in §9.1.1.1.3.4

9.1.1.4.2.1 The Secretary shall notify a person in writing when an individual permit application is required. The notice shall include a brief statement of the reasons for the decision, an application and a statement setting a deadline for the person to file the application.

9.1.1.4.2.2 If a person fails to submit an individual permit application in compliance with a notice from the Secretary, the applicability of this Subsection to the person shall automatically terminate at the end of the day specified for application.

9.1.1.4.3 When an individual NPDES permit is issued to a person for discharges otherwise covered by this Subsection, the applicability of this Subsection is automatically terminated on the effective date of the individual NPDES permit.

9.1.1.5 Conditional "No Exposure" Exclusion

9.1.1.5.1 A Conditional "No Exposure" Exclusion from the requirements of §9.1.1.4 (Monitoring) and §9.1.5 (Storm Water Plan) of this Subsection is available for industrial facilities whose processes and materials are protected by storm resistant shelters to prevent exposure to rain, snow, snowmelt, and/or runoff, as defined herein. This exclusion is applicable to all industrial categories identified in §9.1.1.3.2 of this Subsection. To qualify for a Conditional "No Exposure" Exclusion, the facility must submit and receive written Department approval of a "No Exposure" Certification Form. A facility who obtains an approved Conditional "No Exposure" Exclusion is covered under this Subsection, but excluded from having to comply with the requirements of §9.1.4. and §9.1.5.

9.1.1.5.2 A "No Exposure" Certification Form must be provided for each facility qualifying for the Conditional "No Exposure" Exclusion. The exclusion is available on a facility-wide basis only, not for individual outfalls.

9.1.1.5.3 A storm resistant shelter is not required for the following industrial materials and activities:

9.1.1.5.3.1 Lidded Dumpsters: Lidded dumpsters containing waste materials, providing the containers are completely covered and there are no holes in the bottom of the container to allow leakage. Industrial refuse and trash that is stored uncovered, however, is considered exposed.

9.1.1.5.3.2 Adequately Maintained Vehicles: Adequately maintained vehicles such as trucks, automobiles, forklifts, trailers, or other general purpose vehicles found on-site (but no industrial machinery) which are not leaking or are otherwise a potential source of contaminants.

9.1.1.5.3.3 Fueling Activities: Vehicle or vessel maintenance facilities in which the only maintenance activity conducted on-site is vehicle fueling. If the fuel is dispensed from an above ground storage tank, there must be adequate secondary containment for the tank or the tank must be double walled. In addition, a spill containment and clean-up kit must be maintained on-site.

9.1.1.5.3.4 Above Ground Storage Tanks: Storm resistant shelters are not required for above ground storage tanks provided the following conditions are met:

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1. Form 1: NPDES permit application containing general information about the applicant and facility. This form must accompany the NPDES permit application, Form 2F.

Form 2F: NPDES permit application to discharge storm water associated with industrial activities.

9.1.1.5.3.4.1 Above ground storage tanks must be physically separated from and not associated with vehicle maintenance operations;

9.1.1.5.3.4.2 There must be no piping, pumps or other equipment leaking contaminants that could contact storm water;

9.1.1.5.3.4.3 The tanks must be double walled tanks or must be provided with secondary containment. Secondary containment structures must be constructed to hold at least 110% of the entire contents of the tank plus 6 inches to allow for precipitation;

9.1.1.5.3.4.4 Precipitation collected in secondary containment structures must be properly managed; and

9.1.1.5.3.4.5 A spill containment and clean-up kit must be available for personnel dispensing product.

9.1.1.5.3.5 Final Products: Final products built and intended for use outdoors (e.g., new cars), provided the final products have not deteriorated or are otherwise a potential source of contaminants. Types of products not qualifying for "no exposure" certification:

9.1.1.5.3.5.1 Products that would be mobilized in storm water discharges (e.g., rock salt);

9.1.1.5.3.5.2 Products which may, when exposed, oxidize, deteriorate, leak, or otherwise be a potential source of contaminants (e.g., junk cars, stockpiled train rails); and

9.1.1.5.3.5.3 Final products which are, in actuality, intermediate products. Intermediate products are those used in composition of yet another product (e.g., sheet metal, tubing and paint used in making tractors). Even if the intermediate product is final for a manufacturer and destined for incorporation in a final product intended for use outdoors, these products are not allowed to be exposed because they may be chemically treated or are insufficiently impervious to weathering.

9.1.1.5.3.5.4 There are circumstances where permanent, uninterrupted sheltering of industrial activities or materials is not possible. Under such conditions:

9.1.1.5.3.5.4.1 Materials and activities may be sheltered with temporary covers (e.g., tarpaulins) until permanent enclosure can be achieved; and

9.1.1.5.3.5.4.2 The "No Exposure" provision does not specify every such situation, but the Secretary can address this issue on a case-by-case basis, i.e., determine if the temporary covers will meet the requirements of §9.1.1.5.

9.1.1.5.3.5 The "No Exposure" Exclusion is conditional. If there is a change in circumstances that causes the exposure of industrial activities or materials to storm water, the owner/operator is required to comply immediately with all requirements of this Subsection.

9.1.1.5.3.6 The Secretary retains the authority to require the facility to comply with the requirements of this Subsection if it is determined that there is exposure at the facility, or that the discharge of storm water is contributing to the violation of water quality standards.

9.1.2 Standard Conditions

9.1.2.1 Entry and Inspection

Any person subject to this Subsection shall allow the Department to:

9.1.2.1.1 enter the facility subject to this Subsection during standard business hours;

9.1.2.1.2 inspect and copy at reasonable times, any records that must be kept under the conditions of this Subsection;

9.1.2.1.3 inspect at reasonable times any facilities or equipment; and

9.1.2.1.4 perform sampling of the storm water discharges from the site.

9.1.2.2 Signature Requirements

9.1.2.2.1 All Notice Of Intent (NOI) Forms and "No Exposure" Certification Forms shall be signed by:

9.1.2.2.1.1 a president, vice-president, secretary or treasurer for a corporation; or

9.1.2.2.1.2 a general partner or proprietor for a partnership or sole proprietorship; or

9.1.2.2.1.3 a principal executive officer or ranking official for a municipality or public agency.

9.1.2.2.2 All other reports or information required by this Subsection shall be signed by a person described above or by a duly authorized representative. A person is a duly authorized representative only if:

9.1.2.2.2.1 the authorization is made in writing by the person described above and is submitted to the Department; and

9.1.2.2.2.2 the authorization specifies either an individual or position having responsibility for the overall operation of the regulated facility, such as the position of manager, operator,

superintendent, or position of equivalent responsibility or an individual or position having overall responsibility of environmental matters (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

9.1.2.2.3 Any person signing documents in accordance with this Subsection shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted 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 fine and imprisonment for willful violations."

9.1.2.3 Proper Operation and Maintenance

Any person subject to this Subsection shall at all times properly operate and maintain all facilities, systems and practices of pollution control which are installed, or implemented to achieve compliance with the requirements of this Subsection and with the measures of the Storm Water Plan.

9.1.2.4 Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

9.1.2.5 Duty to Mitigate

Any person subject to this Subsection shall take all reasonable steps to minimize or prevent any discharge of pollutants in violation of this Subsection.

9.1.2.6 Duty to Provide Information

The permittee shall furnish to the Secretary, within a reasonable timeframe, any information which the Secretary may request to determine cause for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Secretary upon request, copies of records required to be maintained by this Subsection.

9.1.2.7 Property Rights

Coverage under this Subsection does not convey any property rights of any sort, any exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, State, or local laws or regulations, or any taking, condemnation or use of eminent domain against any property owned by third parties. The State does not warrant that the permittee's compliance with this permit and operation under this permit will not cause damage, injury, or use of private property, an invasion of personal rights, or violation of federal, state, or local laws or regulations. The permittee is solely and severably liable for all damage, injury or use of private property, invasion of personal rights, infringement of federal, State, or local laws and regulations, or taking or condemnation of property owned by third parties, which may result from actions taken under the permit.

9.1.2.8 Adverse Impacts

Any person subject to the requirements of this Subsection shall take all reasonable steps to minimize any adverse impact to State waters resulting from noncompliance with this Subsection, including such accelerated or additional monitoring as necessary to determine the nature and extent of the non-complying discharge.

9.1.2.9 Transfers

9.1.2.9.1 For industrial activities identified in §9.1.2.2.2.1 (construction activities), coverage under this Subsection is transferable. Coverage under this Subsection shall be transferred in accordance with the provisions outlined in §9.1.2.

9.1.2.9.2 For industrial activities identified in §9.1.1.3.1.2 (9.1.1.3.2), coverage under this Subsection is not transferable. When the ownership of a facility changes, the new operator must submit either an NOI Form or "No Exposure" Certification Form within ten (10) days of the change in ownership.

9.1.2.10 Continuation of Regulatory Requirements

The requirements of this Subsection shall continue in force and effect until this Subsection is re-promulgated.

9.1.2.11 Severability

Any portion of this permit that is found to be void, or that is challenged, shall not affect the validity of the various permit requirements that are not void or challenged.

9.1.2.12 Other State or Federal Laws

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

9.1.2.13 Penalties for Violations

Any person who violates conditions of this Subsection may be subject to penalties in accordance with 7 **Del.C**. Chapter 40, 7 **Del.C**. Chapter 60, or both. Violation of this Subsection is also a violation of the Clean Water Act and may be subject to penalties established under that statute.

9.1.2.14 Oil and Hazardous Substance Liability

Nothing in this Subsection shall preclude the institution of any legal action or relieve any person from any responsibilities, liabilities, or penalties to which a person is or may be subject under 40 C.F.R. Part 117 or 7 **Del.C.** Chapters 60, 62 or 63.

9.1.3 Notification

9.1.3.1 Application For Coverage

9.1.3.1.1 Any person who intends to obtain coverage for storm water discharges associated with industrial activity under this Subsection, must submit a Notice of Intent (NOI) Form in accordance with this Subsection. For those persons who intend to certify that a condition of “no exposure” exists at their facility, a “No Exposure” Certification Form must be submitted in accordance with this Subsection. Once the submitted documentation has been approved, the permittee will receive a letter either acknowledging coverage under this Subsection or exclusion of coverage under this Subsection. Failure to submit a complete and accurate Form will result in the facility being denied coverage under this Subsection.

9.1.3.1.2 Where a facility or activity is owned by one person but is operated by another person, it is the operator’s duty to submit the NOI Form or the “No Exposure” Certification Form.

9.1.3.1.3 When ownership changes, the new owner of the facility must submit a new NOI Form or a new “No Exposure” Certification Form consistent with theTransfers provision of §9.1.2.I.

9.1.3.2 Deadlines

9.1.3.2.1 Industrial Activities identified in §9.1.1.3.1.2, excluding Industrial Activity Codes HZ and LF. Any person intending to obtain coverage under this Subsection for storm water discharges associated with the industrial activities identified in §9.1.1.3.1.2, excluding those facilities classified as Industrial Activity Codes HZ and LF, shall meet the following deadlines.

9.1.3.2.1.1 Facilities Currently Covered Under This Subsection

Coverage will continue for all facilities with existing coverage under this Subsection unless otherwise notified by the Department. Any person intending to obtain a Conditional “No Exposure” Exclusion from the requirements of this Subsection, that presently have and intend to maintain coverage, but will attain a condition of “no exposure” in the future, may submit a “No Exposure” Certification Form at any time during the permit’s term following completion of the on-site changes that will result in the condition of “no exposure”.

9.1.3.2.1.2 Facilities With Coverage Pending

Facilities that submitted NOI Forms for coverage under the previous regulations that were received before the effective date of this Subsection, but processing was incomplete, will be processed for coverage under the reissued Subsection. Those with pending NOI Forms are not required to submit new NOI Forms unless otherwise notified by the Department.

9.1.3.2.1.3 New Facilities or Existing Facilities Not Covered Under This Subsection

New facilities and existing facilities that currently are not covered under this Subsection must submit an NOI Form or, if eligible, a “No Exposure” Certification Form to obtain coverage. New facilities shall submit an NOI Form or “No Exposure” Certification Form within 10 days prior to the commencement of industrial activities. Existing facilities shall submit an NOI Form or “No Exposure” Certification Form within 10 days of notification by the Department that coverage is required.

9.1.3.2.1.4 Where a facility that has been granted a Conditional “No Exposure” Exclusion proposes changes to its activities that will result in industrial activities or materials being exposed to storm water, the Conditional “No Exposure” Exclusion shall become void. The facility must

then obtain full coverage under this Subsection or apply for an individual NPDES permit within 30 days prior to implementing proposed changes.

9.1.3.2.2 Industrial Activities Classified as Industrial Activity Codes HZ and LF.

Any person intending to obtain coverage under this Subsection for storm water discharges associated with the industrial activities identified as Industrial Activity Codes HZ and LF, shall meet the following deadlines.

9.1.3.2.2.1 Facilities Currently Covered Under This Subsection

Coverage will continue for all facilities with existing coverage under this Subsection unless otherwise notified by the Department.

9.1.3.2.2.2 Facilities With Coverage Pending

Facilities that submitted NOI Forms for coverage under the previous regulations that were received before the effective date of this Subsection, but processing was incomplete, will be processed for coverage under the reissued Subsection. Those with pending NOI Forms are not required to submit new NOI Forms unless otherwise notified by the Department.

9.1.3.2.2.3 New Facilities or Existing Facilities Not Covered Under This Subsection

Any person who intends to obtain coverage under this Subsection for storm water discharges associated with the industrial activities classified as Industrial Activity Codes HZ and LF, which commence after the effective date of this Subsection, shall submit a certification that a permit or approval has been obtained in accordance with the "*Delaware Regulations Governing Solid Waste"* (DRGSW). Activities subject to the DRGSW shall not commence and coverage under this Subsection shall not apply until a permit or approval has been obtained in accordance with the DRGSW.

9.1.3.2.2.3.1 The requirements of notification will be satisfied when an NOI Form with accompanying information is submitted in accordance with this Subsection.

9.1.3.2.2.3.2 Persons complying with §9.1.1.2.2, shall be considered in compliance with the NOI provisions outlined in §9.1.3.2.1.3 of this Subsection.

9.1.3.2.2.3.3 Persons identified in any plans required by a DRGSW permit or approval shall sign and maintain on-site a copy of the following certification statement before conducting any professional service identified in the plans:

"I certify under penalty of law that I understand the terms and conditions of the Delaware National Pollutant Discharge Elimination System (NPDES) General Permit Regulation for Storm Water Discharges Associated with Activities subject to the DRGSW."

9.1.3.2.3 Construction Activities

Any person who intends to obtain coverage under this Subsection for storm water discharges associated with the industrial activities described in §9.1.1.3.1.1 (construction activities) of this Subsection shall comply with the provisions of §9.1.2 of the Regulations.

9.1.3.3 Contents of the Notice of Intent Form

The Notice of Intent (NOI) shall be submitted on a form provided by the Department.

9.1.3.3.1 For industrial activities described in §9.1.1.3.1.2, the NOI Form shall include, at a minimum, the following information:

9.1.3.3.1.1 The name of the owner, the facility, facility mailing address and location, if different from the mailing address;

9.1.3.3.1.2 The latitude and longitude of the facility;

9.1.3.3.1.3 Up to four Standard Industrial Classification (SIC) codes that best represent the principal products or activities of the facility;

9.1.3.3.1.4 A brief description of the type of industrial activities conducted and products manufactured at the facility.

9.1.3.3.1.5 The name, address and telephone number of the individual who is directly responsible for development, implementation, maintenance, and revision of the Storm Water Plan; and

9.1.3.3.1.6 The name of the receiving waters or municipal storm water system.

9.1.3.3.1.7 The following certification:

"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 gathered and evaluated the information submitted. Based upon my inquiry of the person(s) directly responsible for gathering the information, the information is, to the best of my knowledge, true, accurate and complete. I am aware that there are significant penalties for

submitting false information, including the possibility of fine and imprisonment for willful violations."

9.1.3.3.2 For industrial activities described in §9.1.1.3.1.1 (construction activities), the NOI Form shall be submitted in accordance with the provisions of §9.1.2.

9.1.3.4 Contents of the "No Exposure" Certification Form

The Conditional "No Exposure" Certification shall be submitted on a form provided by the Department.

9.1.3.4.1 The name of the owner, the facility, facility mailing address and location (if different from the mailing address);

9.1.3.4.2 The latitude and longitude of the facility;

9.1.3.4.3 Up to four Standard Industrial Classification (SIC) Codes that best represent the principal products or activities of the facility;

9.1.3.4.4 Indication as to whether or not the facility was previously covered under a NPDES storm water permit;

9.1.3.4.5 Indication as to whether or not the facility paved or roofed over a formerly exposed, pervious area in order to qualify for the Conditional "No Exposure" Exclusion; and

9.1.3.4.6 An Exposure Checklist. The facility must indicate whether or not the following areas are exposed to precipitation, now or in the foreseeable future. If any of the following areas are or will be exposed to precipitation, the facility is not eligible for the Conditional "No Exposure" Exclusion:

9.1.3.4.6.1 Industrial materials used, stored, or cleaned and that remain and are exposed to storm water;

9.1.3.4.6.2 Materials or residuals on the ground or in storm water inlets from spills/leaks;

9.1.3.4.6.3 Materials or products from past industrial activity;

9.1.3.4.6.4 Material handling equipment (except adequately maintained vehicles);

9.1.3.4.6.5 Materials or products during loading/unloading or transporting activities;

9.1.3.4.6.6 Materials or products stored outdoors (except final products intended for outside use [e.g., new cars] where exposure to storm does not result in the discharge of pollutants).

9.1.3.4.6.7 Materials contained in exposed storage drums, barrels, tanks (provided the tanks do not meet the conditions outlined in §9.1.1.5.3.3.), and similar containers;

9.1.3.4.6.8 Materials or products handled/stored on roads or railways owned or maintained by the discharger;

9.1.3.4.6.9 Waste material (except waste in covered, non-leaking containers [e.g., dumpsters]);

9.1.3.4.6.10 Application or disposal or process wastewater (unless otherwise permitted); and

9.1.3.4.6.11 Particulate matter or visible deposits of residuals from roof stacks and/or vents not otherwise regulated (i.e., under an air quality control permit) and evident in the storm water outflow.

9.1.3.4.7 The following certification:

"I certify under penalty of law that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility. I understand that I am obligated to submit a "No Exposure" Certification Form as required by the Department. I understand that I must allow the Department to perform inspections to confirm the condition of "no exposure." I understand that I must obtain coverage under a NPDES permit prior to any point source discharge of storm water from the facility."

9.1.3.5 Additional Information

When any person subject to this Subsection becomes aware that any relevant facts were omitted or submitted incorrectly on the NOI Form, the "No Exposure" Certification Form, or on any other records required by this Subsection, that person shall promptly submit such corrected information to the Department.

9.1.3.6 Where to Submit

Persons intending to obtain coverage through this Subsection must submit an NOI to the following address:

9.1.3.6.1 Persons intending to obtain coverage under this Subsection for industrial activities identified in §9.1.1.3.1.2 must submit an NOI Form or "No Exposure" Certification Form to the following address:

Delaware Department of Natural Resources and Environmental Control
Division of Water Resources

Surface Water Discharges Section - NPDES Storm Water Program
89 Kings Highway
Dover, DE 19901

9.1.3.6.2 Persons intending to obtain coverage under this Subsection for industrial activities identified in §9.1.1.3.1.1 (construction activities), must submit an application with accompanying information in accordance with the provisions of §9.1.2 of the Regulations.

9.1.3.7 Failure to Notify

Persons who discharge storm water associated with industrial activity, who fail to notify the Department of their intent to be covered under this Subsection, and who discharge to waters of the State without an individual NPDES permit, are in violation of 7 **Del.C**. Chapter 60 and the federal Clean Water Act and may be subject to penalties.

9.1.4 Monitoring

9.1.4.1 Beginning on the effective date of this Subsection, persons conducting industrial activities:

9.1.4.1.1 identified in §9.1.1.3.2.1.2, excluding those facilities classified as Industrial Activity Codes HZ and LF, shall monitor the discharges of storm water associated with industrial activities as specified by this Part.

9.1.4.1.2 identified in §9.1.1.1.2 as Industrial Activity Codes HZ and LF shall perform monitoring in accordance with the DRGSW**.**

9.1.4.1.3 identified in §9.1.1.3.1.1 (construction activities) shall perform monitoring in accordance with the provisions of §9.2 (Part 2) of this Subsection.

9.1.4.2 Sampling Procedures and Conditions

Storm water must be sampled according to the instructions below.

9.1.4.2.1 Sample Type

9.1.4.2.1.1 A grab sample shall be collected from a storm water discharge resulting from a storm event that is greater than 0.1 inches of magnitude and that occurs at least 72 hours from the previously measured (greater than 0.1 inch rainfall) storm event. The required 72 hour interval is waived where a preceeding measurable storm event did not result in a measurable discharge from the facility. The grab sample shall be taken within the first thirty (30) minutes of a storm water discharge. If it is not practicable to take the sample during the first 30 minutes, sample during the first hour of discharge and indicate why a grab sample during the first 30 minutes was impracticable. The permittee shall also allow for two (2) full days of standard operating activities at the facility since the last rainfall event that resulted in runoff from the facility.

9.1.4.2.1.2 For discharges from holding ponds or other impoundments with a 24-hour or greater retention capability, grab samples of the discharge may be obtained at any time.

9.1.4.2.2 Sample Location

Sampling is conducted to capture storm water with the greatest exposure to significant sources of pollution. Each distinct point of discharge (outfall) off-site must be sampled and analyzed separately if activities and site conditions that may pollute the storm water are likely to result in discharges that will significantly vary in the concentration or type of pollutants. All samples, except storm water discharges from coal piles, are to be taken as close to the point of discharge as reasonably practical and can be achieved safely. Storm water from coal piles is sampled before the storm water from the coal pile commingles with storm water for other sources.

9.1.4.2.3 Test Methods

Samples shall be representative of the monitored discharge. Sample collection and analysis must be conducted according to test procedures approved under 40 CFR Part 136, or an alternative method approved by the Department.

9.1.4.2.4 Representative Discharge

If any person subject to this Part reasonably believes that two or more outfalls discharge storm water substantially identical (based on consideration of industrial activity, Industrial Materials, management practices and activities within the area drained by the outfalls) that person may test the discharges of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s).

9.1.4.2.5 Flow Measurement

For each representative sampled storm event, person subject to this Part must provide the following information:

9.1.4.2.5.1 the date and duration (in hours) of the storm event(s) sampled;

9.1.4.2.5.2 rainfall measurements (in inches) or estimates of runoff (in gallons) of the storm event that generated the sampled runoff;

9.1.4.2.5.3 the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and

9.1.4.2.5.4 an estimate of the total volume (in gallons) of the discharge sampled.

9.1.4.2.6 Monitoring Frequency

Persons subject to the monitoring requirements of this Part, shall implement their monitoring program in the first full calendar quarter following submission of the NOI Form. In accordance with §9.1.4.3, visual monitoring shall be performed on a quarterly basis and analytical monitoring shall be performed on a semi-annual basis.

9.1.4.3 Industry-Specific Monitoring Requirements and Effluent Limitations

Storm water must be sampled according to the instructions below unless persons subject to this Part submit an alternative plan as a modification of coverage and it is approved by the Department. Persons subject to this Part are not required to sample outside of regular business hours or during unsafe conditions. There are three (3) individual and separate categories of monitoring requirements [Visual Monitoring, Benchmark Monitoring and Numeric Effluent Limitations] that a facility may be subject under §9.1.4. The monitoring requirements applicable to a facility depend on the types of industrial activities generating storm water runoff from the facility. Persons subject to the monitoring requirements of this Part must review Tables 2.a. through 2.r. below and determine which monitoring requirements apply.

Sector-specific monitoring requirements and limitations are applied discharge by discharge at facilities with co-located activities. Where storm water from the co-located activities are commingled, the monitoring requirements and limitations are additive. Where more than one numeric limitation for a specified parameter applies to a discharge, compliance with the more restrictive limitation is required.

9.1.4.3.1 Quarterly Visual Monitoring

All facilities required to monitor storm water discharges, must perform and document quarterly visual examinations of storm water discharges associated with industrial activities from each storm water outfall. The examination(s) must be made at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December. The examination must document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen and other obvious indicators of storm water pollution. The examination must be performed during daylight hours and must be made of samples collected within the first thirty (30) minutes of when runoff or snowmelt begins discharging from the facility. If no storm event resulted in runoff from the facility during a monitoring quarter, the permittee is excused fro visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no runoff occurred.

9.1.4.3.2 Analytical Monitoring – Benchmark Monitoring Concentrations and Effluent Limitations

Analytical monitoring is required for the industry sectors or sub-sectors that are determined to have a high potential to discharge a pollutant at concentrations of concern. Facilities conducting industrial activities shall analyze grab samples for the parameters identified in Tables a. through r. below on a semi-annual basis. Monitoring shall be completed at least once in each of the following six-month periods: January through June and July through December. Industry-specific monitoring requirements and limitations are applied discharge by discharge at facilities with co-located activities. Where indicated, monitored results shall be compared to Numeric Effluent Limitations or Benchmark Monitoring Concentration values. The Numeric Effluent Limitations and Benchmark Monitoring Concentrations are requirements applicable to a facility and depend on the types of industrial activities generating storm water runoff from the facility. The discharge of pollutants at a level more than that identified and authorized by a specified Numeric Effluent Limitation shall constitute a violation of this Part. The Benchmark Monitoring Concentration values represent target pollutant concentrations for a facility to achieve through implementation of its Storm Water Plan (SWP) {§9.1.5.}. Analytical results that exceed Benchmark Monitoring Concentration values are not a violation of this Part as these values are not Numeric Effluent Limitations. However, results that exceed a Benchmark Monitoring Concentration value are indications that the storm water discharge could

potentially cause, or contribute to causing, water quality impairment in the receiving waterbody. The Benchmark Monitoring Concentration values are also viewed as a level, that if below, the discharge presents little potential for water quality concern.

9.1.4.3.2.1 Sector A – General Sawmills and Planning Mills

9.1.4.3.2.1.1 Numeric Effluent Limitation

Facilities identified by SIC code 2411 shall analyze grab samples for the parameters listed in the following table and shall not exceed the indicated Numeric Effluent Limitations. Persons subject to these Numeric Effluent Limitations must be in compliance with these limitations through the duration of coverage.

Parameter	Units	Effluent Limitations
Wet Decking Discharges at Log Storage and Handling Areas (SIC Code 2411)		
Debris (woody material such as bark, twigs, branches, heartwood, or sapwood)	----------	No discharge of debris that will not pass through a 2.54 cm (1 inch) diameter round opening.
pH	standard units	6.0-9.0

Benchmark Monitoring

Facilities identified by SIC codes 2411, 2421, 2426, 2429, 2431-2439 (except 2334), 2448, 2449, 2451, 2452, 2491 and 2593 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Log Storage and Handling (SIC Code 2411)		
Total Suspended Solids (TSS)	mg/l	100.0
General Sawmills and Planning Mills (SIC Code 2421)		
Chemical Oxygen Demand (COD)	mg/l	120.0
Total Suspended Solids (TSS)	mg/l	100.0
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0
Wood Preserving (SIC Code 2491)		
Total Arsenic	mg/l	0.16854
Total Copper	mg/l	0.0636
pH	standard units	6.0-9.0
Hardwood Dimension and Flooring Mills (SIC Codes 2426, 2429, 2431-2439 (except 2434), 2448, 2449, 2451, 2452, 2499 and 2593)		
Chemical Oxygen Demand (COD)	mg/l	120.0
Total Suspended Solids (TSS)	mg/l	100.0
pH	standard units	6.0-9.0

9.1.4.3.2.2 Sector B – Paper and Allied Products

Benchmark Monitoring Requirements

Facilities identified by SIC code 2631 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations

Paperboard Mills (SIC Code 2631)		
Chemical Oxygen Demand (COD)	mg/l	120.0
pH	standard units	6.0-9.0

9.1.4.3.2.3 Sector C – Chemical and Allied Product Manufacturing

9.1.4.3.2.3.1 Numeric Effluent Limitations

Facilities identified by SIC code 2874 shall analyze grab samples for the parameters listed in the following table and shall not exceed the indicated Numeric Effluent Limitations. Persons subject to Numeric Effluent Limitations must be in compliance with these limitations through the duration of coverage.

Parameter	**Units**	**Effluent Limitations**	
		Daily Maximum	**30-Day Average**
Phosphate Subcategory of the Fertilizer Manufacturing Point Source Category (SIC Code 2874) – applies to precipitation runoff that, during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product			
Total Phosphorus (as P)	mg/l	105.0	35.0
Fluoride	mg/l	75.0	25.0
pH	standard units	6.0-9.0	

9.1.4.3.2.3.2 Benchmark Monitoring Requirements

Facilities identified by SIC codes 2812-2819, 2821-2824, 2841-2844 and 2873-2879 shall analyze grab samples in accordance with the following parameters:

Parameter	**Units**	**Benchmark Monitoring Concentrations**
Industrial Inorganic Chemicals (SIC Codes 2812-2819)		
Total Recoverable Aluminum	mg/l	0.75
Total Recoverable Iron	mg/l	1.0
Nitrate plus Nitrite Nitrogen	mg/l	0.68
pH	standard units	6.0-9.0
Plastics, Synthetics, and Resins (SIC Codes 2821-2824)		
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0
Soaps, Detergents, Cosmetics, and Perfumes (SIC Codes 2841-2844)		
Nitrate plus Nitrite Nitrogen	mg/l	0.68
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0
Agricultural Chemicals (SIC Codes 2873-2879)		
Nitrate plus Nitrite Nitrogen	Nitrate plus Nitrite Nitrogen	0.68
Total Recoverable Iron	mg/l	1.0
Total Recoverable Zinc	mg/l	0.117
Phosphorus	mg/l	2.0

Total Recoverable Lead	mg/l	0.0816
pH	standard units	6.0-9.0

9.1.4.3.2.4 Sector D – Asphalt Paving and Roofing Materials and Lubricant Manufacturers

9.1.4.3.2.4.1 Numeric Effluent Limitations

Facilities identified by SIC codes 2951 and 2952 shall analyze grab samples for the parameters listed in the following table and shall not exceed the indicated Numeric Effluent Limitations. Persons subject to Numeric Effluent Limitations must be in compliance with these limitations through the duration of coverage.

Parameter	**Units**	**Effluent Limitations**	
		Daily Maximum	**30-Day Average**
Discharges from areas where production of asphalt paving and roofing emulsions occurs (SIC Codes 2951 and 2952)			
Total Suspended Solids (TSS)	mg/l	23.0	15.0
Oil and Grease	mg/l	15.0	10.0
pH	standard units	6.0-9.0	

9.1.4.3.2.4.2 Benchmark Monitoring Requirements

Facilities identified by SIC codes 2951 and 2952 shall analyze grab samples in accordance with the following parameters:

Parameter	**Units**	**Benchmark Monitoring Concentrations**
Asphalt Paving and Roofing Materials and Lubricant Manufacturers (SIC Codes 2951 and 2952)		
Total Suspended Solids (TSS)	mg/l	100.0
pH	standard units	6.0-9.0

9.1.4.3.2.5 Sector E – Glass, Clay, Cement, Concrete and Gypsum Products

9.1.4.3.2.5.1 Numeric Effluent Limitations

Facilities conducting cement manufacturing activities shall analyze grab samples for the parameters listed in the following table and shall not exceed the indicated Numeric Effluent Limitations. Persons subject to Numeric Effluent Limitations must be in compliance with these limitations through the duration of coverage.

Parameter	**Units**	**Effluent Limitations**
		Daily Maximum
Cement Manufacturing Facility, Material Storage Runoff: Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products and waste materials that are used in or derived from the manufacture of cement.		
Total Suspended Solids (TSS)	mg/l	50.0
pH	standard units	6.0-9.0

9.1.4.3.2.5.2 Benchmark Monitoring Requirements

Facilities identified by SIC codes 3245-3259, 3261-3269 and 3271-3275 shall analyze grab samples in accordance with the following parameters:

Parameter	**Units**	**Benchmark Monitoring Concentrations**
Clay Product Manufacturers (SIC Codes 3245-3259 and 3261-3269)		
Total Recoverable Aluminum	mg/l	0.75
pH	standard units	6.0-9.0

Concrete and Gypsum Product Manufacturers (SIC Codes 3271-3275)		
Total Suspended Solids (TSS)	mg/l	100.0
Oil and Grease	mg/l	15.0
Total Recoverable Iron	mg/l	1.0
pH	standard units	6.0-9.0

9.1.4.3.2.6 Sector F – Primary Metals

9.1.4.3.2.6.1 Benchmark Monitoring Requirements

Facilities identified by SIC codes 3312-3317, 3321-3325, 3351-3357 and 3363-3369 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC Codes 3312-3317)		
Total Recoverable Aluminum	mg/l	0.75
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0
Iron and Steel Foundries (SIC Codes 3321-3325)		
Total Recoverable Aluminum	mg/l	0.75
Total Suspended Solids (TSS)	mg/l	100.0
Total Recoverable Copper	mg/l	0.0636
Total Recoverable Iron	mg/l	1.0
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0
Rolling, Drawing, and Extruding of Nonferrous Metals (SIC Codes 3351-3357)		
Total Recoverable Copper	mg/l	0.0636
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0
Nonferrous Foundries (SIC Codes 3363-3369)		
Total Recoverable Copper	mg/l	0.0636
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0

9.1.4.3.2.7 Sector J – Mineral Mining and Dressing

9.1.4.3.2.7.1 Numeric Effluent Limitations

Facilities identified by SIC codes 1422-1429, 1442 and 1446 shall analyze grab samples for the parameters listed in the following table and shall not exceed the indicated Numeric Effluent Limitations. Persons subject to Numeric Effluent Limitations must be in compliance with these limitations through the duration of coverage.

Parameter	Units	Effluent Limitations	
		Daily Maximum	30-Day Average
Mine Dewatering Activities at Construction Sand and Gravel; Industrial Sand; and Crushed Stone Mining Facilities (SIC Codes 1422-1429, 1442 and 1446)			
Total Suspended Solids (TSS)	mg/l	45.0	25.0
pH	standard units	6.0-9.0	

9.1.4.3.2.7.2 Benchmark Monitoring Requirements

Facilities identified by SIC codes 1411, 1422-1429, 1442, 1446, 1481 and 1489 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Dimension Stone Crushed and Broken Stone and Nonmetallic Minerals (except fuels)(SIC Codes 1411, 1422-1429, 1481 and 1499)		
Total Suspended Solids (TSS)	mg/l	100.0
pH	standard units	6.0-9.0
Sand and Gravel Mining (SIC Codes 1442 and 1446)		
Nitrate plus Nitrite Nitrogen	mg/l	0.68
Total Suspended Solids (TSS)	mg/l	100.0
pH	standard units	6.0-9.0

9.1.4.3.2.8 Sector M – Automobile Salvage Yards

Benchmark Monitoring Requirements

Facilities identified by SIC code 5015 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Automobile Salvage Yards (SIC Code 5015)		
Total Suspended Solids (TSS)	mg/l	100.0
Total Recoverable Aluminum	mg/l	0.75
Total Recoverable Iron	mg/l	1.0
Oil and Grease	mg/l	15.0
Total Recoverable Lead	mg/l	0.0816
pH	standard units	6.0-9.0

9.1.4.3.2.9 Sector N – Scrap Recycling and Waste Recycling Facilities

Benchmark Monitoring Requirements

Facilities identified by SIC code 5093 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Scrap Recycling and Waste Recycling Facilities (SIC Code 5093)		
Total Suspended Solids (TSS)	mg/l	100.0
Total Recoverable Aluminum	mg/l	0.750
Total Recoverable Copper	mg/l	0.0636
Total Recoverable Iron	mg/l	1.0
Total Recoverable Lead	mg/l	0.0816
Total Recoverable Zinc	mg/l	0.117
Oil and Grease	mg/l	15.0
Chemical Oxygen Demand (COD)	mg/l	120.0
pH	standard units	6.0-9.0

9.1.4.3.2.10 Sector O - Steam Electric Generating Facilities

Benchmark Monitoring Requirements

Facilities identified by Industrial Activity Code SE (Steam Electric Power Generating facilities) are required to analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Steam Electric Generating Facilities (Industrial Activity Code SE)		
Total Recoverable Iron	mg/l	1.0

pH	standard units	6.0-9.0

9.1.4.3.2.11 Sectors P – Land Transportation and Warehousing

Benchmark Monitoring Requirements

Facilities identified by SIC Codes 4011-4013, 4111-4173, 4212-4273, 4311and 5171 shall analyze grab samples for the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Land Transportation and Warehousing (SIC Codes 4011-4013, 4111-4173, 4212-4273, 4311and 5171)		
Oil and Grease	mg/L	15.0
Total Surfactants	mg/L	1.0
Total Suspended Solids	mg/L	100.0
pH	standard units	6.0-9.0

9.1.4.3.2.12 Sector Q – Water Transportation

Benchmark Monitoring Requiremen

Facilities identified by SIC codes 4412-4499 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Water Transportation Facilities (SIC Codes 4412-4499)		
Total Recoverable Aluminum	mg/l	0.75
Total Recoverable Iron	mg/l	1.0
Total Recoverable Zinc	mg/l	0.117
Total Recoverable Lead	mg/l	0.0816
pH	standard units	6.0-9.0

9.1.4.3.2.13 Sector S – Air Transportation

Benchmark Monitoring Requirements

Facilities identified by SIC codes 45xx shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Facilities at airports that use more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis: monitor only those outfalls from the airport facility that collect runoff from areas where deicing/anti-icing activities occur (SIC Codes 45xx)		
Biochemical Oxygen Demand (BOD_5)	mg/l	30.0
Ammonia	mg/l	19.0
Chemical Oxygen Demand (COD)	mg/l	120.0
pH	standard units	6.0-9.0

9.1.4.3.2.14 Sector U – Food and Kindred Products

Benchmark Monitoring Requirements

Facilities identified by SIC codes 2041-2048 and 2074-2079 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Grain Mill Products (SIC Codes 2041-2048)		
Total Suspended Solids (TSS)	mg/l	100.0
pH	standard units	6.0-9.0
Fats and Oils Products (SIC Codes 2074-2079)		

Biochemical Oxygen Demand (BOD_5)	mg/l	30.0
Nitrate plus Nitrite Nitrogen	mg/l	0.68
Total Suspended Solids (TSS)	mg/l	100.0
Chemical Oxygen Demand (COD)	mg/l	120.0
pH	standard units	6.0-9.0

9.1.4.3.2.15 Sector Y - Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries

Benchmark Monitoring

Facilities identified by SIC codes 3011-3069 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Tires and Inner Tubes; Rubber Footwear; Gaskets, Packing and Sealing Devices; Rubber Hose and Belting; and Fabricated Rubber Products, Not Elsewhere Classified (SIC Codes 3011-3069, rubber)		
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0

9.1.4.3.2.16 Sector Z - Leather Tanning and Finishing

Benchmark Monitoring

Facilities identified by SIC code 3111 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Leather Tanning and Finishing (SIC Code 3111)		
Total Kjeldahl Nitrogen	mg/l	1.5
pH	standard units	6.0-9.0

9.1.4.3.2.17 Sector AA – Fabricated Metal Product

Benchmark Monitoring

Facilities identified by SIC codes 3411-3471, 3479, 3482-3499 and 3911-3915 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
Fabricated Metal Products Except Coating (SIC Codes 3411-3471, 3482-3499, 3911-3915)		
Total Recoverable Aluminum	mg/l	0.750
Total Recoverable Iron	mg/l	1.0
Total Recoverable Zinc	mg/l	0.117
Nitrate plus Nitrite Nitrogen	mg/l	0.68
pH	standard units	6.0-9.0
Fabricated Metal Coating and Engraving (SIC Code 3479)		
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0

9.1.4.3.2.18 Coal Pile Runoff

Facilities that have discharges of storm water from coal storage piles regardless of a facility's sector of industrial activity shall analyze grab samples in accordance with the following parameters and shall not exceed the indicated Numeric Effluent Limitations. The coal pile runoff must not be diluted with other storm water flows in order to meet the Numeric Effluent Limitations indicated below. Persons subject to Numeric Effluent Limitations must be in compliance with these limitations through the duration of coverage

Parameter	Units	Numeric Effluent Limitation

Coal Pile Runoff		
Total Suspended Solids	mg/l	50.0
pH	standard units	6.0-9.0

9.1.4.4 Record Keeping

9.1.4.4.1 Records of all analytical monitoring shall include the following:

9.1.4.4.1.1 the date, exact place and time of sampling or measurement;

9.1.4.4.1.2 the name(s) of the individual(s) who performed the sampling or measurement as well as the procedures used for sample collection and preservation;

9.1.4.4.1.3 the date and time when the analysis of the samples took place along with the name of the individual(s) who performed the analysis;

9.1.4.4.1.4 references and written procedures, when available, for the analytical techniques or methods used; and

9.1.4.4.1.5 the results of such analyses, including the bench sheets, instrument read-outs, computer disks or tapes, used to determine these results.

9.1.4.4.1.6 In the event that analytical results exceed Benchmark Monitoring Concentration values or Numeric Effluent Limitations, the facility shall investigate the cause for such exceedance and the results of this investigation shall be documented. The results of the investigation shall identify potential sources of pollution, additional Best Management Practices (BMPs) necessary, revisions to the Industrial Material Management Section of the SWP, or identify other areas of the SWP that may require revision in order to meet the goal of the Benchmark Monitoring Concentration values. Background concentrations of specific pollutants may also be considered during the investigation.

9.1.4.4.2 Records of all quarterly visual monitoring shall include the following:

9.1.4.4.2.1 the date, outfall location and time of examination;

9.1.4.4.2.2 the name(s) of the individual(s) who performed the examination;

9.1.4.4.2.3 the nature of the discharge (i.e., runoff or snowmelt);

9.1.4.4.2.4 visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen and other obvious indicators of storm water pollution); and

9.1.4.4.2.5 probable sources of any observed storm water contamination.

9.1.4.5 Additional Monitoring

The Secretary may provide written notification to any facility, including those otherwise exempt from sampling requirements, requiring additional storm water monitoring.

9.1.4.6 Monitoring Waiver

9.1.4.6.1 The Department may waive specific monitoring requirements, as follows:

9.1.4.6.1.1 Adverse Climatic Conditions

9.1.4.6.1.1 When the permittee is unable to collect samples or perform visual examinations within a specific sampling period due to adverse climatic conditions, the permittee shall collect a substitute sample from a separate qualifying event in the next sampling period. Adverse weather conditions are those that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

9.1.4.6.2 Inactive or Unstaffed Facilities

When the permittee is unable to conduct the required monitoring at an inactive or unstaffed facility, the permittee may seek a Department approved waiver from the monitoring requirements as long as the facility remains inactive and unstaffed. The facility must maintain the Department approval letter with its Storm Water Plan (§9.1.1.5).

9.1.4.6.3 Benchmark Monitoring Waivers

Waivers from Benchmark Monitoring requirements are available to facilities whose discharges are below benchmark monitoring concentration values. On both a parameter by parameter and outfall by outfall basis, the permittee may petition the Department, after the completion of 4 consecutive sampling events, to be exempted from the subsequent 4 sampling events as long as the permittee provides verification that the following conditions have been met. However, a facility that conducts a significant process change must continue monitoring and may not use previous monitoring to demonstrate consistent attainment.

9.1.4.6.3.1 Samples were collected in four (4) consecutive monitoring periods and the parameter concentrations were below the benchmark monitoring concentration values indicated.

9.1.4.6.3.2 A waiver request is submitted and approved by the Department. The waiver request should include supporting monitoring data for 4 consecutive monitoring periods and a certification that based on current potential pollutant sources and Best Management Practices (BMPs) used, discharges from the facility are reasonably expected to be essentially the same (or cleaner) compared to when the monitoring for the 4 consecutive periods was completed.

9.1.4.6.3.3 Following the sampling suspension, sampling shall resume as specified in this Part.

9.1.5 Storm Water Plan (SWP)

9.1.5.1 Persons covered by this Subsection:

9.1.5.1.1 Who engage in industrial activities identified in §9.1.1.3.1.2, excluding those facilities classified as Industrial Activity Codes HZ and LF, shall develop and continually implement a Storm Water Plan (SWP). The SWP shall identify potential sources of pollutants, which may reasonably be expected to affect the quality of storm water discharges associated with industrial activities from a facility. In addition, the SWP shall describe and ensure the implementation of practices and programs which are used to reduce or eliminate the pollutants in storm water discharges associated with industrial activity at a facility and to assure compliance with the terms and conditions of this Subsection.

9.1.5.1.2 Who engage in industrial activities identified as Industrial Activity Codes HZ and LF shall, in place of the SWP, maintain at the site/central location of activities subject to the "*Delaware Regulations Governing Solid Waste"* (DRGSW), any certifications and/or approved plans for complying with the DRGSW.

9.1.5.1.3 Who engage in industrial activities identified by §9.1.1.3.1.1 (construction activities), shall comply with the provisions of §9.1.2.5 (Sediment and Stormwater Plan) of the Regulations.

9.1.5.2 The SWP shall be signed in accordance with this Subsection and maintained at the facility.

9.1.5.3 Persons covered by this Subsection shall retain records of all information required by the SWP (i.e., monitoring results, inspection reports, and any other documentation of compliance with this Subsection) for a minimum of five (5) years.

9.1.5.4 Keeping the SWP Current

Persons covered by this Subsection shall amend the SWP whenever:

9.1.5.4.1 there is a change in the design, construction, operation, or maintenance of activities associated with industrial activities conducted at the facility, which has a significant effect on the potential for the discharge of pollutants to the waters of the State;

9.1.5.4.2 the SWP proves to be ineffective in eliminating or significantly minimizing pollutants from Industrial Materials identified in §9.1.5.7.2.3, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity;

9.1.5.4.3 any sources or potential sources of pollution identified as a result of a facility's Inspection Program pursuant to §9.1.5.7.2.4; or

9.1.5.4.4 notified by this Department that the SWP does not adequately address the requirements of this Subsection, persons subject to this Subsection shall amend the SWP and submit these amendments to this Department within 30 days of notification. The notification from the Department shall list and describe deficiencies of the SWP. The Department may grant additional time for amending the SWP. This extension must be obtained from the Department in writing.

9.1.5.5 Failure to Prepare or Amend the SWP

In no event shall failure to complete or update a SWP in accordance with this Part relieve any persons covered under this Subsection of responsibility to implement actions required to protect the waters of the State, complete any actions that would have been required by such Storm Water Plan and to comply with all conditions of this Subsection.

9.1.5.6 SWP Deadlines

9.1.5.6.1 Existing Facilities

9.1.5.6.1.1 Facilities that were covered under the 1998 regulation who are continuing coverage under this Subsection shall update and implement any revisions to the SWP within 45 days of the effective date of this Subsection. Once updated, the SWP shall be submitted to the Department for review.

9.1.5.6.1.2.Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility must update and implement any revisions to the SWP within 30 days of the ownership change.

9.1.5.6.2 New Facilities

New facilities,facilities covered by an individual permit, and existing facilities not currently covered by a NPDES permit who elect to be covered under this Subsection must prepare and implement the SWP prior to submitting the NOI Form. The SWP must be submitted with the NOI form.

9.1.5.6.3 Extensions

Upon a showing of good cause, the Director may establish a later date in writing for the preparation and compliance with the SWP.

9.1.5.7 Contents of the SWP

Persons covered by this Subsection shall comply with the following requirements when developing and administering the SWP. The SWP shall include at a minimum, but not be limited to, the following items:

9.1.5.7.1 Facility Identification

The name, address, and telephone number of the individual who is responsible for development, implementation, maintenance and revision of the SWP.

9.1.5.7.2 Facility Assessment

9.1.5.7.2.1 Facility Description:

A narrative description must be developed to describe all activities and potential sources of pollutants that may reasonably be expected to add pollutants to storm water discharges or that may result in dry weather discharges from the storm water conveyance system. Examples include the following activities and potential sources when they are exposed to storm water:

9.1.5.7.2.1.1 loading and unloading areas (including areas where chemicals and other materials are transferred);

9.1.5.7.2.1.2 outdoor storage areas;

9.1.5.7.2.1.3 outdoor processing areas;

9.1.5.7.2.1.4 dust producing activities;

9.1.5.7.2.1.5 on-site waste disposal;

9.1.5.7.2.1.6 vehicle/equipment maintenance, cleaning and fueling areas;

9.1.5.7.2.1.7 liquid storage tanks;

9.1.5.7.2.1.8 railroad sidings, tracks, and rail cars; and

9.1.5.7.2.1.9 other.

9.1.5.7.2.2 Map of the Facility

All markings, delineations and designations on the map shall be clearly identifiable. A narrative description of the markings, delineations and designations shall accompany the facility map. The map shall identify:

9.1.5.7.2.2.1 all of the buildings at the facility;

9.1.5.7.2.2.2 the areas where Industrial Materials are stored, handled or used in processes and the types of Industrial Materials associated with each areas;

9.1.5.7.2.2.3 the drainage areas associated with each storm water discharge from the facility/ site and the associated ground cover;

9.1.5.7.2.2.4 all storm water related drainage and discharge structures including all conveyances systems and appurtenances;

9.1.5.7.2.2.5 any structural storm water controls (i.e. detention basins, secondary containment, storm water diversions);

9.1.5.7.2.2.6 all surface waters that receive storm water discharges from the facility;

9.1.5.7.2.2.7 directions of storm water flow;

9.1.5.7.2.2.8 locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes and liquid storage tanks;

9.1.5.7.2.2.9 locations of non-storm water discharges;

9.1.5.7.2.2.10 locations of the following activities where such activities are exposed to precipitation; processing and storage areas, access roads, rail cars and tracks, the location of transfer of substance in bulk and machinery;

9.1.5.7.2.2.11 location and source of runoff from adjacent property containing significant quantities of pollutants of concern to the facility (an evaluation of how the quality of the storm water running onto your facility impacts your storm water discharges may be included); and

9.1.5.7.2.2.12 locations of where major spills or leaks have occurred.

9.1.5.7.2.3 Inventory of Industrial Materials

An estimate of the yearly quantities of Industrial Materials handled by the facility, unless subject to Part 2. This inventory of materials shall list all of the types of materials handled at the site that potentially may be exposed to precipitation or runoff and that may be transported off-site or that may contaminate storm water.

9.1.5.7.2.4 Inventory of Spills and Leaks

Clearly identify areas where potential spills and leaks, which can contribute pollutants to storm water discharges, can occur and their accompanying drainage points. A list of substantial spills, leaks or residual deposits of Industrial Materials that have occurred within the last three years in areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility. The list shall be updated annually unless subject to Part 2.

9.1.5.7.3 Industrial Material Management

The Storm Water Plan shall describe storm water management controls appropriate for a facility and implementation of such controls. The appropriateness for implementing controls listed in the SWP must reflect identified potential sources of pollutants at the facility. The SWP must describe the location of existing non-structural and structural controls selected for the areas where industrial materials or activities are exposed to storm water. For areas where controls are not currently in place, the SWP must describe appropriate controls that will be used to control pollutants in storm water discharges.

The description of storm water management controls must, at a minimum, address the following and provide a reasonable schedule for implementing such controls:

9.1.5.7.3.1 Good Housekeeping Practices

The SWP shall identify the practices/programs used to define the ongoing maintenance and clean-up, as appropriate, of areas which may contribute pollutants to storm water discharges.

9.1.5.7.3.2 Preventative Maintenance Program

The SWP shall include a program that identifies qualified facility personnel to conduct inspections and maintenance of storm water management devices (structural controls) as well as inspections, testing, maintaining and repairing facility equipment and systems to avoid breakdowns and failures that may result in the exposure of industrial materials to storm water. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained on-site.

9.1.5.7.3.3 Spill Prevention and Response Measures

The SWP must describe the procedures that will be followed for cleaning up spills or leaks. The procedures and necessary spill response equipment must be made available to those employees who may cause or detect a spill or leak. Where appropriate, the plan must include an explanation of existing or planned material handling procedures, storage requirements, secondary containment, and equipment (e.g., diversion valves) that are intended to minimize spills or leaks at the facility. If applicable, the spill response plan shall address prevention and minimization of releases of oil and hazardous material into the storm water system. When required, the management of oil and hazardous material shall be performed in accordance with 40 CFR Part 117 and 7 **Del**.**C**. Chapters 60, 62, and 63.

The SWP shall identify a team of individuals responsible for implementing spill response procedures. Personnel identified as the spill response team are responsible for follow-up inspections to ensure that spills have been properly handled to meet environmental and safety standards.

9.1.5.7.3.4 Minimizing Exposure

Where practicable, industrial materials and activities should be protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt or runoff.

9.1.5.7.3.5 Erosion Control Practices

All facilities must evaluate the risk of soil erosion on their site that could contaminate storm water. At a minimum, the SWP must include a narrative that describes whether there is

reasonable potential for soil erosion of a significant amount at the site. Where reasonable potential exist, the permittee must include BMPs to prevent or minimize the potential for soil erosion on-site.

9.1.5.7.3.6 Best Management Practices

The SWP shall include a section that establishes BMPs to reduce the discharge and potential discharge of pollutants in storm water. Section 9.1.9 includes a list of BMPs for specific industrial activities. Facilities conducting activities described in Section 9.1.9 shall implement the corresponding BMPs, as appropriate. Those BMPs listed are considered the minimum set of required structural BMPs for a specific industrial activity. The permittee may select equivalent BMPs that provide the same result as those listed.

Nothing in Section 9.1.9 is intended to preclude the application of innovative treatment, source control, reduction or recycle, or operational BMPs that are not identified by this Part. The permittee may substitute equivalent/superior BMPs for those listed in Section 9.1.9 but must document the basis for the substitution in the SWP, and the permittee assumes the liability if the BMPs are not equivalent/superior to the SWP. Additional BMPs beyond those identified in Appendix B could be necessary to achieve compliance with standards. However, treatment BMPs that include the addition of chemicals to provide treatment must be approved by the Department prior to implementation

9.1.5.7.3.7 Additional Requirements for Salt Storage

The SWP shall provide that storage piles of salt (including pure salt or salt mixed with other materials) shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile.

9.1.5.7.3.8 Management of Runoff

The SWP must contain a narrative assessment of the appropriateness of all existing storm water management controls and practices at the facility. Based on an assessment of the potential of various sources at the site to contribute pollutants to storm water discharges, the SWP must provide that storm water management controls, determined to be reasonable and appropriate, are implemented and maintained.

9.1.5.7.3.9 Off-Site Vehicle Tracking

Off-site vehicle tracking of raw, final, or waste materials or sediments, and the generation of dust must be minimized. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas must be minimized.

9.1.5.7.4 Inspections. The SWP shall detail the following inspection programs. Results of each inspection shall be maintained with the SWP.

9.1.5.7.4.1 Routine Inspections

The facility shall conduct routine inspections of the equipment and areas of the facility designated in the SWP. The SWP shall identify the frequency for which these inspections are conducted. At a minimum, routine inspections shall be conducted once per quarter. These inspections shall ensure the proper operation of plant equipment and storm water controls. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained with the SWP. Any deficiencies noted shall be corrected as soon as practicable, but no later than 14 days after the inspection.

9.1.5.7.4.2 Comprehensive Site Evaluations

Persons subject to this Part shall conduct comprehensive site evaluations. The comprehensive site evaluations shall be used to assess the effectiveness of the current SWP. The evaluation(s) are in addition to the periodic inspections required by this Part. The evaluations may substitute for a periodic inspection if it is conducted during the regularly scheduled periodic inspection. The comprehensive site evaluations shall be conducted for the frequency indicated in the table below:

SIC Code/Industrial Activity Code	Compliance Evaluation Frequency
Sectors A, B, G, H, I, J, O, T, V, W, X, Y, Z, and AD	Annual

Sectors C, D, E, F, P, Q, R, S, U, AA, AB, and AC	Semi-annual [evaluations shall be conducted once in the fall (September-November) and once during the spring (April-June)]
Sectors M and N	Quarterly [evaluations shall be conducted at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December]

The evaluations shall be conducted by one or more qualified employees or contractor personnel, who are familiar with the industrial activities performed at the facility and the elements of the SWP, and shall evaluate:

9.1.5.7.4.2.1 areas identified in the Inventory of Industrial Materials of the SWP;

9.1.5.7.4.2.2 structural controls, including their maintenance and effectiveness;

9.1.5.7.4.2.3 non-structural controls, including good housekeeping measures and spill prevention;

9.1.5.7.4.2.4 storm water outfalls and reasonably accessible areas immediately downstream of each storm water outfall that is authorized under this Subsection; and

9.1.5.7.4.2.5 records required by this Subsection.

Records of each evaluation shall be maintained, indicating the following: date and time of the inspection; person(s) responsible for conducting inspection; findings of the inspection; and any corrective actions taken. Persons subject to this Part must correct any deficiencies noted during the inspection as soon as practicable, but no later than 14 days after the inspection.

9.1.5.7.4.3 Secondary Containment Inspections

A visual inspection by a facility employee shall be conducted before accumulated storm water is released from a secondary containment system. The secondary containment system shall be visually observed for color, foam, outfall staining, visible sheen and dry weather flow prior to release. Accumulated storm water shall be released if found to be uncontaminated by the material stored within the containment area. Records documenting the individual making the observation, the description of the accumulated storm water and the date and time of the release shall be maintained.

9.1.5.7.5 Monitoring Data

The SWP shall include a description of the monitoring program and sampling data for storm water discharges at the facility, in accordance with §9.1.4.

9.1.5.7.6 Training

Facility employees and contractor personnel that work in areas where Industrial Materials are used or stored shall be appropriately trained to meet the requirements of the SWP. Employee training shall be conducted and documented not less than once per year. Training should address topics such as spill response, good housekeeping practices, material management practices, truck wash out procedures, equipment washdown procedures, etc.

9.1.5.7.7 Non-Storm Water Certification

The SWP shall include the Non-Storm Water Certification required by §9.1.6.

9.1.5.7.8 Facility Security

Facilities shall have the necessary security systems to prevent an accidental or intentional discharge of hazardous material or oil through vandalism.

9.1.5.7.9 Additional Requirements for Facilities Subject to SARA III §313 (Water Priority Chemicals)

The SWP shall indicate that appropriate containment, drainage control and/or diversionary structures are provided in all areas where Water Priority Chemicals (WPCs) are stored, processed or otherwise handled. At a minimum, the appropriate preventive systems or its equivalent shall be used (an equivalent practice may be used if approved by the Department in writing for this purpose).

9.1.5.7.9.1 Storage locations for Non-liquid WPCs shall have roofs, covers or other forms of appropriate protection to prevent exposure of storage piles to storm water and wind; and

9.1.5.7.9.2 Storage locations for Liquid WPCs shall include secondary containment providing at least 110% of the entire contents of the largest single tank plus 6 inches to allow for precipitation.

9.1.5.8 Inadequate Industrial Material Management

If a continued transport of substantial amounts of Industrial Material through a facility's storm water discharges persists, the Department may requiretreatment of the contaminated storm water discharges along with limits for contaminant levels. If treatment of the contaminated storm water discharges or limits for contaminant levels is required, permit coverage through an individual NPDES Storm Water Permit may be required.

9.1.5.9 Consistency with Other Plans

The Storm Water Plan must comply with any other plans developed for the facility to control discharges of Industrial Materials into the environment.

9.1.5.10 Copy of Permit Requirements

Persons subject to this Part must include a copy of your letter indicating acquisition of coverage under this Subsection with the SWP.

9.1.6 Outfall Indentification

All persons conducting industrial activities identified in §9.1.1.3.1.2 with discharges that flow through a regulated outfall, shall identify each storm water outfall covered under this Subsection with a legible outfall tag or stencil. The mechanism for identification should be attached to an outfall pipe, stenciled on an outfall pipe, or posted in close proximity of the outfall area. The identification shall indicate the designated outfall number.

9.1.7 Non-Storm Water Discharges

9.1.7.1 Discharges to a storm water system of anything other than storm water, except those discharges described in subparagraph (9.1.7.2) below, shall either be eliminated or in compliance with an appropriate individual NPDES permit.

If non-storm water discharges to a storm water system occur, compliance with this Part must be attained by submitting a schedule to the Department within 15 days of identifying the non-storm water discharge, unless granted a written extension by the Department. The schedule shall indicate a sequence of steps which will either result in the elimination of the non-storm water discharge to the storm water system or that will result in obtaining an appropriate individual NPDES permit.

9.1.7.2 Industrial facilities that qualify for coverage under this Subsection may discharge the following non-storm water discharges, through outfalls identified in the SWP:

9.1.7.2.1 discharges from fire fighting activities and fire hydrant flushings;

9.1.7.2.2 uncontaminated potable water sources including waterline flushings;

9.1.7.2.3 lawn watering and similar irrigation drainage;

9.1.7.2.4 water from the routine external washing of buildings, conducted without the use of detergents or other chemicals;

9.1.7.2.5 water from the routine washing of pavement conducted without the use of detergents or other chemicals and where spills or leaks or toxic or hazardous materials have not occurred (unless a spilled material has been removed);

9.1.7.2.6 uncontaminated air conditioner condensate, compressor condensate, and condensate that externally forms on steam lines;

9.1.7.2.7 water from foundation or footing drains where flows are not contaminated with pollutants (e.g. process materials, solvents, and other pollutants);

9.1.7.2.8 springs and other uncontaminated ground water; and

9.1.7.2.9 mist discharges which originate from cooling towers (as long as the discharge has been evaluated for contaminated chemicals used in the cooling tower and determined that the levels of such chemicals in discharges would not cause or contribute a violation of applicable water quality standards).

9.1.7.3 The facility shall include a certification that the storm water discharges have been evaluated or tested for the presence of non-storm water discharges. Such certification shall be signed in accordance with §9.1.2.2 and shall be maintained with the SWP. The certification shall include:

9.1.7.3.1 the identification of potential sources of non-storm water at the site;

9.1.7.3.2 description of the results of any tests or evaluation for the presence of non-storm water discharges;

9.1.7.3.3 the evaluation criteria or testing method used;

9.1.7.3.4 the date of any testing or evaluation; and

9.1.7.3.5 the on-site drainage points that were directly observed during the test.

9.1.7.4 Any facility that is unable to provide the certification required by §9.1.7.3, shall notify the Department 60 days after submitting an NOI Form to be covered by this Subsection. If the failure to certify is caused by the inability to perform adequate tests for evaluations, such notification shall describe:

9.1.7.4.1 the procedure of any test conducted for the presence of non-storm water discharges;

9.1.7.4.2 the results of such test or other relevant observations;

9.1.7.4.3 potential sources of non-storm water discharges to the storm water conveyance system(s); and

9.1.7.4.4 why adequate tests for such storm water conveyance system(s) were not feasible.

9.1.8 Effective Date of Coverage Under This Subsection

9.1.8.1 Commencement of Coverage

Coverage under this Subsection begins when the Department has received and approved of notification pursuant to the NOI or "No Exposure" Certification requirements outlined in §9.1.3.

9.1.8.2 Duration of Coverage

Coverage under this Subsection shall be granted for a specific duration which will be determined by the Department. In no case shall coverage be valid for more than five years.

9.1.8.3 Re-notification

9.1.8.3.1 Any person wishing to extend or renew coverage under this Subsection must submit a new NOI Form or a new "No Exposure" Certification Form not less than 60 days prior to the expiration date of coverage, unless permission for a later date has been granted by the Department. In the event that the permittee submits a timely request to extend or renew existing coverage, and the Department through no fault of the permittee, is unable to make a final determination on the request before the expiration date of coverage, the terms and conditions of the existing coverage shall be continued and remain fully effective and enforceable until the Department makes a final determination on the request.

9.1.8.3.2 Any person subject to the provisions of this Subsection is required to submit a new NOI Form or a new "No Exposure" Certification Form in a timeframe specified by the Department upon re-promulgation of this Subsection.

9 DE Reg 1250 (2/1/06)

Part 2 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES

9.2 Definitions

"**Appropriate Plan Approval Agency**" means the Department, Conservation District, county, municipality, or State agency that is responsible for review and approval of the Sediment and Stormwater Plan.

"**Best Available Technology (BAT)**" means a level of technology based on the very best (State of the art) control and treatment measures that have been developed or are capable of being developed and that are economically achievable within the appropriate industrial category.

"**Best Management Practices (BMPs)**" means schedules of activities, prohibition of practices, maintenance procedures, and other management practices or measures to prevent or reduce the discharge of pollutants. BMPs include the following, among other practices and measures: structural and non-structural controls; treatment requirements; operating procedures and practices to control site runoff, or sludge disposal, or waste disposal, or spillage, or leaks, or drainage from raw materials storage.

"**Certified Construction Reviewer**" means those individuals, having passed a Department-sponsored or approved training course, who provide on-site inspection for sediment control and storm water management in accordance with the *Delaware Sediment and Stormwater Regulations*.

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

"**Clean Water Act (CWA)**" means 33 U.S.C. 1251 et seq. (formerly known as the Federal Water Pollution Control Act Amendment of 1972).

"**Co-permittee**" is a discharger of storm water associated with construction activity who is jointly and individually responsible for compliance with all conditions of this Part and applicable laws with another entity.

"**Construction Activity**" means clearing, grading and excavating activities that result in a land disturbance equal to or greater than one acre, including the disturbance of less than one acre of land that is part of a larger common plan of development or sale that will ultimately disturb more than one acre.

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

"**Discharge of Storm Water Associated with Construction Activity**" means a discharge of storm water from areas where soil disturbing activities (e.g. clearing, grading, or excavations), construction materials or equipment storage or maintenance (e.g. fill piles, borrow areas, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g. concrete or asphalt batch plants) are located.

"**Effective Date**" means the date when these regulations have formally passed through a public comment period, a public hearing and have been formally adopted by the Department and become operative.

"**Facility**" means any building, any structure, any complex of buildings or structures, or any process, production, equipment, or machinery, which makes it possible for any activity to be conducted.

"**Final Stabilization**" means that:

All soil disturbing activities at the site have been completed and either of the two following criteria are met:

A uniform (e.g. evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or

Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

When background native vegetation will cover less than 100% of the ground (e.g., arid areas, beaches), the 70% coverage criteria is adjusted as follows: if the native vegetation covers 50% of the ground, 70%of 50% (0.70 X 0.50 = 0.35) would require 35% total coverage for final stabilization. On a beach with no natural vegetation, no stabilization is required.

For individual lots in residential construction, final stabilization means that either:

The homebuilder has completed final stabilization as specified above, or

The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.

For construction projects on land used for agriculture purposes (e.g., pipelines across crop or range land, staging areas for highway construction, etc.) final stabilization may be accomplished by returning the disturbed land to its preconstruction agriculture use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to "water of the United States" and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) above.

"**Individual Permit"** means a permit which is written for one specific facility or site.

"**Municipal Separate Storm Water System**" means a conveyance system which is not intended to convey anything but storm water and is owned by a municipal or public entity.

"**Notice of Intent (NOI)**" serves as an application for NPDES permit coverage under this Part.

"**Notice of Termination (NOT)**" serves as an application for termination of NPDES permit coverage under this Part.

"**NPDES (National Pollutant Discharge Elimination System)"** means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits for the discharge of any pollutant or combination of pollutants and imposing and enforcing pretreatment and sludge requirements pursuant to Sections 307, 402, 318, and 405 of the Clean Water Act.

"**NPDES Permit"** means any permit authorizing the potential or actual point source discharge of pollutants to State waters, under prescribed conditions, pursuant to Section 6 of the State of Delaware "Regulations Governing the Control of Water Pollution."

"Operational Control" means the responsibility for managing a construction activity subject to the provisions of this Part.

"Operator" for the purpose of this Part, means any person associated with construction activity who has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications.

"**Permit Coverage**" means an authorization granted to a category of storm water discharges pursuant to this Subsection.

"Permittee" is a discharger of storm water associated with construction activity who is responsible for compliance with all conditions of this part and to whom coverage under this Part has been granted.

"Person" means any individual, partnership, corporation, association, institution, enterprise, municipality, commission, political subdivision, or duly established entity.

"**Project Completion**" occurs when all items and conditions of the Plan have been satisfied, as-built documentation has been approved by the Plan approval agency, and final stabilization has been achieved in accordance with the definition in this document. It is at project completion that permit coverage is terminated.

"**Secretary**" means the Secretary of the State of Delaware Department of Natural Resources and Environmental Control or his duly authorized designee.

"**Sediment and Stormwater Plan**" means a plan for the control of soil erosion, sedimentation, storm water quantity, and water quality impacts resulting from construction activity. For the purposes of this Part, a Sediment and Stormwater Plan is a plan developed in accordance with the requirements of the *Delaware Sediment and Stormwater Law* and *Regulations*.

"**Storm Water**" means run-on or runoff of water from the surface of the land resulting from precipitation or snow or ice melt.

"**These Regulations**" means the State of Delaware Special Conditions for Storm Water Discharges Associated with Construction Activity.

"**Total Maximum Daily Load"** or **"TMDL"** means the amount of a given pollutant that may be discharged to a waterbody from point, nonpoint and natural background sources and still allow attainment or maintenance of the applicable narrative and numerical water quality standards. A "TMDL" is the sum of the individual wasteload allocations or WLAs for point sources and load allocations or LAs for nonpoint sources of pollution and natural background. A "TMDL" may include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a "TMDL" attempts to match the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact.

"**Transferee**" means the person who accepts permit responsibility from the original permittee.

"**Transfer of Authorization**" means to transfer control of permitted construction activities to either a duly authorized person who will control the permitted activities, or a new owner/operator for the site for which the permit has been issued.

"**Transferor**" means the original permittee who transfers permit responsibility to another entity.

"**Waters of the State**" 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:

Waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean;

All interstate waters, including interstate wetlands;

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;

All impoundments of waters otherwise defined as waters of the State under this definition; and

Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (1) – (4).

Waste and storm water treatment systems that would otherwise meet this definition are not "waters of the State."

9.2.1 Coverage

9.2.1.1 Eligibility

The following discharges and activities are eligible for NPDES General Industrial Storm Water Permit coverage under this Part.

9.2.1.1.1 This Part covers all new and existing storm water discharges that are composed in whole or in part of discharges associated with construction activity [as defined by 40 Code of Federal Regulations (CFR), Section 122.26 (b)(14)(x), (15); see §9.1.02.0 DEFINITIONS]

9.2.1.1.2 Discharges from support activities (e.g., concrete or asphalt plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

9.2.1.1.2.1 The support activity is directly related to the construction site required to have NPDES permit overage for discharges of storm water associated with construction activity;

9.2.1.1.2.2 The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity it supports; and

9.2.1.1.2.3 Appropriate controls and measures are identified in a Sediment and Stormwater Plan covering the discharges from the support activity areas.

9.2.1.1.3 Discharges composed of allowable discharges listed in 9.2.1.1 and 9.2.6.2 commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.

9.2.1.1.4 Storm water discharges associated with construction activity at facilities which have permit coverage for a discharge other than storm water can be covered by this Part, or at the discretion of the Secretary, an existing individual permit may be amended to cover storm water discharges associated with construction activities.

9.2.1.2 Limits on Eligibility

The following discharges and activities are not eligible for NPDES General Industrial Storm Water Permit coverage under this Subsection.

9.2.1.2.1 Discharges of storm water associated with industrial activity fully addressed by facilities with individual NPDES permits.

9.2.1.2.2 Discharges of pollutants occurring in watersheds for which there is a Total Maximum Daily Load (TMDL) allocation for associated water bodies are not eligible for coverage under this Part unless the facility has an approved Sediment and Stormwater Plan (Plan) that is shown to reduce pollutant loading to the level required by the TMDL or to the maximum extent practicable. To be eligible under this Part, the facility must incorporate into their Plan any conditions applicable to their discharges necessary for consistency with any TMDL implementation plan or plan for achieving State surface water quality standards. For discharges not eligible for coverage under this Part, the discharger must apply for and receive an individual NPDES permit.

9.2.1.2.3 Discharges of pollutants in quantities that would cause or contribute to an exceedance of any applicable surface water quality standard for the receiving waters, including:

9.2.1.2.3.1 Discharges of substances or materials in amounts that are toxic, or that would be toxic to humans, fish, aquatic life, or wildlife;

9.2.1.2.3.2 Discharges of floatable debris, oils, scum, foam, or grease in other than trace amounts. Excluded from this are naturally occurring substances such as leaves and twigs provided no person has placed such substances in or near the discharge; and

9.2.1.2.3.3 Discharges that cause or contribute to degradation or loss of State designated beneficial uses of the receiving waters.

9.2.1.2.3.4 Discharges of materials other than storm water are prohibited and are not authorized by this Subsection.

9.2.1.2.3.5 Discharges of storm water from post-construction that originate from the site after project completion, including any temporary support activity.

9.2.1.2.3.6 Discharges mixed with non-storm water. This exclusion does not apply to discharges identified in 9.1.02.6(B).

9.2.1.2.3.7 Storm water discharges, allowable non-storm water discharges, and storm water discharge-related activities that are likely to jeopardize the continued existence of any species that are federally-listed as endangered or threatened ("listed") under the Endangered Species Act (ESA) or result in the adverse modification or destruction of habitat that is federally-designated as critical under the ESA ("critical habitat").

9.2.1.2.3.8 Storm water discharges, allowable non-storm water discharges, or storm water discharge-related activities that would cause a prohibited "take" of federally-listed endangered or threatened species (as defined under section 3 of the ESA and 50 CFR 17.3), unless such takes are authorized under sections 7 or 10 of the ESA.

9.2.1.2.3.9 Storm water discharges, allowable non-storm water discharges, or storm water discharge-related activities that would negatively affect a property that is listed or is eligible for listing in the National Historic Register.

9.2.1.3 Individual NPDES Permit Coverage

9.2.1.3.1 Any person covered by this Subsection may request to seek coverage under an individual permit by submitting an individual application (Form 1 and Form 2F*) as prescribed in Section 6 of the *Regulations Governing The Control of Water Pollution*. Coverage under this Subsection will continue until authorization for coverage under an individual permit has been issued to the person making the request.

Form 1: NPDES permit application containing general information about the applicant and facility. This form must accompany the NPDES permit application, Form 2F.

Form 2F: NPDES permit application to discharge storm water associated with industrial activity.

9.2.1.3.2 The Secretary may require any person covered by this Subsection to submit an application and seek coverage under an individual NPDES permit.

9.2.1.3.2.1 The Secretary shall notify a person in writing when an individual permit application is required. The notice shall include a brief statement of the reasons for the decision, an application, and a statement setting a deadline for the person to file the application. The Secretary shall notify the person in writing that permit coverage under this Subsection shall automatically terminate on the effective date of the individual NPDES permit that is issued to the person.

9.2.1.3.2.2 If a person fails to submit an individual permit application in compliance with a notice from the Secretary, the applicability of this Subsection to the person shall automatically terminate at the end of the day specified for application or NOI submittal.

9.2.1.3.3 When an individual NPDES permit is issued to a person for discharges otherwise covered by this Subsection, the applicability of this Subsection is automatically terminated on the effective date of the individual NPDES permit.

9.2.1.4 Authorization

To be authorized to discharge storm water under this Part, a person planning a construction activity must submit, in accordance with the requirements of §9.1.2.3, an NOI form prior to commencement of any construction activities. Unless notified by the Secretary to the contrary, persons who submit such notification and have either obtained approved Sediment and Stormwater Plans or have been deemed exempt in accordance with the *Delaware Sediment and Stormwater Law* and *Regulations*, are authorized to discharge storm water associated with construction activity under the terms and conditions of this Part.

9.2.1.5 Transfer of Authorization

9.2.1.5.1 Transfer of control of permitted activities at the site.

A person submitting an NOI who does not intend to control the permitted activities on the site shall transfer authorization under this Part, at least ten (10) days prior to any land disturbing activities, to a duly authorized person who will control the permitted activities. To transfer authorization under this Part, the facility must submit and receive written Department approval of a completed Transfer of Authorization form, signed by both the transferor and transferee.

9.2.1.5.2 Transfer of property to a new owner.

A permittee/transferor may transfer coverage under this Part to a new owner should ownership change during the construction period. To transfer authorization under this Part, the facility must submit and receive written Department approval of a completed Transfer of Authorization form, signed by both the transferor and transferee.

9.2.1.5.3 Obligations of the permittee/transferor.

The permittee/transferor must familiarize the person who is assuming control of the permitted activities, the transferee or new owner, with the program and provide the transferee/new owner with a copy of the Sediment and Stormwater Plan as required in §9.2.5. All conditions and obligations outlined in this Part will apply to the transferee/new owner upon transfer.

9.2.1.5.4 The Department will maintain guidance related to Transfer of Authorization.

9.2.1.6 Shared Operational Control (Co-Permittee Status)

9.2.1.6.1 Construction activities at a permitted site may become the responsibility of multiple persons when more than one person has operational control (see §9.2 Definitions) of the site. When multiple persons maintain operational control, all are considered co-permittees of the site.

9.2.1.6.2 A person submitting an NOI who will share control of the permitted activities on the site shall require a duly authorized person to submit to the Department a Co-Permittee form. The co-permittee condition shall become effective upon receipt and written Department approval of a completed Co-Permittee form, signed by both the original and subsequent co-permittee. If operational control will be shared by more than one additional co-permittee, a Co-Permittee form shall be submitted for all subsequent co-permittees.

9.2.1.6.3 The original permittee must familiarize the subsequent co-permittees with the program and provide the subsequent co-permittees with a copy of the Sediment and Stormwater Plan as required in §9.2.5. All conditions and obligations outlined in this Part will apply to the co-permittees upon completion of the Co-Permittee form.

9.2.1.6.4 The Department will maintain guidance related to Co-Permittees.

9.2.2 Standard Conditions

9.2.2.1 Entry and Inspection

Any person subject to this Subsection shall allow the Department to:

9.2.2.1.1 enter the facility subject to this Subsection during standard business hours;

9.2.2.1.2 inspect and copy at reasonable times, any records that must be kept under the conditions of this Subsection;

9.2.2.1.3 inspect at reasonable times any facilities or equipment; and

9.2.2.1.4 perform sampling of the storm water discharges from the site.

9.2.2.2 Signature Requirements

9.2.2.2.1 All Notice Of Intent (NOI) Forms shall be signed by:

9.2.2.2.1.1 a president, vice-president, secretary or treasurer for a corporation; or

9.2.2.2.1.2 a general partner or proprietor for a partnership or sole proprietorship; or

9.2.2.2.1.3 a principal executive officer or ranking official for a municipality or public agency.

9.2.2.2.2 All other reports or information required by this Subsection shall be signed by a person described above or by a duly authorized representative. A person is a duly authorized representative only if the authorization is made in writing by the person described above and is submitted to the Department.

9.2.2.2.3 Any person signing documents in accordance with this Subsection shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted 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 fine and imprisonment for willful violations."; and

"I certify under penalty of law that I understand the terms and conditions of the Delaware National Pollutant Discharge Elimination System (NPDES) Special Conditions for Storm Water Discharges Associated with Construction Activities."

9.2.2.3 Proper Procedures

Any person subject to this Subsection shall at all times properly operate and maintain all facilities, systems and practices of pollution control which are installed, or implemented to achieve compliance with the requirements of this Subsection and with the measures of the Sediment and Stormwater Plan.

9.2.2.4 Duty to Mitigate

Any person subject to this Subsection shall take all reasonable steps to minimize or prevent any discharge of pollutants in violation of this Subsection.

9.2.2.5 Adverse Impacts

Any person subject to the requirements of this Subsection shall take all reasonable steps to minimize any adverse impact to State waters, including such accelerated or additional monitoring as necessary to determine the nature and extent of the non-complying discharge.

9.2.2.6 Transfers

Coverage under this Part is transferable. Coverage under this Part shall be transferred in accordance with the provisions outlined in §9.2.1.5.

9.2.2.7 Continuation of Expired Coverage

The requirements of this Part shall continue in force and effect until this Part is re-promulgated.

9.2.2.8 Other State or Federal Laws

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

9.2.2.9 Penalties for Violations

Any person who violates conditions of this Subsection may be subject to penalties in accordance with 7 **Del.C.** Chapter 60. Violation of this Subsection is also a violation of the Clean Water Act and may be subject to penalties established under that statute.

9.2.2.10 Oil and Hazardous Substance Liability

Nothing in this Subsection shall preclude the institution of any legal action or relieve any person from any responsibilities, liabilities, or penalties to which a person is or may be subject under 40 C.F.R. Part 117 or 7 **Del.C.** Chapters 60, 62 or 63.

9.2.2.11 Need to Halt or Reduce Activity Not a Defense

Persons subject to this Part may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the construction activity subject to this Part to maintain compliance with the conditions of this Part.

9.2.2.12 Property Rights

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

9.2.2.13 Severability

The provisions of this Part are severable, and if any provision of this Part, or the application of any provision of this Part to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Part shall not be affected thereby.

9.2.3 Notification

9.2.3.1 Deadlines

9.2.3.1.1 New Projects

Any person who intends to obtain coverage under this Part for storm water discharges associated with construction activity, commencing after the effective date of this Part, must submit a Notice of Intent (NOI) Form in accordance with this Part prior to the onset of construction as a condition of approval of the Sediment and Stormwater Plan.

9.2.3.1.2 Permitted Ongoing Projects

9.2.3.1.2.1 Any person who has or had permit coverage for storm water discharges associated with construction activity immediately prior to the effective date of this Part, who wishes to continue coverage must submit a new Notice of Intent (NOI) within 90 days of re-promulgation of this Part.

9.2.3.1.2.2 Any person who has or had permit coverage for storm water discharges associated with construction activity prior to the effective date of this Part, and meets the termination of coverage requirements in accordance with § 9.2.7.2 must submit a Notice of Termination (NOT) within 90 days of re-promulgation of this Part.

9.2.3.1.3 Unpermitted Ongoing Projects

For any person subject to this Part who has or had not obtained permit coverage for storm water discharges associated with construction activity taking place prior to the effective date of this Part, authorization to discharge under the renewed Part occurs at the time that the NOI is submitted. The Department reserves the right to seek enforcement action for any unpermitted discharges or noncompliance that occurs between commencement of construction and discharge authorization.

9.2.3.1.4 Late Notification

Any person subject to this Part is not precluded from submitting an NOI in accordance with the requirements of this Part after initiating construction activities. Authorization to discharge occurs at the time that the NOI is submitted. The Department reserves the right to seek enforcement action for any unpermitted discharges or noncompliance that occurs between commencement of construction and discharge authorization.

9.2.3.2 Contents of the Notice of Intent (NOI) Form

The Notice of Intent (NOI) shall be submitted on a form provided by the Department. The NOI shall include, at a minimum, the following information.

9.2.3.2.1 Applicant information including the operator name, contact person, mailing address, and telephone number;

9.2.3.2.2 Project information including the project name, location, county, and municipality, if applicable;

9.2.3.2.3 The project type and proposed methods of permanent storm water management;

9.2.3.2.4 The latitude and longitude of the facility;

9.2.3.2.5 The name of the receiving waters or municipal separate storm water system;

9.2.3.2.6 The plan approval agency name;

9.2.3.2.7 The total land area and the estimated area to be disturbed; and

9.2.3.2.8 The estimated construction start and project completion dates.

9.2.3.3 Additional Information

When any person subject to this Part becomes aware that any relevant facts were omitted or submitted incorrectly on the NOI Form, or any other records required by this Part, that person shall promptly submit such corrected information to the Department.

9.2.3.4 Where to Submit

Persons intending to obtain permit coverage under this Part must submit an NOI Form to the following address:
The Department of Natural Resources and Environmental Control
Division of Soil and Water Conservation
Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

9.2.3.5 Fees

The completed NOI Form must be accompanied by the appropriate fee required by the Department and established by the State regulations to be considered complete.

9.2.3.6 Failure to Notify

Persons who discharge storm water associated with construction activity, who fail to notify the Department of their intent to be covered under this Part, and who discharge to waters of the State without an individual NPDES permit, are in violation of 7 **Del.C.** Chapter 60 and the federal Clean Water Act and may be subject to penalties.

9.2.4 Monitoring

9.2.4.1 Effluent Limitations

The Department has not established specific effluent limitations for storm water discharges associated with construction activity. Therefore, this Part establishes effluent limitations in terms of performance standards established with the Best Available Technology (BAT) for erosion and sediment control and storm water management. Compliance with BAT associated with the *Delaware Sediment and Stormwater Regulations,* and/or Sediment and Stormwater Program standards and specifications, guidance, and policy will constitute compliance with effluent limitations for storm water discharges associated with construction activity.

9.2.4.2 For the purposes of monitoring, persons subject to this Part must:

9.2.4.2.1 During construction, maintain at the site the approved Sediment and Stormwater Plan (see §9.2.5).

9.2.4.2.2 Conduct the following:

9.2.4.2.2.1 weekly maintenance inspections of erosion and sediment controls, and constructed storm water management measures; and

9.2.4.2.2.2 inspections of erosion and sediment controls and storm water management practices the next business day after a rainfall event that results in runoff.

9.2.4.3 Record Keeping

9.2.4.3.1 During construction, persons subject to this Part must maintain at the site, written reports of all inspections conducted in accordance with item B above, that include:

9.2.4.3.1.1 the date and time of the inspection;

9.2.4.3.1.2 the name(s) of the individual(s) who performed the inspection;

9.2.4.3.1.3 as assessment of the condition of erosion and sediment controls, and constructed storm water management measures;

9.2.4.3.1.4 a description of any erosion and sediment control and storm water management measures construction or implementation and maintenance performed on those measures; and

9.2.4.3.1.5 a description of the site's present phase of construction.

9.2.4.3.2 Persons subject to this Part shall maintain all inspection reports, notices of violations, enforcement actions, and correspondence issued by the Department, its authorized agents, the appropriate plan approval agency, or a required Certified Construction Reviewer.

9.2.4.3.3 Reporting Requirements

Persons subject to this Part must retain the records described in §9.2.4.2.1, and §9.2.4.3 and submit the information upon request to the Department at the following address:
The Department of Natural Resources and Environmental Control
Division of Soil and Water Conservation
Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

9.2.4.4 Additional Monitoring

The Secretary may provide written notification to any facility, requiring additional monitoring.

9.2.5 Sediment And Stormwater Plan (Plan)

9.2.5.1 Persons covered by this Part shall develop, fully implement, and maintain at the site, the approved Sediment and Stormwater Plan (Plan) and any other records that are required in accordance with 7 **Del.C.** Chapter 40 and the *Delaware Sediment and Stormwater Regulations*. The Plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with Delaware Erosion and Sediment Control Handbook standard and specification for Construction Site Pollution Prevention, shall be incorporated into the Plan for construction activity.

9.2.5.2 The Plan shall be signed in accordance with this Part and kept at the facility.

9.2.5.3 Persons covered by this Part shall retain records of all information required by the Plan for a minimum of five (5) years.

9.2.5.4 Keeping the Plan Current

9.2.5.4.1 Persons covered by this Part shall amend the Plan whenever:

9.2.5.4.1.1 There is a change in the design, construction, operation, or maintenance of erosion and sediment controls or storm water management measures on the site; or

9.2.5.4.1.2 The Plan proves to be ineffective in eliminating or significantly minimizing the discharge of pollutants, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity; or

9.2.5.4.1.3 To address any sources or potential sources of pollution identified as a result of a site inspection pursuant to §9.2.4.2; or

9.2.5.4.1.4 Upon notification by the Department or the appropriate plan approval agency that the Plan does not adequately address the requirements of this Part. The notification from the Department or the appropriate plan approval agency shall list and describe the deficiencies of the Plan.

9.2.5.4.2 Persons subject to §9.2.5.4.1.1 shall amend the Plan and submit these amendments to the Department or appropriate plan approval agency and receive approval for the amendments prior to construction or modification of the erosion and sediment controls or storm water management measures on the site.

9.2.5.4.3 Persons subject to subsections 9.2.5.4.1.2, 9.2.5.4.1.3, and 9.2.5.4.1.4 shall amend the Plan and submit these amendments to the Department or appropriate plan approval agency and receive approval for the amendments within 30 days of notification by the persons subject to this Part, inspector, Certified Construction Reviewer, Department, or appropriate plan approval agency that the current Plan is inadequate. The Department may grant additional time for amending the Plan. A written request for an extension shall be made by the person subject to this Part to the Department.

9.2.5.4.4 Under the requirements of the *Delaware Sediment and Stormwater Law* and *Regulations*, the Plan remains valid for three (3) years following the date of approval. If construction continues beyond that three-year time period, an extension or renewal of the Plan may be granted by the Department or the appropriate plan approval agency. Unless the plan is extended or renewed, the plan is considered expired and any construction activity that occurs after the expiration date occurs in violation of the *Delaware Sediment and Stormwater Law* and *Regulations* and this Part. For the purposes of this Part, permit coverage is only valid within the three (3) year period as long as construction activity is taking place.

9.2.5.5 Failure to Prepare or Amend Plan

In no event shall failure to complete or update a Plan in accordance with this Part relieve any persons covered under this Part of responsibility to implement actions required to protect the waters of the State, complete any actions that would have been required by such Plan, and to comply with all conditions of this Part.

9.2.5.6 Sediment and Stormwater Plan Deadlines

The Plan must be approved, and the NOI Form submitted to the Department, prior to the onset of construction activity at the site for which coverage has been granted. Failure to obtain an approved Plan prior to construction activity constitutes a violation of the *Delaware Sediment and Stormwater Law* and *Regulations* and this Part.

9.2.6 Non-storm Water Discharges

9.2.6.1 Discharges to a storm water system of anything other than storm water, except those discharges described in subparagraph (B) below, shall either be eliminated or in compliance with an appropriate individual NPDES permit.

9.2.6.2 Industrial facilities that qualify for coverage under this Subsection may discharge the following non-storm water discharges, through outfalls identified in the Plan:

9.2.6.2.1 discharges from fire fighting activities and fire hydrant flushings;

9.2.6.2.2 uncontaminated potable water sources including waterline flushings;

9.2.6.2.3 lawn watering and similar irrigation drainage;

9.2.6.2.4 water from the routine external washing of buildings, conducted without the use of detergents or other chemicals;

9.2.6.2.5 water from the routine washing of pavement conducted without the use of detergents or other chemicals and where spills or leaks or toxic or hazardous materials have not occurred (unless a spilled material has been removed);

9.2.6.2.6 uncontaminated air conditioner condensate, compressor condensate, and condensate that externally forms on steam lines;

9.2.6.2.7 water from foundation or footing drains where flows are not contaminated with pollutants (e.g. process materials, solvents, and other pollutants);

9.2.6.2.8 springs and other uncontaminated ground water; and

9.2.6.2.9 mist discharges which originate from cooling towers (as long as the discharge has been evaluated for contaminated chemicals used in the cooling tower and determined that the levels of such chemicals in discharges would not cause or contribute a violation of applicable water quality standards).

9.2.7 Effective Date Of Coverage

9.2.7.1 Commencement of Coverage

Coverage under this Part begins when the Department has been notified pursuant to the provisions outlined in §9.2.3 of this Part.

9.2.7.2 Termination of Coverage

Coverage under this Part continues until a completed Notice of Termination (NOT) form has been submitted to the Department or appropriate plan approval agency and it is determined by the Department or appropriate plan approval agency that:

9.2.7.2.1 All items and conditions of the Plan have been satisfied in accordance with the *Delaware Sediment and Stormwater Regulations*,

9.2.7.2.2 As-built documentation verifies that the permanent stormwater management measures have been constructed in accordance with the approved Plan and the *Delaware Sediment and Stormwater Regulations*, and

9.2.7.2.3 Final stabilization has been achieved in accordance with the definition in 9.2.

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9.3 Regulations Governing Discharges from Aquaculture or Aquatic Animal Production Facilities (Reserved)

9.4 Regulations Governing Discharges from the Clean Up of Gasoline and Fuel Oil Released from Underground Storage Tanks (Reserved)

9.5 The Concentrated Animal Feeding Operation (CAFO)

9.5.1 Authority, Purpose and Scope

9.5.1.1 Authority. These regulations are promulgated pursuant to the authority provided by 3 **Del.C.** §2200 et.al. and 7 **Del.C.** §6000 et.al, and 40 CFR 122 and 412.

9.5.1.2 Purpose. The purpose of these regulations is to establish requirements for certain animal feeding operations defined as a Concentrated Animal Feeding Operation (CAFO) in order to protect water quality from activities associated with CAFO management, to sustain and provide a profitable agricultural industry and to help meet or exceed federally mandated water quality standards.

9.5.1.3 Scope. CAFOs, as defined in §9.5.2.0 or as designated in §9.5.3.2 of these regulations are point sources subject to NPDES CAFO permitting requirements. Once an animal feeding operation (AFO) is defined as a CAFO for one type of animal, the NPDES requirements for CAFOs apply to all animals as referenced in these regulations that are held in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals.

9.5.2 Definitions

9.5.2.1 For purposes of these regulations, the following words or terms shall have the meanings as indicated:

"Adequate Storage" for liquid and solid manure systems, means the provision of at least four months holding capacity of liquid or solid manure in accordance with State Technical Standards.

"Agricultural Storm Water Exemption" means a precipitation related exempt discharge of manure, litter or process wastewater. The discharge is exempt provided the manure, litter or process wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater, which minimize nitrogen and phosphorus movement to surface waters. The agricultural storm water exemption does not apply to discharges from the production area.

"Animal Feeding Operation" or **"AFO"** means a facility (other than an aquatic animal production facility) where the following conditions are met: (1) Animals (other than aquatic) as referenced in §9.5.3.1.1 and §9.5.3.1.2 of these regulations that have been, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and (2) the animal confinement areas do not sustain crops, vegetation, forage growth or post-harvest residues in the normal growing season. (3) Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals in an operation, if the production areas adjoin each other or if the AFOs use a common area or system for the disposal of wastes. (For example, facilities or production areas that are commonly managed, co-located and share manure storage systems are considered a single AFO. A poultry operation with many facilities in a single location or address is deemed a single AFO).

"Animal Waste Management Plan" means a plan written in accordance with State Technical Standards that documents and recommends a combination of conservation practices and management measures for the handling, storage, treatment and management of any or all of the following for use in connection with animal wastes, manures, composted dead animals, or process wastewater from any animal feeding operation.

"Applicant" means any person seeking and or required to obtain a CAFO NPDES permit.

"Apply," "applying," or any variation of the word "apply," as it relates to the application of nutrients, means the human controlled mechanical conveyance of nutrients to land for the purpose of applying organic or inorganic nutrients.

"Application Area" means land under the control of an AFO owner or operator, whether it is owned, licensed, or leased to which manure, litter or process wastewater from the production area is or may be applied.

"Best Available Technology Economically Achievable (BAT)" means those factors involved in assessing the implementation of the best available technology including cost to achieve required effluent reductions, the age of equipment or technology being implemented, process involved, process changes, engineering aspects of the application of various types of control techniques, non-water quality environmental impact, and other such factors as deemed appropriate by the Secretary and in accordance with State Technical Standards.

"Best Conventional Pollutant Control Technology (BCT)" means those factors related to the assessment of best conventional pollutant control technology including consideration of the reasonableness of the relationship between costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from the discharges, process employed, process changes, engineering aspects of the application of various types of control techniques, non-water quality environmental impact and other such factors as deemed appropriated by the Secretary and in accordance with State Technical Standards.

"Best Management Practices" or **"BMP"** means those practices that have been approved by the Delaware Nutrient Management Commission and meet State Technical Standards. Best Management Practices (BMPs) are recommended activities which enhance agronomic results, benefit the environment, and prevent or reduce pollution to Waters of the State. BMPs are not to be interpreted as mandatory implementation actions of a plan (e.g., Pre-side dress Soil Nitrate Test, cover crops, vegetative buffer strips, litter additives, manure incorporation, timing/method, etc.) unless specified in the nutrient management plan, animal waste management plan, or site-specific practices described in §9.5.5.

"Best Practicable Control Technology Currently Available (BPT)" means those factors relating to the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, age of equipment and facilities, processes, process changes, engineering aspects of the application of various types of control techniques, non-water quality environmental impacts, and other such factors deemed appropriate by the Secretary and in accordance with State Technical Standards.

"Catastrophic Mortalities" means any mortality that exceeds the designed disposal system capacity, as described in State Technical Standards, to accommodate losses within 24 hours. Most disposal systems are designed to handle the normal anticipated mortality. If enough animals are lost and the disposal system cannot hold them all without causing serious disruption in the disposal process, then it is a catastrophic loss.

"Certified Nutrient Consultant" means a person who is approved by the Delaware Nutrient Management Commission to engage in the activities of advising or consulting with another person who is required to have a certificate under the *Delaware Nutrient Management Regulations*, regarding the formulation, application, or scheduling of organic or inorganic nutrients within Delaware. Provided however any employee of any federal, State or local government agency or the University of Delaware, or other organization duly recognized by the Commission for such purpose, who provides advice or consultation in his capacity as such an employee, without compensation, shall not be deemed to be a nutrient consultant unless such advice and consultation constitutes a direct and substantial part of a nutrient management plan developed pursuant to these regulations.

"**Concentrated Animal Feeding Operation**" or **"CAFO"** means an animal feeding operation (AFO) subject to the terms and conditions of these regulations and defined as a "Large CAFO", or a "Medium CAFO", or "Designated" as a CAFO in accordance with §9.5.3.2 of these regulations.

"Delaware Nutrient Management Commission," "**DNMC"**, or "**Commission"** means the Commission established by 3 **Del.C.** §2220 "or its designee."

"Department" means the Delaware Department of Natural Resources and Environmental Control who shall administer the program with the assistance of the Delaware Department of Agriculture.

"Discharge of a Pollutant" or **"discharge"** means the addition of any pollutant or combination of pollutants, to state waters or the ocean, from any source or activity other than a vessel or other floating craft when being used as a means of transportation and in compliance with the Clean Water Act. This definition includes, but is not limited to additions of pollutants into State waters from: (1) Surface runoff that is collected or channeled by man; (2) Discharges through pipes, sewers, and other conveyances which do not lead to a treatment works; and (3) Discharges through pipes, sewers, or other conveyances, leading into a treatment works other than a publicly owned treatment works (POTW).

"Drainage Ditch" means a constructed or reconstructed watercourse with a drainage area less than 800 acres. A constructed or reconstructed watercourse with a drainage area greater than 800 acres is considered a stream.

"Effluent Limitation" means any restrictions, prohibitions, or permit requirements established under State or Federal law, including but not limited to, standards of performance for new sources, best management practices or BMPs, effluent standards and ocean discharge criteria on the quantities, rates, and concentrations of the chemical, physical, biological, or other constituents discharged into state waters.

"Freeboard Action Level" means the liquid level within a lagoon or other liquid storage structure that indicates the structure is full and requires that immediate steps be taken to transfer liquid out of the waste storage structure.

"Ground Water" means any water naturally found under the surface of the earth.

"Inorganic Fertilizer(s)" means a fertilizer comprised of chemically synthesized plant nutrient elements that are essential for plant growth and include at least nitrogen or phosphorus.

"Land Application Area" is equivalent to "Application Area".

"Linear Rate" means an approach that expresses rates of application of nutrients as pounds of nitrogen and phosphorus, as described in State Technical Standards.

"Liquid Manure" means less than 12% solids. Wash water, runoff, precipitation, and so forth are added, if needed to dilute the manure and lower the solids content.

"**Manure**" means fecal and urinary defecations of animals as referenced in §9.5.3.1.1 and §9.5.3.12, and may include, but is not limited to comingled spilled feed, bedding, soil, and compost.

"Manure and processed wastewater application setbacks" means the distance between the land application area and any down-gradient surface waters.

"Maximum Operating Level" means the maximum operating level for liquid waste storage ponds and shall be the pond level that provides for the required volume less the volume contribution of

precipitation and runoff from the 25-year, 24-hour storm event plus the volume allowance for residual solids after liquids have been removed.

"Narrative Rate" means an approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, as described in the State Technical Standards.

"New Discharger" means any building, structure, facility or installation:

- Which prior to August 13, 1979, had not discharged pollutants;
- Which had never received a final effective NPDES permit for discharges at that site;
- From which there is or may be a new or additional discharge of pollutants; and
- Which does not fall in the definition of "new source".

"New Source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commences:

- After promulgation of standards of performance under §306 of the Act which are applicable to such source; or
- After proposal of standards of performance under §306 of the Act which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal. In addition, any building, structure, facility or installation constructed after the effective date of these regulations must also meet the siting criteria described in §7.0 of these regulations.

"NPDES" or **"National Pollutant Discharge Elimination System"** means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of any pollutant or combination of pollutants and imposing and enforcing pretreatment and sludge requirements pursuant to the Clean Water Act.

"Notice of Intent" or **"NOI"** means the form used to serve as a notification of the intention of the facility identified on the form to adhere to the provisions of these regulations.

"Nutrient Management Plan" or **"Plan"** means a plan written by a certified nutrient consultant in accordance with State Technical Standards to manage the amount, placement, timing and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turf grass.

"Nutrients" means nitrogen, phosphorus, and any other elements necessary for or helpful to plant growth.

"Operator" means any person in control of, or having responsibility for, the operation of the CAFO.

"Overflow" means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained in the structure.

"**Owner"** means any person who owns a CAFO.

"Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons, whether incorporated or not.

"Pollutant" means for the purposes of these regulations any substance, which causes or contributes to, or may cause or contribute to, the degradation of water, and soil resources. Examples may include, but are not limited to excess nutrients, chemicals, toxic substances, industrial, municipal or agricultural wastes, etc.

"Process Wastewater" means any water directly or indirectly used in the operation of an AFO including, but not limited to spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits; direct contact swimming, washing, or spray cooling of animals; dust control; or any water which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

"Production Area" means, unless otherwise modified in this document, that part of an AFO that includes the "animal confinement area", the "manure storage area", the raw materials storage area and the "waste containment areas", egg washing or processing facility and any area used in the storage, handling, treatment or disposal of mortalities. Animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. Manure Storage Area includes but is not limited to lagoons, runoff ponds, storage sheds, and stockpiles, under house or pit storages, liquid impoundments, static piles, and composting

piles. Waste Containment Area includes but is not limited to settling basins, and areas within berms and diversion which separate uncontaminated storm water.

"Realistic Yield Goals" means the expected crop yields based on the best four (4) out of seven (7) years of recorded data. Yield goals higher than the average require written justification from a certified nutrient consultant. Without actual crop yield data, use realistic yield goals in accordance with State Technical Standards.

"Secretary" means the Secretary of the Delaware Department of Natural Resources and Environmental Control (or his/her designee), who shall administer the program with the assistance of the Secretary of the Delaware Department of Agriculture (or his/her designee).

"State Nutrient Management Law" means the law and associated regulations authorized in 3 **Del.C.** §2200 et.al.

"State Nutrient Management Program" or "**SNMP**" means all the nutrient management program elements developed by the Delaware Nutrient Management Commission, whether or not reduced to rules or regulations.

"State Technical Standards" means those technical standards established by the Secretary and in consultation with a collaborative group of technical experts representing technical resources and endorsed by the Delaware Nutrient Management Commission. State Technical Standards are available at the Department.

"State Waters" or **"Waters of the State"** means all water, on the surface and under the ground, wholly or partially within, or bordering the State, or within its jurisdiction including but not limited to: (1) waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean; (2) all interstate waters, including interstate wetlands; (3) all other Waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sand flats, wetlands, sloughs, or natural or impounded ponds; (4) all impoundments of waters otherwise defined as Waters of the State under this definition; (5) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in the above four statements. (6) Waste and storm water treatment systems or waste storage structures including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds which otherwise meet the requirements of this definition) are not "State waters" or "Waters of the State."

"Stockpiling" means the temporary location of manure piles in the production area for no more than 14 days unless the manure/litter is located under cover in an approved Manure Storage Structure. Stockpiling must be conducted and positioned in accordance with State Technical Standards.

"Stormwater" means runoff from rain, snow or other forms of precipitation resulting in surface runoff and drainage.

"Storm Water Treatment System" means a system of vegetative, structural, and other facilities or measures that control the volume, conveyance and rate of storm water runoff, and manage water quality impacts of storm water runoff. This may include constructed wetlands developed for the purpose of storm water runoff management.

"Temporary Field Staging" means the location of manure in a field for 90 days or less prior to its application in the land application area. Temporary Field Staging criteria and performance standards are further described in State Technical Standards.

"Vegetated Buffer" means a permanent strip of dense perennial vegetation naturally occurring or established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters. For the purposes of these regulations, vegetated buffers will be measured from the top of the bank of the water body that is being buffered.

"Water Quality Standard" means any rule or limit established by the Secretary of the Department of Natural Resources and Environmental Control which consists of a designated use or uses for Waters of the State and the water quality criteria for such waters based upon such designated uses.

"25-Year, 24-Hour Rainfall Event" means the runoff event produced by a storm having an annual probability of occurrence of 4%, as defined by the *National Weather Service Technical Paper Number 40, "Rainfall Frequency Atlas of the United States"(as amended)*, equivalent to regional or

state rainfall probability information developed there from, or a rain event resulting in 6.0 inches of rainfall for New Castle county, 6.5 for Kent county and 6.7 for Sussex county in a 24-hour period.

"100-Year, 24-Hour Rainfall Event" means the runoff event produced by a storm having an annual probability of occurrence of 1%, as defined by the National Weather Service Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", equivalent to regional or state rainfall probability information developed there from, or a rain event resulting in 8.0 inches of rainfall for New Castle county, 8.9 for Kent county and 9.2 for Sussex county in a 24-hour period.

9.5.3 Applicability

9.5.3.1 The CAFO NPDES permit requirements described in these regulations shall apply to any person who owns or operates a CAFO where animal manure is, has been or will be generated. An Animal Feeding Operation (AFO) is a CAFO if the number of animals equal or exceed the following criteria:

9.5.3.1.1 An Animal Feeding Operation (AFO) is a Large CAFO if the number of animals equal or exceed the following criteria:

1,000	Cattle other than mature dairy cows or veal calves. Includes but is not limited to heifers, steers, bulls, and cow/calf pairs.
700	mature dairy cattle (whether milked or dry cows),
2,500	swine each weighing over 55 pounds,
10,000	swine weighing under 55 pounds,
500	horses,
10,000	sheep or lambs,
55,000	turkeys,
30,000	laying hens or broilers, if the AFO uses a liquid manure handling system,
125,000	chickens except laying hens (if other than a liquid manure handling system),
82,000	laying hens (if other than a liquid manure handling system),
1,000	veal calves.
30,000	ducks (if the AFO uses other than a liquid manure handling system),
5,000	ducks (if the AFO uses a liquid manure handling system).

9.5.3.1.2 An Animal Feeding Operation (AFO) is a Medium CAFO if

9.5.3.1.2.1 The number of animals equal or exceed the following criteria; and

300 to 999	Cattle other than mature dairy cows or veal calves. Includes but is not limited to heifers, steers, bulls, and cow/calf pairs.
200 to 699	mature dairy cattle (whether milked or dry cows),
750 to 2,499	swine each weighing over 55 pounds,
3,000 to 9,999	swine weighing under 55 pounds,
150 to 499	horses,
3,000 to 9,999	sheep or lambs,
16,500 to 54,999	turkeys,
9,000 to 29,999	laying hens or broilers, if the AFO uses a liquid manure handling system,
37,500 to 124,999	chickens except laying hens (if other than a liquid manure handling system),
25,000 to 81,999	laying hens (if other than a liquid manure handling system),
300-999	veal calves.
10,000 to 29,999	ducks (if the AFO uses other than a liquid manure handling system),
1,500 to 4,999	ducks (if the AFO uses a liquid manure handling system).

9.5.3.1.2.2 Either one of the following conditions are met:

9.5.3.1.2.2.1 Pollutants originating from the CAFO are discharged directly or indirectly into Waters of the State; or through a man-made ditch, flushing system, or other similar man-made device; or

9.5.3.1.2.2.2 Pollutants are discharged directly into Waters of the State which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

9.5.3.2 Designation of a CAFO. The Secretary or his designee, may designate any AFO as a CAFO upon determination that it is a significant contributor of pollutants to Waters of the State.

9.5.3.2.1 The Secretary has the authority to designate a CAFO based on the following conditions:

9.5.3.2.1.1 The size of the AFO and the amount of pollutants reaching Waters of the State;

9.5.3.2.1.2 The location of the AFO relative to Waters of the State;

9.5.3.2.1.3 The means of conveyance of manure, litter or process wastewaters into Waters of the State;

9.5.3.2.1.4 The slope, vegetation, and other factors affecting the likelihood or frequency of discharge of manure, litter or process wastewaters into Waters of the State; or

9.5.3.2.1.5 Other relevant factors at the discretion of the Secretary.

9.5.3.2.2 No AFO shall be designated under this paragraph unless the Department has conducted an on-site inspection of the operation. No AFO with numbers below those established in section 9.5.3.1.2.1 of these regulations may be designated as a CAFO unless:

9.5.3.2.2.1 Pollutants are discharged into Waters of the State through a manmade ditch, flushing system, or other similar manmade device; or

9.5.3.2.2.2 Pollutants are discharged directly into Waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

9.5.3.2.3 AFOs designated as a CAFO are subject to the CAFO NPDES permit regulations specified under these regulations and the Nutrient Management Law (3 **Del.C.** §2200 et.al.). AFOs designated as CAFOs will be notified in writing by the Secretary.

9.5.3.3 State Technical Standards set out guidance and expectations for the owner and operator in complying with these regulations. They are intended to provide flexibility in keeping up with technical and scientific advancements and to provide increased consistency in the administration of the Nutrient Management Program.

9.5.4 Application for Coverage

9.5.4.1 Duty to Apply.

9.5.4.1.1 Any owner or operator of a Large, Medium, or Designated CAFO who does not have an effective NPDES CAFO permit has a duty to apply for a NPDES CAFO permit when:

9.5.4.1.1.1 Pollutants originating from the CAFO are discharged or proposed to discharge directly or indirectly into Waters of the State; or

9.5.4.1.1.2 Pollutants originating from a CAFO are discharged into Waters of the State caused by handling of animal mortalities or manure; or

9.5.4.1.1.3 Pollutants originating from a CAFO are proposed for discharge as a result of the design, construction, operation or maintenance of a CAFO such that a discharge will occur; or

9.5.4.1.1.4 Pollutants from a large CAFO are discharged into Waters of the State from the land application area as agricultural storm water, except for discharges falling within the agricultural storm water exemption;

9.5.4.1.1.4.1 Large CAFOs experiencing a precipitation related discharge of manure, litter, or process wastewater from land application areas under control of a large CAFO that is not required to apply for a NPDES CAFO permit, shall be considered an agriculture storm water discharge only where land application has occurred and is in compliance with a nutrient management plan with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater and which minimize nitrogen and phosphorus movement to surface waters. Unpermitted Large CAFOs shall maintain compliance with the state Nutrient Management Law (3 **Del.C.** §2200 et.al,) and make such documentation available to the Secretary upon request.

9.5.4.1.2 Any owner or operator of a CAFO meeting the requirements of §9.5.4.1.1 of these regulations shall apply for a NPDES CAFO permit by submitting a Notice of Intent (NOI) on the prescribed form within 90 calendar days of the effective date of these regulations except for:

9.5.4.1.2.1 Newly constructed CAFOs not subject to effluent guidelines and new sources shall submit a NOI at least 180 days prior to commencement of operations or as assigned by the Secretary.

9.5.4.1.2.2 Expanded CAFOs that become a CAFO as a result of the expansion shall submit a NOI within 90 days of meeting the definition as a CAFO.

9.5.4.1.2.3 CAFO owners or operators shall submit a NOI within 90 days of being designated as a CAFO in accordance with §9.5.3.2 of these regulations.

9.5.4.2 The NOI shall serve as a formal commitment by the CAFO owner or operator to comply with the standards established in these regulations.

9.5.4.3 The NOI for a NPDES CAFO permit shall be made and signed by the owner or operator of the facility or activity generating the discharge.

9.5.4.4 The NOI shall include, but not be limited to, the following information:

9.5.4.4.1 The trade name of the CAFO, type of business (corporation, sole proprietorship, partnership, etc), if any, the name of the owner and operator, mailing address for the owner and operator, and emergency address or description of the location of the CAFO including the closest road name intersection of the CAFO.

9.5.4.4.2 Annual operation data for the CAFO in accordance with State Technical Standards to include, but not limited to animal type(s), number of animals confined, estimated manure, litter and process wastewater generation by type per year, manure storage capacity, manure storage system, estimated amount of manure transported off-site, animal mortality system, process wastewater system generated, where applicable, and total number of acres under control of the CAFO and available for land application.

9.5.4.4.3 A copy of the Nutrient Management Plan or Animal Waste Management Plan meeting the requirements described in §9.5.5 of these regulations shall be submitted with the NOI to the Department in the method specified on the NOI form.

9.5.4.5 The Secretary will review the NOI and may request additional information from the owner or operator.

9.5.5 Nutrient Management Plans or Animal Waste Management Plans

9.5.5.1 For purposes of compliance with these regulations a nutrient management plan or animal waste management plan shall be written by a certified nutrient consultant in accordance with State Technical Standards and shall contain the following applicable contents:

9.5.5.1.1 Plan Identification:

9.5.5.1.1.1 Owner and operator name, owner and operator mailing address, county road number or name, telephone number and watershed designation of operation.

9.5.5.1.1.2 The trade name of the CAFO, type of business (corporation, sole proprietorship, partnership, etc), mailing address, contact information for, but not limited to the owner and operator, and emergency address or location description to include the closest road name intersection of the CAFO.

9.5.5.1.1.3 Nutrient consultant's name and company:

9.5.5.1.1.3.1 Address and telephone number.

9.5.5.1.1.3.2 Nutrient consultant certification number.

9.5.5.1.1.3.3 Date of plan and duration of animal waste or nutrient management plan.

9.5.5.1.1.4 Total acres owned, licensed, or leased by the CAFO owner and operator represented in the nutrient management plans or animal waste management plan and a brief description of agricultural commodities produced within the CAFO.

9.5.5.1.1.5 Certification statement signed by the owner or operator stating the owner and operator shall implement the nutrient management or animal waste management plan.

9.5.5.1.2 Field maps or aerial photographs that include the following:

9.5.5.1.2.1 Individual field identification and boundaries for all owned, licensed or leased fields under control of the CAFO owner or operator.

9.5.5.1.2.2 A copy of soil survey map showing all soil types on each field or the soil texture identification of all pertinent soils.

9.5.5.1.2.3 The location of all surface waters including drainage ditches, streams, ponds, etc.

9.5.5.1.2.4 Irrigation systems where applicable.

9.5.5.1.2.5 Latitude and longitude of the production area will be maintained by the Department in the NPDES CAFO permit case file for each CAFO NOI received.

9.5.5.1.3 Crop and Nutrient Information:

9.5.5.1.3.1 The total number and type of animals, annual quantity estimate of manure and litter generation and storage methods.

9.5.5.1.3.2 Description and method of temporary outside locations of manure.

9.5.5.1.3.3 Total acres owned, licensed or leased by the CAFO owner or operator subject to the animal waste management plan or nutrient management plan and summary of needed nutrients.

9.5.5.1.3.4 Realistic yield goal in accordance with State Technical Standards.

9.5.5.1.3.5 Soil test results using protocols established in the State Technical Standards.

9.5.5.1.3.6 Current and planned crop rotation.

9.5.5.1.3.7 Determine the rate of application of nitrogen and phosphorus using the narrative rate approach or the linear rate approach in accordance with State Technical Standards.

9.5.5.1.3.7.1 Determine nitrogen application rates for each field based on realistic yield goal of crop(s) to be grown and in accordance with State Technical Standards.

9.5.5.1.3.7.2 Determine the phosphorus application rates for each field in accordance with State Technical Standards.

9.5.5.1.3.7.3 The linear rate approach includes maximum application rates from manure, litter and process wastewater for each year of NPDES CAFO permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the Secretary , in pound per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, these factors must include:

9.5.5.1.3.7.3.1 The outcome of a field-specific assessment of the potential for nitrogen and phosphorus transport from each field;

9.5.5.1.3.7.3.2 The crops to be planted in each field or any other uses of a field such as pasture or fallow fields;

9.5.5.1.3.7.3.3 The realistic yield goal for each crop or use identified for each field;

9.5.5.1.3.7.3.4 The nitrogen and phosphorus recommendations from sources specified by the Secretary for each crop or use identified for each field;

9.5.5.1.3.7.3.5 Credits for all nitrogen in the field that will be plant available;

9.5.5.1.3.7.3.6 Consideration of a multi-year phosphorus application; and

9.5.5.1.3.7.3.7 Accounting for all other additions of plant available nitrogen and phosphorus to the field;

9.5.5.1.3.7.3.8 For land applications include:

9.5.5.1.3.7.3.8.1 The form and source of manure, litter, process wastewater to be land applied;

9.5.5.1.3.7.3.8.2 The timing and method of land application;

9.5.5.1.3.7.3.8.3 The methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be land applied.

9.5.5.1.3.7.3.9 Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, or process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application.

9.5.5.1.3.7.4 The narrative rate approach must include the maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable by the Secretary, in pounds per acre, for each field, and certain factors necessary to determine such amounts.

9.5.5.1.3.7.4.1 At a minimum, the factors must include:

9.5.5.1.3.7.4.1.1 The outcome of a field-specific assessment of the potential for nitrogen and phosphorus transport from each field;

9.5.5.1.3.7.4.1.2 The crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops);

9.5.5.1.3.7.4.1.3 The realistic yield goal for each crop or use identified for each field; and

9.5.5.1.3.7.4.1.4 The nitrogen and phosphorus recommendations from sources specified by the Secretary for each crop or use identified for each field.

9.5.5.1.3.7.4.2 In addition, the terms of the nutrient management plan must include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied:

9.5.5.1.3.7.4.2.1 Results of soil tests conducted in accordance with protocols identified in the nutrient management plan and State Technical Standards;

9.5.5.1.3.7.4.2.2 Credits for all nitrogen in the field that will be plant available;

9.5.5.1.3.7.4.2.3 The amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied;

9.5.5.1.3.7.4.2.4 Consideration of multi-year phosphorus application;

9.5.5.1.3.7.4.2.5 Accounting for all other additions of plant available nitrogen and phosphorus to the field;

9.5.5.1.3.7.4.2.6 The form and source of manure, litter, and process wastewater;

9.5.5.1.3.7.4.2.7 The timing and method of land application; and

9.5.5.1.3.7.4.2.8 Volatilization of nitrogen and mineralization of organic nitrogen.

9.5.5.1.3.7.4.3 The terms of the nutrient management plan shall include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the Secretary for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in State Technical Standards.

9.5.5.1.3.7.4.4 For CAFOs using the narrative rate approach, the following projections must be included in the nutrient management plan submitted to the Secretary, but are not terms of the nutrient management plan:

9.5.5.1.3.7.4.4.1 The CAFO's planned crop rotations for each field for the period of permit coverage;

9.5.5.1.3.7.4.4.2 The projected amount of manure, litter, or process wastewater to be applied;

9.5.5.1.3.7.4.4.3 Projected credits for all nitrogen in the field that will be plant available;

9.5.5.1.3.7.4.4.4 Consideration of multi-year phosphorus application;

9.5.5.1.3.7.4.4.5 Accounting for all other additions of plant available nitrogen and phosphorus to the field; and

9.5.5.1.3.7.4.4.6 The predicted form, source, and method of application of manure, litter, and process wastewater for each crop.

9.5.5.1.3.7.4.4.7 Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

9.5.5.1.3.7.4.5 CAFOs that use the narrative rate approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in State Technical Standards before land applying manure, litter, and process wastewater and must rely on the following data:

9.5.5.1.3.7.4.5.1 A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by State Technical Standards, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements in accordance with State Technical Standards; and

9.5.5.1.3.7.4.5.2 The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

9.5.5.1.3.8 Manure, litter and process wastewater analysis using protocols established in State Technical Standards

9.5.5.1.3.9 Estimate residual nitrogen (organic nutrients, fertilizer, or legume crops from prior year) in absence of a Pre-sidedress Soil Nitrate Test (PSNT) in accordance with State Technical Standards.

9.5.5.1.3.10 Describe the nitrogen and phosphorus source(s) selected, rates and approximate timing of application(s).

9.5.5.1.3.11 Determine the appropriate application of manure, litter and process wastewater within the application area in accordance with State Technical Standards.

9.5.5.1.4 Description of minimum best management practices (BMPs) in place and to be implemented in the production area and in the land application area in accordance with State Technical Standards to include, but not limited to:

9.5.5.1.4.1 Provide an overall manure balance budget that clearly identifies available manure, intended manure use, manure storage capacity, and excess manure.

9.5.5.1.4.1.1 This budget shall identify the intended use to include, but not limited to land application, exportation, or other described uses in accordance with State Technical Standards.

9.5.5.1.4.1.2 The CAFO owner or operator shall account for excess manure in the annual Nutrient Management Report.

9.5.5.1.4.2 Provide a description of manure storage capacity and general schedule or timeframe when manure is removed or transported to a temporary field staging, land application area, exportation or other uses to include but not be limited to:

9.5.5.1.4.2.1 Management practices to prevent manure storage, collection, and conveyance systems from leaking pollutants to Waters of the State.

9.5.5.1.4.2.1.1 For liquid storage: storage shall be managed to prevent a discharge of pollutants and must include a calendar plan for liquid and sediment removal, with a freeboard action level of not less than one foot, with a depth marker.

9.5.5.1.4.2.1.2 For solid storage: permanent and temporary storage shall be managed to prevent a discharge of pollutants and be consistent with State Technical Standards.

9.5.5.1.4.2.2 Emergency actions for spills and catastrophic events for liquid storage systems to include the volume of water generated and collected by a 25-year, 24-hour rainfall event.

9.5.5.1.4.3 Describe adequate storage methods for manure, litter and process wastewater, and proper operation and maintenance of the storage facilities in accordance with State Technical Standards.

9.5.5.1.4.4 Provide a description and action plan to divert or segregate all clean water as appropriate from the production area and for collecting all water coming in contact with the production area in accordance with State Technical Standards to include but not limited to the following categories:

9.5.5.1.4.4.1 Approved methods in accordance with State Technical Standards to prevent direct contact between animals and Waters of the State; and

9.5.5.1.4.4.2 Approved methods in accordance with State Technical Standards to prevent runoff from coming into contact with manure, litter, or process wastewater.

9.5.5.1.4.5 Provide a detailed animal mortality plan to include but not be limited to the following contents:

9.5.5.1.4.5.1 Provide a statement acknowledging that burial of dead animals is prohibited. The State Veterinarian may approve this practice under emergency circumstances such as serious bio-security threats.

9.5.5.1.4.5.2 Provide a description of the methods and procedures for daily handling and disposal of dead animals in a manner to prevent contamination of Waters of the State. Disposal of mortalities is strictly prohibited in liquid manure, storm water, or process wastewater storage or treatment areas.

9.5.5.1.4.5.3 Methods and procedures for handling catastrophic mortalities in accordance with State Technical Standards.

9.5.5.1.4.6 Describe conservation practices to control nutrient loss sufficient to minimize the discharge of pollutants to Waters of the State to be implemented on the CAFO in accordance with State Technical Standards.

9.5.5.1.4.6.1 Identify manure and processed wastewater application setbacks to be implemented on the CAFO in accordance with State Technical Standards. The direct application of manure or processed wastewater to Waters of the State is prohibited. The following three setback standards are provided as three options:

9.5.5.1.4.6.1.1 One-hundred (100) foot application setback measured from the top of the bank of the water of the state to be protected, (Unless the CAFO exercises one of the compliance alternatives provided for in paragraphs 5.1.4.6.1.2, or 5.1.4.6.1.3, of this section, manure, litter and process wastewater may not be applied closer than 100 feet to any down-gradient surface waters, open tile intakes structures, sinkholes, agricultural well heads or other conduits to surface water) and/or

9.5.5.1.4.6.1.2 Thirty-five (35) foot vegetated buffer measured from the top of the bank of the water of the state to be protected, where applications of manure, litter, and process wastewater are prohibited, and/or

9.5.5.1.4.6.1.3 Alternative compliance practices as follows:

9.5.5.1.4.6.1.3.1 Minimum ten (10) foot vegetated buffer measured from the top of the bank of the water of the state to be protected, and plant a winter cover crop in accordance with State Technical Standards following the crop receiving manure, litter or process wastewater for fields with high phosphorus soils and; or

9.5.5.1.4.6.1.3.2 Minimum ten (10) foot application setback measured from the top of the bank of the water of the state to be protected, and plant a winter cover crop in accordance with State Technical Standards following crops receiving manure, litter or process wastewater in areas without high phosphorus soils.

9.5.5.1.4.6.1.3.3 Any additional approved alternative compliance practices identified in the State Technical Standards.

9.5.5.1.4.7 Chemicals and other contaminants handled on-site shall not be disposed of in any manure, litter, process wastewater, or storm water storage or treatment system.

9.5.5.2 A CAFO nutrient management plan or animal waste management plan shall be provided and implemented for the term of the CAFO NPDES Permit upon submittal of the NOI. Upon expiration of the NPDES CAFO permit, or upon substantial changes to the CAFO, as defined in §9.5.8.4 of these regulations, or when the CAFO owner or operator makes changes to the nutrient management plan or animal waste management plan, a new plan must be provided. Such plans shall be reported to the Department no later than December 15 of the year in which they are required to be updated. Where the owner or operator makes changes to the nutrient management plan or animal waste management plan, they shall also identify the changes, as required by §9.5.8.4.1 of these regulations.

9.5.6 Terms and Conditions of CAFO NPDES Permits.

9.5.6.1 Each owner or operator covered by these regulations shall meet or exceed the minimum conditions or terms of a NPDES CAFO permit that consists of the following and applicable contents.

9.5.6.1.1 Standard Conditions for all NPDES CAFO Permits

9.5.6.1.1.1 Duty to Comply. Failure to comply with the terms of a NPDES CAFO permit or these regulations shall constitute a violation of these regulations and shall be grounds for enforcement action as provided in 3 **Del.C.** §2200 et.al. and 7 **Del.C.** §6000 et.al. The Department may seek voluntary compliance with a warning, notice or other educational means. However, the law does not require that such voluntary means be used before proceeding with enforcement.

9.5.6.1.1.2 Duty to Mitigate. Any person subject to these regulations shall take all reasonable steps to minimize or prevent any discharge of pollutants in violation of these regulations.

9.5.6.1.1.3 Need to Halt or Reduce Activity Not a Defense. Owners and operators subject to these regulations may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in question to maintain compliance with the conditions of the permit and these regulations.

9.5.6.1.1.4 Property Rights. The issuance of a NPDES CAFO permit under the requirements of these regulations does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property, nor any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

9.5.6.1.1.5 Modification, Revocation, Reissuance, and Termination of NPDES CAFO Permit Coverage. The NPDES CAFO permit may be modified, terminated or revoked and reissued in whole or in part, during its term, for cause by the Secretary. The filing of a request for NPDES CAFO permit modification, or revocation and reissuance, or termination, or a notification of any changes or anticipated noncompliance does not stay any NPDES CAFO permit condition;

9.5.6.1.1.6 Requirement to Implement a Site Specific Nutrient Management Plan or Animal Waste Management Plan. Any NPDES CAFO permit issued to a CAFO owner or operator shall require the CAFO owner or operator to implement and fully comply with a nutrient management plan or animal waste management plan as described in §9.5.5 of these regulations developed by a Delaware certified nutrient consultant that contains site specific best management practices necessary to meet the requirements of this paragraph and applicable effluent limitation and standards as specified in these regulations. Violation of the

terms of the nutrient management plan or animal waste management plan incorporated into the NPDES CAFO permit shall constitute a violation of the NPDES CAFO permit.

9.5.6.1.1.7 Reporting and Emergency Notification Requirements

9.5.6.1.1.7.1 Annual Reporting Requirements: Each person covered by these regulations shall submit an annual report by March 1 for the previous calendar year on a form provided by the Department including but not limited to the following:

9.5.6.1.1.7.1.1 Owner's and Operator's name, mailing address and telephone number.

9.5.6.1.1.7.1.2 Certified Nutrient consultant's name and company.

9.5.6.1.1.7.1.3 Date nutrient management plan or animal waste management plan was prepared and duration of plan.

9.5.6.1.1.7.1.4 Total acres covered by the nutrient management plan or animal waste management plan and a brief description of agricultural commodities produced within the CAFO.

9.5.6.1.1.7.1.5 A statement indicating whether the current version of the CAFO's nutrient management plan or animal waste management plan was developed or approved by a certified nutrient consultant.

9.5.6.1.1.7.1.6 The annual operating data to include animal type(s), number of animals confined and manure, litter and process wastewater generation by type;

9.5.6.1.1.7.1.7 The quantity of animal manure, litter and process wastewater in tons or thousand gallons applied to land managed by the CAFO owner or operator and the quantity of land to which applied;

9.5.6.1.1.7.1.8 The quantity of inorganic fertilizers applied to the land and the quantity of land to which applied;

9.5.6.1.1.7.1.9 The quantity and type of manure, litter or process wastewater exported from the CAFO; and

9.5.6.1.1.7.1.10 The name, address and organization of person(s) receiving and/or responsible for utilizing the manure;

9.5.6.1.1.7.1.11 Summary of all manure, litter and process wastewater discharges from the production areas that have occurred in the previous calendar year, including date, time, and approximate volume;

9.5.6.1.1.7.1.12 The actual crop(s) planted,

9.5.6.1.1.7.1.13 The statement (as provided on the annual report form) certifying whether actual yields for each crop met or exceeded the expected yield and actual yields;

9.5.6.1.1.7.1.14 The actual nitrogen and phosphorus content of the manure, litter and process wastewater,

9.5.6.1.1.7.1.15 The results of calculations conducted in accordance with these regulations,

9.5.6.1.1.7.1.16 The amount of manure, litter, and process wastewater applied to each crop during the previous calendar year; and

9.5.6.1.1.7.1.17 For any CAFO that implements a nutrient management plan that addresses rates of application in accordance with these regulations, the results of any soil testing for nitrogen and phosphorus taken during the previous calendar year, and the data used in calculations conducted in accordance with these regulations.

9.5.6.1.1.7.2 Emergency Notification: If for any reason, there is a discharge of pollutants from a CAFO the owner or operator shall verbally notify the Delaware Department of Agriculture (Nutrient Management Program) at 1-800-282-8685 and DNREC Emergency Response Branch at 1-800-662-8802 within 24 hours of becoming aware of the discharge and document the incident in writing within five (5) days. The information to be provided shall include:

9.5.6.1.1.7.2.1 A description of the discharge and cause, including a description of the flow path to the receiving waters, an estimate of the flow and volume discharged.

9.5.6.1.1.7.2.2 The period of discharge, including exact dates and times and if not corrected, the anticipated time the discharge is expected to continue and the steps being taken to reduce, eliminate and prevent recurrence of the discharge.

9.5.6.1.1.7.2.3 If the discharge was caused by a precipitation event(s), the amount of rainfall, as measured with a rain gauge at the site.

9.5.6.1.1.7.2.4 Results of any sampling and analysis of the discharge, if available.

9.5.6.1.1.7.2.5 For further questions or assistance, call the Delaware Department of Agriculture at 1-800-282-8685, (Nutrient Management Program), and DNREC Emergency Response Branch at 1-800-662-8802.

9.5.6.1.1.8 Duration of NPDES CAFO permits, Continuation of Expiring NPDES CAFO permits, and Transferability of NPDES CAFO permits

9.5.6.1.1.8.1 Duration of NPDES CAFO Permits. All NPDES CAFO permits shall be issued for fixed terms not to exceed five years. NPDES CAFO permits of less than five years duration may be issued in appropriate circumstances. NPDES CAFO permits may be modified, revoked and reissued, or terminated as specified in §9.5.6.1.1.5. Except for the continuation provisions of §9.5.6.1.1.8.2 of these regulations for expiring NPDES CAFO permits, the term of a NPDES CAFO permit shall not be extended beyond five years from its original date of effectiveness by modification, extension or other means.

9.5.6.1.1.8.2 Continuation of Expiring NPDES CAFO Permits.

9.5.6.1.1.8.2.1 The terms and conditions of an expired NPDES CAFO permit are automatically continued pending issuance of a new or reissued NPDES CAFO permit if:

9.5.6.1.1.8.2.1.1 The owner or operator has submitted a timely and sufficient NOI for a new or reissued NPDES CAFO permit under at least 180 days prior to the NPDES CAFO permit expiration date; and

9.5.6.1.1.8.2.1.2 The Department is unable, through no fault of the owner or operator, to issue a new NPDES CAFO permit before the expiration date of the previous NPDES CAFO permit.

9.5.6.1.1.8.2.1.3 NPDES CAFO permits continued under §9.5.6.1.1.8.2 of these regulations remain fully effective.

9.5.6.1.1.8.3 Transferability of NPDES CAFO Permits.

9.5.6.1.1.8.3.1 NPDES CAFO Permit Transfer. The NPDES CAFO permit is not transferable to any person, except after notice to and with the concurrence of the Secretary. The owner or operator may request a NPDES CAFO permit transfer by:

9.5.6.1.1.8.3.1.1 The owner or operator shall notify the Secretary, in writing, at least 30 days prior to the proposed transfer;

9.5.6.1.1.8.3.1.2 Submit a written agreement to the Secretary, signed by all parties to the transfer, containing a specific date for transfer of NPDES CAFO permit responsibility and coverage between the current and new owners or operators (including acknowledgement that the existing owner or operator is liable for violations up to that date, and that the new owner or operator is liable for violations from that date on); and

9.5.6.1.1.8.3.1.3 If the Department does not notify the current owner or operator and the new owner or operator of its intent to modify, revoke and reissue, or terminate the NPDES CAFO permit and to require that a new NOI be filed rather than agreeing to the transfer of the NPDES CAFO permit within 30 days of receipt of the notification of the proposed transfer; and

9.5.6.1.1.8.3.1.4 If the owner or operator shall provide adequate advance notice of a proposed transfer to allow sufficient time for the Department to modify the NPDES CAFO permit to identify the new owner or operator and incorporate such other requirements as may be necessary under the Law or the Act; then

9.5.6.1.1.8.3.1.5 Such a transferred NPDES CAFO permit shall, as of the date of transfer, be as fully effective as if it had been issued directly to the new owner or operator.

9.5.6.1.1.9 Duty to maintain NPDES CAFO permit coverage: No later than 180 days before the expiration of the NPDES CAFO permit, the owner or operator shall submit an NOI to renew its NPDES CAFO permit, unless the CAFO has ceased to operate as a CAFO, or will not discharge or propose to discharge upon expiration of the NPDES CAFO permit.

9.5.6.1.1.10 Cease NPDES CAFO permit coverage: The owner or operator may request to cease NPDES CAFO permit coverage by submitting a request in writing to the Secretary with a justification for the request. The justification shall explain why the owner or operator no longer has a duty to apply for NPDES CAFO permit coverage. The Secretary will approve or deny the request within 180 days.

9.5.6.1.1.11 Entry and Evaluation

9.5.6.1.1.11.1 The Secretary, or authorized designee, shall be authorized to evaluate implementation of these regulations and furthermore be allowed to:

9.5.6.1.1.11.1.1 Enter and inspect the CAFO subject to these regulations.

9.5.6.1.1.11.1.2 Have access to and the right to copy, at reasonable times, any records that must be kept under the conditions of these regulations.

9.5.6.1.1.11.1.3 Sample or monitor any soil, manure, litter, process wastewater, surface waters, and discharges from the site.

9.5.6.1.1.11.2 The owner and operator may or may not be notified in advance of entry and evaluation. Entry and evaluation shall be in accordance with any biosecurity requirements of the individual or commodity industry involved. As a general practice DNREC and DDA will provide advance notice of inspections; however, in order to ensure compliance, unannounced inspections may be performed.

9.5.6.2 Terms and Conditions for Large Horse and Sheep CAFO NPDES Permits

9.5.6.2.1 Effluent Limits

9.5.6.2.1.1 Existing Large CAFOs. Any existing Large Horse or Sheep CAFOs must achieve the following effluent limits attainable by the application of best available technology economically achievable (BAT):

9.5.6.2.1.1.1 There shall be no discharge of process wastewater pollutants to Waters of the State from the production area.

9.5.6.2.1.1.2 Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24 hour rainfall event at the CAFO when BAT has been applied any process wastewater pollutants in the overflow may be discharged into Waters of the State.

9.5.6.2.1.2 New Source Performance Standards for Large Horse or Sheep CAFOs. Any new source must achieve the following performance standard:

9.5.6.2.1.2.1 There shall be no discharge of process wastewater into Waters of the State from the production area.

9.5.6.2.1.2.2 The overflow of process waste water from the production area may be discharged whenever rainfall events, either chronic or catastrophic, occurs from a facility designed, constructed, operated and maintained to contain all process waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

9.5.6.2.2 Recordkeeping Requirements for new and existing Large Horse or Sheep CAFOs.

9.5.6.2.2.1 Those owners or operators requiring a NPDES CAFO permit in accordance with these regulations shall maintain records of implementation for six years at the CAFO in accordance with State Technical Standards. All animal waste management plans, nutrient management plans, site-specific management requirements and records of implementation shall be kept by the owners or operators. Animal waste management plans, nutrient management plans and records of implementation shall be made available for inspection and by request of the Secretary.

9.5.6.2.2.1.1 Records of implementation in the Production Area shall include, but are not limited to:

9.5.6.2.2.1.1.1 Records indicating mortality management to include number disposed and method of disposal.

9.5.6.2.2.1.1.2 Records of manure storage activities, length of storage, amount stored, and maintenance of manure storage facilities.

9.5.6.2.2.1.1.3 Records indicating the following routine visual inspections of the CAFO production area were conducted. At a minimum the following must be visually inspected:

9.5.6.2.2.1.1.3.1 The CAFO owner or operator shall document any deficiencies and/or necessary corrective actions resulting from the inspections and the date deficiencies were corrected. Deficiencies shall be corrected in 30 days. Deficiencies not corrected in 30 days shall be accompanied by an explanation of the factors preventing immediate correction.

9.5.6.2.2.1.1.3.2 Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage containment structure;

9.5.6.2.2.1.1.3.3 Daily inspection of water lines, including drinking water or cooling water lines;

9.5.6.2.2.1.1.3.4 Weekly inspections and records of depth of the manure, litter, and process wastewater impoundments; the inspection shall note the level in liquid impoundments as indicated by a depth marker.

9.5.6.2.2.1.1.3.4.1 All open surface liquid impoundments shall have a permanent depth marker or recorder installed at the maximum operating level to indicate when drawdown should begin and that provides for the required volume less the volume contribution of precipitation and runoff from the 25-year, 24-hour storm event plus the volume allowance for residual solids after liquids have been removed.

9.5.6.2.2.1.1.4 Records of the date, time, and estimated volume of any overflow.

9.5.6.2.2.1.1.5 Records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total volume design, and approximate number of days of storage.

9.5.6.2.2.1.2 Records of implementation in the Land Application Area shall include, but are not limited to:

9.5.6.2.2.1.2.1 Manure, litter, process wastewater and soil test results, methods for testing and analyzing, and recommended nitrogen and phosphorus application rates with an explanation of the basis for determining manure application rates, as provided in the protocols established in the State Technical Standards or the nutrient management plan.

9.5.6.2.2.1.2.2 Quantities, calculations, analyses and sources of all nitrogen and phosphorus applied to fields.

9.5.6.2.2.1.2.3 Dates, weather conditions at the time of manure, litter or process wastewater land application and 24 hours before and after application, and methods of application(s).

9.5.6.2.2.1.2.4 Crops planted, yields, and plant matter (grain, silage, etc.) removed from the land.

9.5.6.2.2.1.2.5 Records indicating periodic inspections and maintenance of land application equipment for leaks.

9.5.6.2.2.1.3 Off site use of manure, litter or process wastewater. If manure, litter or process wastewater is sold or given to other persons for disposal or utilization, the following information shall be maintained at the CAFO generating the manure, litter or process wastewater:

9.5.6.2.2.1.3.1 The date of manure, litter or process wastewater removal.

9.5.6.2.2.1.3.2 Name of receiver and contact information.

9.5.6.2.2.1.3.3 Quantity (tons/gallons) of manure, litter or process wastewater removed.

9.5.6.2.2.1.3.4 A copy of the most recent manure, litter and process wastewater nutrient analysis shall be given to the receiver on or before the date of transfer.

9.5.6.2.2.1.4 The annual report and supporting documents.

9.5.6.3 Terms and Conditions for Large Dairy Cows and Cattle other than Veal Calves CAFO NPDES Permits

9.5.6.3.1 Effluent Limits for Large Dairy Cows and Cattle other than Veal Calves CAFOs

9.5.6.3.1.1 Existing Large Dairy Cows and Cattle other than Veal Calves CAFOs. Any existing Large Dairy Cows and Cattle other than Veal Calves CAFOs must achieve the following effluent limits attainable by the application of best practicable control technology currently available (BPT), best conventional pollutant control technology (BCT), or attainable by the application of the best available technology economically achievable (BAT):

9.5.6.3.1.1.1 Large Dairy Cows and Cattle other than Veal Calves CAFO Production Areas. There shall be no discharge of manure, litter or process wastewater pollutants to Waters of the State from the production area of large dairy cows and cattle other than veal calves CAFOs.

9.5.6.3.1.1.1.1 Whenever precipitation causes an overflow of manure, litter or process wastewater, pollutants in the overflow may be discharged into Waters of the State if:

9.5.6.3.1.1.1.1.1 The production area is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewaters plus the runoff and direct precipitation from a 25-year, 24 hour rainfall event; and

9.5.6.3.1.1.1.1.2 The production area is operated in accordance with the measures and records required in §9.5.6.3.2 of these regulations.

9.5.6.3.1.1.1.2 Voluntary alternative performance standards. Any CAFO owner and operator subject to these regulations may request the Secretary to establish, in his or her discretion

CAFO NPDES permit effluent limits based on site-specific alternative technologies that achieve a quantity of pollutants discharged from the production area equal to or less than the quantity of pollutants that would be discharged under the baseline performance standards.

9.5.6.3.1.1.1.2.1 The CAFO owner and operator requesting alternative performance standards shall provide supporting technical analysis as described in State Technical Standards and other relevant information and data to support such site-specific limitations to the Secretary within the time frame provided. The supporting technical analysis must include calculation of the quantity of pollutants discharged, on a mass basis where appropriate, based on a site specific analysis of a system designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including runoff from a 25 year, 24 hour rainfall event.

9.5.6.3.1.1.1.2.2 The technical analysis of the discharge of pollutants must include:

9.5.6.3.1.1.1.2.2.1 All daily inputs to the storage system, including manure, litter, all process wastewaters, direct precipitation, and runoff.

9.5.6.3.1.1.1.2.2.2 All daily outputs from the storage system, including losses due to evaporation, sludge removal, and the removal of wastewater for use on cropland at the CAFO or transport off site.

9.5.6.3.1.1.1.2.2.3 A calculation determining the predicted median annual overflow volume based on a 25 year period of actual rainfall data applicable to the site.

9.5.6.3.1.1.1.2.2.4 Site specific pollutant data, including N, P, BOD5, TSS, for the CAFO from representative sampling and analysis of all sources of input to the storage system, or other appropriate pollutant data.

9.5.6.3.1.1.1.2.2.5 Predicted annual average discharge of pollutants, expressed where appropriate as a mass discharge on a daily basis (lbs/day), and calculated considering the requirements in this section.

9.5.6.3.1.1.2 Large Dairy Cows and Cattle other than Veal Calves CAFO Land Application Areas. Discharges from existing land application areas for large dairy cows, and cattle other than veal calves CAFOs are subject to the following requirements:

9.5.6.3.1.1.2.1 Develop and implement best management practices including in accordance with State Technical Standards, including but not limited to:

9.5.6.3.1.1.2.1.1 Nutrient Management Plan which incorporates a field specific assessment of the potential of nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals while minimizing nitrogen and phosphorus movement to surface waters.

9.5.6.3.1.1.2.1.2 Determine application rates for manure, litter and process wastewater applied to the CAFO to minimize movement of excess nitrogen and phosphorus from the field to surface waters in accordance with State Technical Standards.

9.5.6.3.1.1.2.1.3 Sample and analyze manure and soil in accordance with State Technical Standards. Use the results to determine application rates for manure, litter and process wastewater.

9.5.6.3.1.1.2.1.4 Inspect equipment used for the land application of manure, litter, or process wastewater for leaks prior to application.

9.5.6.3.1.1.2.1.5 Implement minimum setback requirements described in §9.5.5.1.4.6.1 of these regulations and in accordance with State Technical Standards.

9.5.6.3.1.1.2.2 Maintain records specified in §9.5.6.3.2.1.2 of these regulations in accordance with State Technical Standards.

9.5.6.3.1.2 New Source Performance Standards for Large Dairy Cows and Cattle other than Veal Calves CAFOs. Any new source from Large Dairy Cows and Cattle other than Veal Calves CAFOs must achieve the following performance standard:

9.5.6.3.1.2.1 Large Dairy Cows and Cattle other than Veal Calves CAFO Production Areas. Any new source from Large Dairy Cows and Cattle other than Veal Calves CAFOs shall attain limitations and requirements as specified in §9.5.6.3.1.1.1 of these regulations.

9.5.6.3.1.2.2 Large Dairy Cows and Cattle other than Veal Calves CAFO Land Application Areas. Any new source from Dairy Cows and Cattle other than Veal Calves CAFO shall attain limitations and requirements as specified in §9.5.6.3.1.1.2 of these regulations.

9.5.6.3.2 Recordkeeping Requirements for new and existing Large Dairy Cows and Cattle other than Veal Calves CAFOs.

9.5.6.3.2.1 Those owners or operators requiring coverage by these regulations shall maintain records of implementation for six years at the CAFO in accordance with State Technical Standards. All animal waste management plans, nutrient management plans, site-specific management requirements and records of implementation shall be kept by the owners or operators. Animal waste management plans, nutrient management plans and records of implementation shall be made available for inspection and by request of the Secretary.

9.5.6.3.2.1.1 Records of implementation in the Production Area of Large Dairy Cows and Cattle other than Veal Calves CAFOs shall include, but are not limited to:

9.5.6.3.2.1.1.1 Records indicating mortality management to include number disposed and method of disposal.

9.5.6.3.2.1.1.2 Records of manure storage activities, length of storage, amount stored, and maintenance of manure storage facilities.

9.5.6.3.2.1.1.3 Records indicating the following routine visual inspections of the CAFO production area were conducted. At a minimum the following must be visually inspected:

9.5.6.3.2.1.1.3.1 The CAFO owner or operator shall document any deficiencies and/or necessary corrective actions resulting from the inspections and the date deficiencies were corrected. Deficiencies shall be corrected in 30 days. Deficiencies not corrected in 30 days shall be accompanied by an explanation of the factors preventing immediate correction.

9.5.6.3.2.1.1.3.2 Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage containment structure;

9.5.6.3.2.1.1.3.3 Daily inspection of water lines, including drinking water or cooling water lines;

9.5.6.3.2.1.1.3.4 Weekly inspections and records of depth of the manure, litter, and process wastewater impoundments; the inspection shall note the level in liquid impoundments as indicated by a depth marker.

9.5.6.3.2.1.1.3.4.1 All open surface liquid impoundments must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25 year – 24 hour rainfall event.

9.5.6.3.2.1.1.4 Records of the date, time, and estimated volume of any overflow.

9.5.6.3.2.1.1.5 Records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total volume design, and approximate number of days of storage.

9.5.6.3.2.1.2 Records of implementation in the Land Application Area of Large Dairy Cows and Cattle other than Veal Calves CAFOs shall include, but are not limited to:

9.5.6.3.2.1.2.1 Manure, litter, process wastewater and soil test results, methods for testing and analyzing, and recommended nitrogen and phosphorus application rates with an explanation of the basis for determining manure application rates, as provided in the protocols established in the State Technical Standards or the nutrient management plan.

9.5.6.3.2.1.2.2 Quantities, analyses and sources of all nitrogen and phosphorus applied to fields.

9.5.6.3.2.1.2.3 Dates, weather conditions at the time of manure, litter or process wastewater land application and 24 hours before and after application, and methods of application(s).

9.5.6.3.2.1.2.4 Crops planted, yields, and plant matter (grain, silage, etc.) removed from the land.

9.5.6.3.2.1.2.5 Records indicating periodic inspections and maintenance of land application equipment for leaks.

9.5.6.3.2.1.3 Off site use of manure, litter or process wastewater

9.5.6.3.2.1.3.1 If manure, litter or process wastewater is sold or given to other persons for disposal or utilization, the following information shall be maintained at the CAFO generating the manure, litter or process wastewater:

9.5.6.3.2.1.3.1.1 The date of manure, litter or process wastewater removal.

9.5.6.3.2.1.3.1.2 Name of receiver and contact information.

9.5.6.3.2.1.3.1.3 Quantity (tons/gallons) of manure, litter or process wastewater removed.

9.5.6.3.2.1.3.1.4 A copy of the most recent manure, litter and process wastewater nutrient analysis shall be given to the receiver on or before the date of transfer.

9.5.6.3.2.1.4 The annual report and supporting documents.

9.5.6.4 Terms and Conditions for Large Swine, Poultry and Veal Calves NPDES CAFO Permits

9.5.6.4.1 Effluent Limits for Large Swine, Poultry and Veal Calves NPDES CAFO Permits

9.5.6.4.1.1 Existing Large Swine, Poultry and Veal Calves NPDES CAFOs. Any existing Large Swine, Poultry and Veal Calves CAFOs must achieve the following effluent limits attainable by the application of best practicable control technology currently available (BPT), best conventional pollutant control technology (BCT), or attainable by the application of the best available technology economically achievable (BAT):

9.5.6.4.1.1.1 Large Swine, Poultry and Veal Calves NPDES CAFO Production Areas. There shall be no discharge of manure, litter or process wastewater pollutants to Waters of the State from the production area of Large Swine, Poultry and Veal Calves NPDES CAFOs.

9.5.6.4.1.1.1.1 The production area for §9.5.6.4 of these regulations means that part of an AFO that includes the “animal confinement area”, the “manure storage area”, the raw materials storage area and the “waste containment areas”, egg washing or processing facility and any area used in the storage, handling, treatment or disposal of mortalities. Animal confinement area includes the areas inside the poultry, swine or veal calf confinement houses and end pads in accordance with State Technical Standards. Manure storage and waste containment areas include storage sheds, and stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles.

9.5.6.4.1.1.1.2 Whenever precipitation causes an overflow of manure, litter or process wastewater, the overflow may be discharged into Waters of the State if:

9.5.6.4.1.1.1.2.1 The production area is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewaters plus the runoff and direct precipitation from a 25-year, 24 hour rainfall event;

9.5.6.4.1.1.1.2.2 The production area is operated in accordance with the measures and records required in §9.5.5 and §9.5.6.4.2.1.1 of these regulations.

9.5.6.4.1.1.1.3 Voluntary alternative performance standards. Any CAFO owner and operator subject to these regulations may request the Secretary to establish, in his or her discretion CAFO NPDES permit effluent limits based on site-specific alternative technologies that achieve a quantity of pollutants discharged from the production area equal to or less than the quantity of pollutants that would be discharged under the baseline performance standards. The CAFO owner and operator requesting alternative performance standards shall provide supporting technical analysis as described in State Technical Standards and other relevant information and data to support such site-specific limitations to the Secretary within the time frame provided. The supporting technical analysis must include calculation of the quantity of pollutants discharged, on a mass basis where appropriate, based on a site specific analysis of a system designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including runoff from a 25 year, 24 hour rainfall event. The technical analysis of the discharge of pollutants must include:

9.5.6.4.1.1.1.3.1 All daily inputs to the storage system, including manure, litter, all process wastewaters, direct precipitation, and runoff.

9.5.6.4.1.1.1.3.2 All daily outputs from the storage system, including losses due to evaporation, sludge removal, and the removal of wastewater for use on cropland at the CAFO or transport off site.

9.5.6.4.1.1.1.3.3 A calculation determining the predicted median annual overflow volume based on a 25 year period of actual rainfall data applicable to the site.

9.5.6.4.1.1.1.3.4 Site specific pollutant data, including N, P, BOD5, TSS, for the CAFO from representative sampling and analysis of all sources of input to the storage system, or other appropriate pollutant data.

9.5.6. 4.1.1.1.3.5 Predicted annual average discharge of pollutants, expressed where appropriate as a mass discharge on a daily basis (lbs/day), and calculated considering the requirements in this section.

9.5.6.4.1.1.2 Large Swine, Poultry and Veal Calves NPDES CAFO Land Application Areas. Discharges from land application areas from Large Swine, Poultry and Veal Calves NPDES CAFOs are subject to the following requirements:

9.5.6.4.1.1.2.1 Develop and implement best management practices in accordance with State Technical Standards, including but not limited to:

9.5.6.4.1.1.2.1.1 Nutrient management plan which incorporates a field specific assessment of the potential of nitrogen and phosphorus transport as approved in accordance with State Technical Standards from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals while minimizing nitrogen and phosphorus movement to surface waters.

9.5.6.4.1.1.2.1.2 Determine application rates for manure, litter and process wastewater applied to the CAFO to minimize movement of excess nitrogen and phosphorus from the field to surface waters and in accordance with State Technical Standards.

9.5.6.4.1.1.2.1.3 Sample and analyze manure and soil in accordance with State Technical Standards. Use the results to determine application rates for manure, litter and process wastewater.

9.5.6.4.1.1.2.1.4 Inspect equipment used for the land application of manure, litter, or process wastewater for leaks prior to application.

9.5.6.4.1.1.2.1.5 Implement minimum setback requirements described in §9.5.5.1.4.6.1 of these regulations and in accordance with State Technical Standards.

9.5.6.4.1.1.2.2 Maintain records specified in §9.5.6.4.2.1.2 of these regulations and in accordance with State Technical Standards.

9.5.6.4.2 New Source Performance Standards for Large Swine, Poultry and Veal Calves CAFOs. Any new source from Large Swine, Poultry and Veal Calves CAFOs must achieve the following performance standard:

9.5.6.4.2.1 Large Swine, Poultry and Veal Calves CAFOs Production Areas.

9.5.6.4.2.1.1 There shall be no discharge of manure, litter or process wastewater pollutants into Waters of the State from the production area of Large Swine, Poultry and Veal Calves CAFOs.

9.5.6.4.2.1.2 Voluntary alternative performance standards. Any CAFO owner and operator subject to these regulations may request the Secretary to establish, in his or her discretion CAFO NPDES permit effluent limits based on site-specific alternative technologies that achieve a quantity of pollutants discharged from the production area equal to or less than the quantity of pollutants that would be discharged under the baseline performance standards. The CAFO owner and operator requesting alternative performance standards shall provide supporting technical analysis as described in State Technical Standards and other relevant information and data to support such site-specific limitations to the Secretary within the time frame provided. The supporting technical analysis must include calculation of the quantity of pollutants discharged, on a mass basis where appropriate, based on a site specific analysis of a system designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including runoff from a 25 year, 24 hour rainfall event. The technical analysis of the discharge of pollutants must include:

9.5.6.4.2.1.2.1 All daily inputs to the storage system, including manure, litter, all process wastewaters, direct precipitation, and runoff.

9.5.6.4.2.1.2.2 All daily outputs from the storage system, including losses due to evaporation, sludge removal, and the removal of wastewater for use on cropland at the CAFO or transport off site.

9.5.6.4.2.1.2.3 A calculation determining the predicted median annual overflow volume based on a 25 year period of actual rainfall data applicable to the site.

9.5.6.4.2.1.2.4 Site specific pollutant data, including N, P, BOD5, TSS, for the CAFO from representative sampling and analysis of all sources of input to the storage system, or other appropriate pollutant data.

9.5.6.4.2.1.2.5 Predicted annual average discharge of pollutants, expressed where appropriate as a mass discharge on a daily basis (lbs/day), and calculated considering the requirements in this section.

9.5.6.4.2.1.3 Maintain records specified in §9.5.6.4.2 of these regulations and in accordance with State Technical Standards.

9.5.6.4.2.2 Large Swine, Poultry and Veal Calves CAFO Land Application Areas. Any new source from Large Swine, Poultry and Veal Calves CAFOs shall attain limitations and requirements as specified in §9.5.6.4.1.1.2 of these regulations.

9.5.6.4.3 Recordkeeping Requirements for new and existing Large Swine, Poultry and Veal Calve CAFOs.

9.5.6.4.3.1 Those owners or operators requiring coverage by these regulations shall maintain records of implementation for six years at the CAFO in accordance with State Technical Standards. All animal waste management plans, nutrient management plans, site-specific management requirements and records of implementation shall be kept by the owners or operators. Animal waste management plans, nutrient management plans and records of implementation shall be made available for inspection and by request of the Secretary.

9.5.6.4.3.1.1 Records of implementation in the Production Area of Large Swine, Poultry and Veal Calves CAFOs shall include, but are not limited to:

9.5.6.4.3.1.1.1 Records indicating mortality management to include number disposed and method of disposal.

9.5.6.4.3.1.1.2 Records of manure storage activities, length of storage, amount stored, and maintenance of manure storage facilities.

9.5.6.4.3.1.1.3 Records indicating the following routine visual inspections of the CAFO production area were conducted for Poultry, Swine or Veal Calf CAFOs utilizing a liquid manure handling system. At a minimum the following must be visually inspected:

9.5.6.4.3.1.1.3.1 The CAFO owner or operator shall document any deficiencies and/or necessary corrective actions resulting from the inspections and the date deficiencies were corrected. Deficiencies shall be corrected in 30 days. Deficiencies not corrected in 30 days shall be accompanied by an explanation of the factors preventing immediate correction.

9.5.6.4.3.1.1.3.2 Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage containment structure;

9.5.6.4.3.1.1.3.3 Daily inspection of water lines, including drinking water or cooling water lines;

9.5.6.4.3.1.1.3.4 Weekly inspections and records of depth of the manure, litter, and process wastewater impoundments; the inspection shall note the level in liquid impoundments as indicated by a depth marker.

9.5.6.4.3.1.1.3.4.1 All open surface liquid impoundments must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25 year – 24 hour rainfall event.

9.5.6.4.3.1.1.4 Records of the date, time, and estimated volume of any overflow.

9.5.6.4.3.1.1.5 Records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total volume design, and approximate number of days of storage.

9.5.6.4.3.1.2 Records of implementation in the Land Application Area of Large Swine, Poultry and Veal Calves CAFOs shall include, but are not limited to:

9.5.6.4.3.1.2.1 Manure, litter, process wastewater and soil test results, methods for testing and analyzing, and recommended nitrogen and phosphorus application rates with an explanation of the basis for determining manure application rates, as provided in the protocols established in the State Technical Standards or the nutrient management plan.

9.5.6.4.3.1.2.2 Quantities, analyses and sources of all nitrogen and phosphorus applied to fields.

9.5.6.4.3.1.2.3 Dates, weather conditions at the time of manure, litter or process wastewater land application and 24 hours before and after application, and methods of application(s).

9.5.6.4.3.1.2.4 Crops planted, yields, and plant matter (grain, silage, etc.) removed from the land.

9.5.6.4.3.1.2.5 Records indicating periodic inspections and maintenance of land application equipment for leaks.

9.5.6.4.3.1.3 Off site use of manure, litter or process wastewater

9.5.6.4.3.1.3.1 If manure, litter or process wastewater is sold or given to other persons for disposal or utilization, the following information shall be maintained at the CAFO generating the manure, litter or process wastewater:

9.5.6.4.3.1.3.1.1 The date of manure, litter or process wastewater removal.

9.5.6.4.3.1.3.1.2 Name of receiver and contact information.

9.5.6.4.3.1.3.1.3 Quantity (tons/gallons) of manure, litter or process wastewater removed.

9.5.6.4.3.1.3.1.4 A copy of the most recent manure, litter and process wastewater analysis shall be given to the receiver on or before the date of transfer.

9.5.6.4.3.1.4 The annual report and supporting documents.

9.5.6.5 Terms and Conditions for Duck CAFO NPDES Permits

9.5.6.5.1 Special Definitions: For purposes of this section:

9.5.6.5.1.1 "Dry lot" means a facility for growing ducks in confinement with a dry litter floor cover and no access to swimming areas.

9.5.6.5.1.2 "Wet lot" means a confinement facility for raising ducks which is open to the environment, has a small number of sheltered areas, and with open water runs and swimming areas to which ducks have free access.

9.5.6.5.2 Effluent Limits for Duck CAFOs

9.5.6.5.2.1 Existing Large Duck CAFOs. Any existing Large Duck CAFOs must achieve the following effluent limits attainable by the application of best practicable control technology currently available (BPT):

Regulated parameter	Maximum daily [1]	Maximum monthly average [1]	Maximum daily [2]	Maximum monthly average [2]
BOD5	3.66	2.0	1.66	0.91
Fecal coliform	([3])	([3])	([3])	([3])

[1]Pounds per 1000 ducks

[2] Kilograms per 1000 ducks

[3] Not to exceed MPN of 400 per 100 ml at any time.

9.5.6.5.3 New Source Performance Standards for Duck CAFOs. Any new source must achieve the following performance standard:

9.5.6.5.3.1 There shall be no discharge of manure, litter or process wastewater pollutants into Waters of the State from the production area.

9.5.6.5.3.2 Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25 year, 24 hour rainfall event at the location of the CAFO, any process wastewater pollutants in the overflow may be discharged into Waters of the State.

9.5.6.5.3.3 Pretreatment Standards for New Sources of Duck CAFOs.

9.5.6.5.3.3.1 Any new source from Duck CAFOs must achieve the following performance standard: There shall be no introduction of process wastewater pollutants to publically owned treatment works (POTW).

9.5.6.5.3.3.2 Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25 year, 24 hour rainfall event at the location of the CAFO, any process wastewater pollutants in the overflow may be introduced to publically owned treatment works.

9.5.6.6 Terms and Conditions for all Medium and Designated CAFO NPDES Permits

9.5.6.6.1 Nutrient Management Plans or Animal Waste Management Plans

9.5.6.6.1.1 Requirement to Implement a Site Specific Nutrient Management Plan or Animal Waste Management Plan. Any NPDES CAFO permit issued to a Medium or Designated CAFO owner or operator shall require the CAFO owner or operator to implement and fully comply with a

nutrient management plan or animal waste management plan developed by a Delaware certified nutrient consultant as described in §5.0 of these regulations that contains site specific best management practices necessary to meet the requirements of this paragraph and standards specified in these regulations.

9.5.6.6.2 Record Keeping for all Medium and Designated CAFOs

9.5.6.6.2.1 Those owners or operators requiring a NPDES CAFO permit in accordance with these regulations shall maintain records of implementation for six years at the CAFO, in accordance with State Technical Standards. All animal waste management plans, nutrient management plans, site-specific management requirements and records of implementation shall be kept by the owners or operators. Animal waste management plans, nutrient management plans and records of implementation shall be made available for inspection and by request of the Secretary.

9.5.6.6.2.1.1 Records of implementation in the Production Area of Medium and Designated CAFOs shall include, but are not limited to:

9.5.6.6.2.1.1.1 Records indicating mortality management to include number disposed and method of disposal.

9.5.6.6.2.1.1.2 Records of manure storage activities, length of storage, amount stored, and maintenance of manure storage facilities.

9.5.6.6.2.1.1.3 The CAFO owner or operator shall document any deficiencies found within the production area and/or necessary corrective actions resulting from any inspections conducted and the date deficiencies were corrected. Deficiencies shall be corrected in 30 days. Deficiencies not corrected in 30 days shall be accompanied by an explanation of the factors preventing immediate correction.

9.5.6.6.2.1.2 Records of implementation in the Land Application Area of Medium and Designated CAFOs shall include, but are not limited to:

9.5.6.6.2.1.2.1 Manure, litter, process wastewater and soil test results, methods for testing and analyzing, and recommended nutrient application rates with an explanation of the basis for determining manure application rates, as provided in the protocols established in the State Technical Standards or the nutrient management plan.

9.5.6.6.2.1.2.2 Quantities, analyses and sources of all nitrogen and phosphorus applied to fields.

9.5.6.6.2.1.2.3 Dates, weather conditions at the time of manure, litter or process wastewater land application and 24 hours before and after application, and methods of application(s).

9.5.6.6.2.1.2.4 Crops planted, yields, and plant matter (grain, silage, etc.) removed from the land.

9.5.6.6.2.1.2.5 Records indicating periodic inspections and maintenance of land application equipment for leaks.

9.5.6.6.2.1.2.5.1 The CAFO owner or operator shall document any deficiencies found within the land application area and/or necessary corrective actions resulting from any inspections conducted and the date deficiencies were corrected. Deficiencies shall be corrected in 30 days. Deficiencies not corrected in 30 days shall be accompanied by an explanation of the factors preventing immediate correction.

9.5.6.6.2.1.3 Off site use of manure, litter or process wastewater. If manure, litter or process wastewater is sold or given to other persons for disposal or utilization, the following information shall be maintained at the CAFO generating the manure, litter or process wastewater:

9.5.6.6.2.1.3.1 The date of manure, litter or process wastewater removal.

9.5.6.6.2.1.3.2 Name of receiver and contact information.

9.5.6.6.2.1.3.3 Quantity (tons/gallons) of manure, litter or process wastewater removed.

9.5.6.6.2.1.3.4 A copy of the most recent manure, litter and process wastewater analysis shall be given to the receiver on or before the date of transfer.

9.5.6.6.2.1.4 The annual report and supporting documents.

9.5.7 Criteria for Siting New CAFO Facilities.

9.5.7.1 New CAFOs not permitted prior to the effective date of these regulations shall meet the following criteria:

9.5.7.1.1 New Source Siting Determination

9.5.7.1.1.1 Scope

9.5.7.1.1.1.1 Except as otherwise provided in an applicable "New Source Performance State Technical Standard", a source is a "new source" if meets the definition of a new source as provide in these regulations; and

9.5.7.1.1.1.2 It is constructed at the site at which no other source is located;

9.5.7.1.1.1.3 It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

9.5.7.1.1.1.4 Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent; the Secretary shall consider such factors as the extent to which the new facility is integrated with the existing CAFO; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

9.5.7.1.1.1.4.1 In the event that an unforeseen circumstance, such as a natural or man-made disaster, has partially or completely destroyed a NPDES CAFO permitted facility or structure, the owner or operator of that NPDES CAFO permitted operation may request in writing a determination by the Secretary that replacement of that partially or completely destroyed facility or structure is not a "new source". The Secretary may approve such determinations on a case by case basis considering the unique facts of each request and event. In addition, such determination must be requested and approved in writing before construction commences.

9.5.7.1.1.2 A source meeting the requirements to determine a new source as listed above in this section is a new source only if a new source performance standard has been approved in the State Technical Standards. If there is no such standard, the source is a new discharger.

9.5.7.1.1.3 Construction at a site at which an existing source is located results in a modification to the NPDES CAFO permit rather than a new source or a new discharger if the construction does not create a new building except where the Secretary has made an alternate determination as described in §9.5.7.1.1.1.4.1 of these regulations, structure, facility, or installation meeting the criteria of this section but otherwise alters, replaces, or adds to existing process or production equipment.

9.5.7.1.1.4 Construction of a new source has commenced if the owner or operator has:

9.5.7.1.1.4.1 Begun, or caused to begin as part of a continuous onsite construction program,

9.5.7.1.1.4.2 Any placement, assembly, or installation of facilities or equipment; or

9.5.7.1.1.4.3 Significant site preparation work including clearing, excavation, or removal of existing building, structures or existing facilities which is necessary for the placement, assembly or installation of new source facilities or equipment; or

9.5.7.1.1.4.4 Entered into a binding contractual obligation for the purchase of facilities or equipment which is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

9.5.7.2 Siting of New Control Facilities.

9.5.7.2.1 Waste storage structures shall not be located in the 100-year flood plain unless the CAFO is designed and constructed such that the manure from a CAFO is protected from floodwaters from a storm of 24 hours duration having a one (1) percent chance of recurrence within a given year. Such events are defined as 100-year, 24-hour rainfall event. Waste storage structures and treatment lagoons are to be designed in accordance with State Technical Standards.

9.5.7.2.2 Waste storage structures shall not be located closer than 300 feet from any public water well nor 200 feet from a domestic water well.

9.5.7.2.3 No Waters of the State shall come into direct contact with the animals confined at the CAFO. Fences or other practices may be used to restrict such access in accordance with State Technical Standards.

9.5.7.2.4 Animal confinement areas shall not be located:

9.5.7.2.4.1 In the 100 year flood plain unless the animal confinement areas are protected from inundation and damage that may occur during that flood event.

9.5.7.2.4.2 Closer than 300 feet from any public water well, nor 200 feet from a domestic water well.

9.5.7.2.5 The handling, treatment, and management of CAFO wastes shall not:

9.5.7.2.5.1 Result in the inadvertent destruction or adverse modification of habitat that supports federally endangered or threatened species.

9.5.7.2.5.2 Create a public health hazard.

9.5.7.2.5.3 Result in groundwater contamination.

9.5.8 Public Access to Information, Public Notice for NOIs and Draft NPDES CAFO Permits, Public Comments, Public Hearings for NOIs and NPDES CAFO Permits

9.5.8.1 Public Access to Information.

9.5.8.1.1 All information pertaining to NPDES CAFO permit issuance, reissuance, modification, revocation or termination, including NOIs, attachments, comments received by the public, and draft NPDES CAFO permits shall be available for review by the public.

9.5.8.1.2 Annual reports, including without limitation a statement by the owner or operator stating whether or not the owner or operator met or exceeded the projected crop yields provided in CAFO's nutrient management plan, shall be available for review by the public, provided that the crop yields provided and contained in annual reports shall be confidential and non-public to the maximum extent permitted under Delaware law. The crop yields provided and contained in annual reports may be used for data compilation in an aggregated form, and such data compilation in an aggregated form may be made public. Information transmitted by the Secretary to EPA shall be subject to appropriate Federal regulations.

9.5.8.2 Public Notice for NOIs

9.5.8.2.1 The Department shall follow the following procedures in accordance with 7 **Del.C.** §6004 (b) when processing an NOI for a CAFO NPDES permit.

9.5.8.2.1.1 Every complete NOI for a CAFO NPDES permit, including any request for NPDES CAFO permit modification, revocation, and reissuance or termination, shall be given public notice by publication on the State of Delaware website, and in a newspaper of general circulation in the county, city or town in which the CAFO is located and in a daily newspaper of general circulation throughout the state.

9.5.8.2.1.1.1 Notice shall be provided when the tentative determinations have been made and a draft NPDES CAFO permit prepared.

9.5.8.2.1.1.2 A copy of the notice shall be mailed to the applicant, and any person or group who has asked to be notified. The Secretary will maintain a mailing list of persons and groups who will be sent copies of notices for all NPDES NOIs. The Secretary will add the name of any person or group to that list upon written request.

9.5.8.2.1.1.3 Public notice is not required when a request for NPDES CAFO permit modification, revocation, reissuance, or termination is denied. The Secretary will provide written notice of such decision to the person who filed the request.

9.5.8.2.1.2 The contents of the public notice of any NOI shall include the following minimum information:

9.5.8.2.1.2.1 Name and address of the owner or operator and the name of the CAFO submitting the NOI;

9.5.8.2.1.2.2 A brief description of the CAFO described in the NOI;

9.5.8.2.1.2.3 The type of discharge or proposed discharge, the name of the receiving water and general description of the location of each discharge point indicating whether such discharge or proposed discharge is new or existing;

9.5.8.2.1.2.4 A statement indicating the Secretary's intent to issue a CAFO NPDES permit for the discharges or proposed discharges described in the NOI;

9.5.8.2.1.2.5 A brief description of the procedures by which the public may participate in the final NPDES CAFO permit decision, including the timeframe for providing comments, a description of the procedure for requesting a hearing or if the Secretary has determined to hold a public hearing, the date and time for such hearing; and

9.5.8.2.1.2.6 The location at which the NOI, CAFO nutrient management plan or animal waste management plan, and terms of the NPDES CAFO permit may be inspected;

9.5.8.2.1.2.7 Address and phone number of the Department office at which interested persons may obtain further information.

9.5.8.2.1.3 The owner or operator may be responsible for the cost of any such advertisements and notices made by the Department as required by these regulations, not to exceed $500.

9.5.8.2.1.4 Public notices may describe more than one NOI or NPDES CAFO permit.

9.5.8.2.1.5 The Secretary shall provide a period of not less than 30 days following the date of public notice during which time interested parties may submit their written views on the draft NPDES CAFO permit made with respect to the NOI. All written comments submitted during the comment period will be retained by the Department and considered in the formulation of its final determination with respect to the NOI.

9.5.8.3 Public Comments.

9.5.8.3.1 All persons, including the owner or operator, who believe any condition in the draft NPDES CAFO permit is inappropriate or that the Secretary's tentative decision to deny the application, terminate the NPDES CAFO permit, or prepare a draft NPDES CAFO permit is inappropriate, must raise the issues and submit all arguments supporting their position by the close of the public comment period.

9.5.8.3.2 The Secretary shall consider all comments when preparing the final NPDES CAFO permit and shall provide a response to all comments received during the public notice period.

9.5.8.3.2.1 The Secretary shall ensure, to a reasonable extent, that the comments on any draft NPDES CAFO permits have been addressed.

9.5.8.3.2.2 The Secretary shall prepare a written response, indicating which provisions of the draft NPDES CAFO permit have been changed in the final NPDES CAFO permit, and the reason for the change, or if the requested change is not made, the reason for denying the change.

9.5.8.3.2.3 Responses shall be available to the public, at the time the notice of a final NPDES CAFO permit decision is given.

9.5.8.3.3 At his discretion, the Secretary may reopen or extend the comment period to give interested persons the opportunity to comment on any provisions in the draft NPDES CAFO permit that were modified or on additional conditions that were to be included in response to the data, information, or arguments presented during the initial comment period. Comments filed during such reopened or extended comment period shall be limited to those new or modified provisions. The public notice shall define the scope of the reopening or extension of the comment period.

9.5.8.4 Public Hearings

9.5.8.4.1 The Secretary will hold a public hearing on an NOI in accordance with 7 **Del.C.** §6006 if he receives a meritorious request for a hearing during the public comment period. A public hearing may be held on any NOI if the Secretary determines it to be in the best interest of the State to do so. Such notice shall also be sent by mail to any person who has requested such notification from the Department by providing their name and mailing address. The reasonable time stated shall be 15 days, unless federal law requires a longer time, in which case the longer time shall be stated. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the NPDES CAFO permit's probable impact.

9.5.8.4.2 Public Notice of Hearings

9.5.8.4.2.1 Public notice of any hearing shall be circulated as follows:

9.5.8.4.2.1.1 Notice of public hearings shall be published on a State of Delaware website, in a newspaper of general circulation in the county or city where the CAFO is located and in a daily newspaper of general circulation throughout the state;

9.5.8.4.2.1.2 Notice of the hearing shall be sent to all persons and government agencies which received a copy of the notice for the NOI;

9.5.8.4.2.1.3 Notice of the hearing shall be sent to all persons who requested the hearing and/or provided comments.

9.5.8.4.2.2 In addition to the requirements in §9.5.8.2.1.2 of these regulations, the public hearing notice shall include the following:

9.5.8.4.2.2.1 A brief reference to the public notice issued for the NOI, including date of issuance unless the public notice includes the hearing notice;

9.5.8.4.2.2.2 Information regarding the date, time and location of the hearing;

9.5.8.4.2.2.3 The purpose of the hearing;

9.5.8.4.2.2.4 A concise statement of the issues raised by the persons requesting the hearing;

9.5.8.4.2.2.5 A brief reference to the rules and procedures to be followed at the hearing.

9.5.8.5 NPDES CAFO Permit Issuance

9.5.8.5.1 After the close of the public comment period, the Secretary shall consider all comments received including any additional data, information or arguments presented during the public

comment period and render a final NPDES CAFO permit decision. For the purposes of these regulations, a final NPDES CAFO permit decision means a final decision to issue, deny, modify, revoke, reissue, or terminate a NPDES CAFO permit.

9.5.8.5.2 The Secretary shall notify the CAFO owner and operator and each person who submitted comments or requested notice of the final NPDES CAFO permit decision. The notice shall include the Secretary's response to comments and a reference for appealing the Secretary's decision.

9.5.8.5.3 Effective date of NPDES CAFO permit

9.5.8.5.3.1 NPDES CAFO permit coverage under these regulations begins upon approval by the Secretary.

9.5.8.6 Changes to a nutrient management plan.

9.5.8.6.1 The CAFO owner or operator shall provide the Secretary with the most current version of the CAFO's nutrient management plan or animal waste management plan and shall identify changes from the previous version, except that the results of calculations made in accordance with the narrative rate approach are not subject to the requirements of this section.

9.5.8.6.2 The Secretary will review the revised nutrient management plan or animal waste management plan to ensure that it meets the requirements of these regulations and applicable effluent limitations and standards, as described in the State Technical Standards, and will determine whether the changes to the incorporated nutrient management plan or animal waste management plan require revision to the terms of the NPDES CAFO permit issued to the CAFO.

9.5.8.6.2.1 If revision to the terms of the incorporated nutrient management plan is not necessary, the Secretary will notify the CAFO owner or operator and upon such notification the owner or operator may implement the revised nutrient management plan.

9.5.8.6.2.2 If revision to the terms of the incorporated nutrient management plan is necessary, the Secretary will determine whether such changes are substantial changes.

9.5.8.6.2.2.1 Substantial Changes. A substantial change to the NPDES CAFO permit will be determined by the Secretary. Changes determined to be substantial are subject to public review and comment as specified in sections 9.5.8.2 and 9.5.8.3 of these regulations. The Secretary may incorporate the changes to the incorporated nutrient management plan or animal waste management plan into the NPDES CAFO permit, and will notify the owner or operator and the public of the final decision concerning revisions to the terms and conditions of the NPDES CAFO permit. Substantial changes include, but are not be limited to the following changes:

9.5.8.6.2.2.1.1 Addition of new land application areas not included under the terms of a CAFO nutrient management plan incorporated into an existing CAFO NPDES permit and in full compliance with the requirements of these regulations;

9.5.8.6.2.2.1.1.1 If the new CAFO owner or operator applies manure, litter or process wastewater on the newly acquired land application area in accordance with existing NPDES CAFO permit terms applicable to the newly acquired application areas, such addition would be a change to the new CAFO owner or operator's nutrient management plan but would not be a substantial change for purposes of these regulations;

9.5.8.6.2.2.1.2 Changes to the site specific components of the nutrient management plan where changes will increase the risk of nitrogen or phosphorus transport to Waters of the State;

9.5.8.6.2.2.1.3 Changes to the crop specific maximum annual manure application rates, total nitrogen rates or plant available phosphorus rates;

9.5.8.6.2.2.1.4 Addition of the animal feeding capacity greater than 25%;

9.5.8.6.2.2.1.5 Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding rates of application; or

9.5.8.6.2.2.1.6 Any change to the operation that presents a risk of nitrogen and phosphorus runoff as determined by the Secretary.

9.5.8.6.2.2 2 Insubstantial Changes. If the Secretary determines that the revisions to the terms of the incorporated nutrient management plan submitted by the owner or operator are not substantial, the Secretary will make the revised nutrient management plan publicly available and include the revisions in the NPDES CAFO permit record, revise the terms of the incorporated nutrient management plan in the NPDES CAFO permit, notify the owner

or operator and inform the public of any changes to the terms of the incorporated nutrient management plan in the NPDES CAFO permit.

9.5.9 Enforcement, Fines, and Penalties

9.5.9.1 Whoever violates these regulations shall be subject to the fines and penalties established in 3 **Del.C.** §2200 and 7 **Del.C.** Ch. 60 at the discretion of the Secretary and appropriate Court.

9.5.9.2 Any person wishing to file a complaint against any person regarding an alleged violation of these regulations shall follow the process established by *Regulations Governing the Processing of Complaints and Violations published in the January 1, 2001 Register of Regulations.*

9.5.10 Effective Date. November 11, 2011.

9.6 Reserved

9.7 Reserved

9.8 Regulations Governing Discharges from the Application of Pesticides to Waters of the State

9.8.1 **Authority**

These regulations are promulgated pursuant to the authority provided by 3 **Del.C.** §2200 et.al. and 7 **Del.C.** §6000 et.al, and 40 CFR Part 122.

9.8.2 **Definitions**

The following words and terms, when used in this Subsection, shall have the following meaning unless the context clearly indicates otherwise:

"Action Threshold" means the point at which pest populations or environmental conditions cannot be tolerated necessitating that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

"Active Ingredient" means any substance (or group of structurally similar substances) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a). [40 CFR § 152.3]. Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. [40 CFR § 174.3]

"Adverse Incident" means an unusual or unexpected incident that an Operator has observed upon inspection or of which the Operator otherwise becomes aware, in which:

(1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue; and,

(2) The person or non-target organism suffered a toxic or adverse effect, directly as a result of pesticide residue. The phrase "toxic or adverse effects" includes effects that occur within Waters of the State on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present), and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water; fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; or other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.)

The phrase, toxic or adverse effects, also includes any adverse effects to humans or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge to Waters of the State that are temporally and spatially related to exposure to a pesticide residue (e.g., skin rashes, vomiting, lethargy, sickness from consumption of plants or animals containing pesticides).

"Agricultural land management practices" means those methods and procedures generally accepted by the Conservation Districts and used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

"Annual Treatment Threshold" means an area (in acres) or linear distance (in miles) in a calendar year to which an Operator is authorizing and/or performing pesticide applications as identified below:

Table 1. Annual Treatment Thresholds	
Pesticide Use	Annual Threshold
Mosquitoes and Other Flying Insect Pest Control (larvaecide and adulticide)	6400 acres of treatment area cumulative
Weed and Algae Pest Control	20 linear miles or 80 acres of water (i.e. surface area)
Animal Pest Control	20 linear miles or 80 acres of water (i.e. surface area)
Forest Canopy Pest Control	6400 acres of treatment area cumulative

For calculating annual treatment areas for Mosquitoes and Other Flying Insect Pest Control and Forest Canopy Pest for comparing with any threshold in Table 1, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same 3,000 acre site should be counted as 9,000 acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. The treatment area for these two pesticide use patterns is additive over the calendar year.

For calculating annual treatment areas for Weed and Algae Control and Animal Pest Control for comparing with any threshold in Table 1, calculations should include either the linear extent of or the surface area of waters for applications made to Waters of the State or at water's edge adjacent to Waters of the State. For calculating the annual treatment area, count each treatment area only once, regardless of the number of pesticide application activities performed on that area in a given year. Also, for linear features (e.g., a canal or ditch), use the length of the linear feature whether treating in or adjacent to the feature, regardless of the number of applications made to that feature during the calendar year. For example, whether treating the bank on one side of a ten-mile long ditch, banks on both sides of the ditch, and/or water in that ditch, the total treatment area is ten miles for purposes of determining if an Pesticides Discharge Management Plan (PDMP) is required to be created. Additionally, if the same 10 miles area is treated more than once in a calendar year, the total area treated is still 10 miles for purposes of comparing with any threshold in Table 1. The treatment area for these two pesticide use patterns is not additive over the calendar year.

"Best Available Technology (BAT)" is the "best" or most advanced and reasonably cost-effective treatment technology, control measures and practices, including pollution prevention, available to prevent, manage, reduce or remove pollutants taking the following seven factors into account:

(1) The age of equipment and facilities involved;

(2) The process or processes employed;

(3) The engineering aspects of applying the various technologies, types of controls or practices;

(4) Process or production changes;

(5) Pollution prevention measures (e.g. raw material substitutions, equipment modification, production scheduling, inventory control, housekeeping measures and in-process recycling that returns wastes directly to production as raw materials);

(6) The cost of achieving such pollutant removal(s) or effluent reduction(s); and

(7) Non-water quality impacts (e.g. energy requirements).

"Best Management Practices (BMPs)" means schedules of activities, prohibition of practices, maintenance procedures, and other management practices or measures to prevent or reduce the discharge of pollutants to Waters of the State. BMPs include the following, among other practices and measures: structural and non-structural controls; treatment requirements; and operating procedures and practices to control site runoff, or spillage, or leaks, or drainage from raw materials storage.

"Biological Control Agents" mean those agents that are organisms that can be introduced to Operator sites, such as herbivores, predators, parasites, and hyperparasites. [Source: US FWS IPM Guidance, 2004].

"Biological Pesticides (also called biopesticides)" includes microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP).

Microbial pesticide means a microbial agent intended to prevent, destroy, repel, or mitigate any pest, or intended for use as a plant regulator, defoliant, or desiccant, that:

(1) Is a eukaryotic microorganism including, but not limited to, protozoa, algae, and fungi;

(2) Is a prokaryotic microorganism, including, but not limited to, Eubacteria and Archaebacteria; or,

(3) Is a parasitically replicating microscopic element, including but not limited to, viruses. [40 CFR § 158.2100(b)]

Biochemical pesticide means a pesticide that:

(1) Is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance;

(2) Has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and

(3) Has a non-toxic mode of action to the target pest(s). [40 CFR § 158.2000(a)(1)]

Plant-incorporated protectant means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof.

"Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

"Cultural Methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Declared Pest Emergency" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control. This public declaration may be based on:

(1) Significant risk to human health;

(2) Significant economic loss; or,

(3) Significant risk to endangered species, threatened species, beneficial organisms, or the environment.

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

"Discharge" when used without qualification, means the "discharge of a pollutant."

"Discharge of a Pollutant" means the addition of any pollutant, or combination of pollutants, to state waters or the contiguous zone, or the ocean, from any source or activity other than a vessel or other floating craft when being used as a means of transportation and in compliance with Section 312 of the Act. This definition includes additions of pollutants into State waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into a treatment works other than a publicly owned treatment works (POTW).

"Facility" means any NPDES "point source" (including land or appurtenances thereto) that is subject to regulation under the NPDES program. [40 CFR § 122.2]

"Federal Facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.) as amended.

"For-Hire" means an individual or company that has been hired to apply pesticides and includes persons who make contractual pesticide applications for which they or their employer receives compensation (e.g., lawn care firms, pest control companies).

"Impaired Water" (or "Water Quality Impaired Water" or "Water Quality Limited Segment") means a water is impaired for purposes of this Subsection if it has been identified by the Department as not meeting applicable State water quality standards (these waters are called "water quality limited segments" under 40 CFR § 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

"Inert Ingredient" means any substance (or group of structurally similar substances), other than an active ingredient, that is intentionally included in a pesticide product. Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.

"Integrated Pest Management (IPM)" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.

"Large Entity" means any:

(1) Public entity that serves a population greater than 10,000 within the State of Delaware; or,

(2) Private enterprise that exceeds the Small Business Administration size standard as identified at 13 CFR § 121.201 (size standards set by North American Industry Classification System codes, which vary by industry type) for applications within the State of Delaware; or,

(3) Any State of Delaware employee who performs any pesticide application under the realm of this Subsection as part of their job duties.

"Mechanical/Physical Methods" means mechanical tools or physical alterations of the environment for pest prevention or removal.

"Minimize" means to reduce and/or eliminate pesticide discharges to Waters of the State through the use of "control measures" to the extent technologically available and economically practicable and achievable.

"Non-target Organisms" means the plant and animal hosts of the target species, the natural enemies of the target species and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Operator" means any entity (individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof) associated with the application of pesticides which results in a discharge to Waters of the State. "Operator" includes:

(1) Any entity which performs the application of a pesticide; or,

(2) Any entity which has day-to-day control of the application (i.e., they are authorized to direct workers for hire to carry out those activities).

"Person" means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

"Pest" means any organism under circumstances that make it deleterious to man or the environment, if it is:

(1) Any invertebrate animal, including but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living man or other living animals, and any vertebrate animal other than man;

(2) Any plant growing where not wanted, including any moss, alga, liverwort, or other plant of any higher order, and any plant part such as a root; or,

(3) Any fungus, bacterium, virus, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCA sec. 201(g)(1)) and cosmetics (as defined in FFDCA sec. 201(i)).

"Pesticide Discharge Management Plan (PDMP)" means a document that identifies the control measures (including inspections, maintenance, monitoring, and corrective action) used to comply with the applicable requirements of this Subsection and documents its implementation.

"Pest Management Area" means the area of land, including any water, for which an Operator has responsibility for and is authorized to conduct pest management activities as covered by this Subsection (e.g., for an Operator who is a mosquito control district, the pest management area is the total area of the district).

"Pest Management Measure" means any practice used to meet the effluent limitations outlined herein that complies with manufacturer's specifications as required under FIFRA, industry standards, and recommended industry practices related to the application of pesticides, relevant legal requirements and

other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to waters of the State.

"Pesticide" means:

(1) any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest,

(2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and,

(3) any nitrogen stabilizer, except that the term ''pesticide'' shall not include any article that is a "new animal drug" within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing a new animal drug.

The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). For purposes of the preceding sentence, the term "critical device" includes any device that is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term ''semi-critical device'' includes any device that contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body [FIFRA Section 2(u)].

The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA).

The term "pesticide" is used when referring to the "pesticide, as applied." When referring to the chemical in the pesticide product with pesticidal qualities, the term "active ingredient" is used.

"Pesticide Product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide Research and Development" means activities undertaken on a systematic basis to gain new knowledge (research) and/or the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development).

"Pesticide Residue" includes that portion of a pesticide application that is discharged from a point source to Waters of the State and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Pesticide Use Pattern" means the method and type of pest that is controlled, and includes the following: mosquito and other flying insect control (adulticide and larvaecide); weed and algae control; animal pest control; and forest canopy pest control.

"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 stormwater runoff.

"Pollutant" means dredged spoil and other dredged materials, fill material,, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil, product chemicals, and industrial, municipal, and agricultural waste discharged into water. For purposes of this definition, a "biological pesticide" is considered a "biological material," and any "pesticide residue" resulting from use of a "chemical pesticide" is considered a "chemical waste."

"Secretary" means the Secretary of the State of Delaware Department of Natural Resources and Environmental Control or his duly authorized designee.

"State" means the State of Delaware.

"Target Pest" means the organism(s) toward which Pest Management Measures are being directed.

"Tier 3 Waters" means for anti-degradation purposes, pursuant to 40 CFR § 131.12(a)(3), Tier 3 waters are identified by States or Tribes as having high quality waters constituting an Outstanding National Resource Water (ONRW), which may include waters of National Parks and State Parks, wildlife refuges, and waters of exceptional recreational or ecological significance.

"Total Maximum Daily Loads (TMDLs)" means the amount of a given pollutant that may be discharged to a waterbody from point, nonpoint and natural background sources and still allow attainment or maintenance of the applicable narrative and numerical water quality standards. A "TMDL" is the sum of the individual Waste Load Allocations or WLAs for point sources and load allocations or LAs for nonpoint sources of pollution and natural background. A "TMDL" may include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a "TMDL" attempts to match the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact.

"Treatment Area" means the entire area, whether over land or water, where a pesticide application is intended to provide pest control benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pest control benefits.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based effluent limitations because of factors beyond the Operator's reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"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, or within its jurisdiction including but not limited to:

(1) waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean;

(2) all interstate waters, including interstate wetlands;

(3) all other Waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sand flats, wetlands, sloughs, or natural or impounded ponds;

(4) all impoundments of waters otherwise defined as Waters of the State under this definition; and

(5) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (1) – (4).

Waste and stormwater treatment systems or waste storage structures including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds which otherwise meet the requirements of this definition) are not "State Waters" or "Waters of the State."

"Water Quality Impaired" See 'Impaired Water'.

"Water Quality Standards" means any rule or limit established by the Secretary which consists of a designated use or uses for Waters of the State and the water quality criteria for such waters based upon such designated uses. Water quality standards also include an antidegradation policy and implementation procedures.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetland areas are as delineated under and through 7 **Del.C.** Ch. 66 and the "Corps of Engineers Wetlands Delineation Manual", dated January, 1987.

9.8.3 **Coverage**

9.8.3.1 This Subsection applies to all Operators who: (1) apply biological pesticides or chemical pesticides that leave a residue (hereinafter collectively "pesticides") for Pesticide Use Patterns described below; and (2) do so directly to Waters of the State or indirectly to systems that discharge into Waters of the State (i.e. stormwater wet ponds), and excludes pesticide applications for Federal Facilities.

9.8.3.2 **Pesticide Use Patterns Covered Under Subsection**

This Subsection applies to Operators who fall under any one of the following pesticide use patterns: Mosquito and Other Flying Insect Pest Control (adulticide and larvaecide); Weed and Algae Control; Animal Pest Control; or Forest Canopy Pest Control.

9.8.3.2.1 **Mosquito and Other Flying Insect Pest Control (Adulticide and Larvaecide)**

To control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.

9.8.3.2.2 **Weed and Algae Pest Control**

To control weeds, algae, and pathogens that are pests in water and at water's edge, including ditches and/or canals.

9.8.3.2.3 **Animal Pest Control**

To control animal pests in water and at water's edge. Animal pests in this use category include fish, lampreys, insects, mollusks, and pathogens.

9.8.3.2.4 **Forest Canopy Pest Control**

Application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.

9.8.3.3 Coverage under this Subsection shall be granted for a duration of five (5) years (refer to 9.8.6 for resubmission requirements) unless determined otherwise by the Department. In no case shall coverage be valid for more than five (5) years.

9.8.3.4 For those Operators who exceed Annual Treatment Thresholds, those Operators are considered to be temporarily covered under this Subsection upon the NOI being received by the Department. If the application is approved, final coverage will be granted after NOI review by the Department. The Department may require application resubmission at any time if the NOI is deemed inadequate or incomplete.

9.8.4 **Revocation**

Permit coverage may be modified in whole or in part, revoked and reissued, or terminated by the Department during its term for cause as specified herein:

9.8.4.1 If the pesticide proposed for use on the NOI form is not registered for use under that specific Pesticide Use Pattern as defined in 9.8.2;

9.8.4.2 Violation of any term or condition of permit coverage, as contained herein;

9.8.4.3 Failure of the permittee to disclose fully all relevant facts in the NOI application or during the permit issuance process or the permittee's misrepresentation of any relevant facts at any time;

9.8.4.4 Failure to notify the Department by resubmission of a new NOI upon change in product use or substantial alterations or additions to the permitted activity;

9.8.4.5 A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (e.g., the promulgation of any applicable effluent standard or prohibition under the Clean Water Act, any change in State law that requires the reduction or elimination of the discharge, revisions to state Water Quality Standards or TMDLs etc.); or,

9.8.4.6 Information indicating that the permitted discharge poses a threat to human health or the environment.

9.8.5 **Exclusions and Limitations on Coverage**

9.8.5.1 **Exclusions**

Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures and forest lands do not require a NPDES permit, but not discharges from but not discharges from aquaculture or aquatic animal production facilities that produce 2,000 lbs or more harvest weight fish or aquatic animals per year, discharges to aquaculture projects, discharges from concentrated animal feeding operations (CAFOs) or discharges from silvicultural point sources (7 **DE Admin. Code** §7201-6.3.1.6).

9.8.5.2 **Limitations on Coverage**

9.8.5.2.1 **Discharges to Water Quality Impaired Waters**

The Operator is not eligible for coverage for any discharges from a pesticide application to Waters of the State if the water is identified as impaired by that pesticide or its degradates. If the discharge is not eligible because the water is listed as impaired for that specific pesticide, but there is evidence that shows the water is no longer impaired, this information may be submitted to the Department with a request that coverage be allowed.

9.8.5.2.2 **Discharges to Waters Designated as Tier 3 for Anti-degradation Purposes**

The Operator is not eligible for coverage for discharges from a pesticide application to waters designated by the Department as Tier 3 for anti-degradation purposes.

9.8.5.2.3 **Discharges Currently or Previously Covered by another Permit**

Discharges covered by another National Pollutant Discharge Elimination System (NPDES) permit shall apply for permit coverage under this Subsection separately.

9.8.5.2.4 **Discharges Covered Under the Pesticides General Permit (federal lands)**

The Operator is not eligible for coverage for pesticide applications taking place on federal lands or federal facilities covered under NPDES Pesticides General Permit administered by EPA.

9.8.6 **Notice of Intent (NOI)**

9.8.6.1 All Operators (as defined in 9.8.2) regulated under this Subsection that fall below Annual Treatment Thresholds (as defined in 9.8.2) are automatically covered under this Subsection and need not submit a NOI.

9.8.6.2 Operators (as defined in 9.8.2) regulated under this Subsection that exceed the Annual Treatment Thresholds (as defined in 9.8.2) will be required to submit a complete and accurate NOI within ninety (90) days of promulgation. Only one Operator, not both (either the entity who performed the application of the pesticide or the entity who has day-to-day control of the application), shall apply for permit coverage for any given area.

9.8.6.3 All NOI submissions must follow Signatory Requirements as described in 9.8.14, and must be sent to the address as provided in 9.8.15, unless otherwise instructed.

9.8.6.4 Failure to submit a complete and accurate form will result in the facility being denied coverage.

9.8.6.5 Persons who discharge pesticides according to 9.8.3 who fail to notify the Department of their intent to be covered under this Subsection, or who discharge to waters of the State without an individual NPDES permit, are in violation of 7 **Del.C.** Ch. 60 and the federal Clean Water Act and may be subject to penalties.

9.8.6.6 Any Operator who has submitted a complete and accurate NOI under the *Emergency Regulations Governing Discharges from the Application of Pesticides to Waters of the State* will not be required to resubmit, and will fall under requirement per the final promulgated regulations herein.

9.8.6.7 Any person wishing to extend or renew coverage under this Subsection must submit a new NOI Form not less than sixty (60) days prior to the permit expiration date. In the event that the permittee submits a timely request to extend or renew existing coverage, and the Department through no fault of the permittee, is unable to make a final determination on the request before the expiration date of coverage, the terms and conditions of the existing coverage shall be continued and remain fully effective and enforceable until the Department makes a final determination on the request.

9.8.6.8 A new NOI must be submitted to the Department under the following circumstances:

9.8.6.8.1 An Operator who has previously submitted an NOI and who undergoes a name change or change in ownership must submit a new NOI to the Department no later than (30) days after this change.

9.8.6.8.2 A change in Operator who was not listed on the original NOI must submit a new NOI to the Department no later than (30) days after this change.

9.8.6.8.3 Major changes in operations including the change of Operator (not change in employees under Operator), change in active ingredients (not change in specific product name), or instances where the average acres or linear miles treated varies by more than 15% of estimates as indicated on the original NOI will require NOI resubmission within thirty (30) days after such changes have occurred.

9.8.7 **Notice of Termination (NOT)**

9.8.7.1 Coverage under this Subsection continues until a completed Notice of Termination (NOT) form has been submitted to, and formally approved by, the Department, in instances when an NOI was originally submitted to the Department. The NOT shall be submitted on a form provided by the Department. Failure to submit a complete and accurate NOT form will result in the facility being denied termination under this Subsection.

9.8.7.2 All NOT submissions must follow Signatory Requirements as described in 9.8.14, and must be sent to the address as provided in 9.8.15.

9.8.7.3 For Operators who submitted a NOI under 9.8.6, the NOT Form shall be submitted to the Department within 30 days of any of the following events:

9.8.7.3.1 A new owner or Operator has taken over responsibility of the original Operator;

9.8.7.3.2 Operators have ceased applying and, therefore, are no longer discharging; or

9.8.7.3.3 Coverage under an individual permit has been granted by the Department.

9.8.8 **Individual NPDES Permit Coverage**

9.8.8.1 **Requirements for Coverage under an Individual Permit**

The Department may require the Operator to apply for and/or obtain authorization to discharge under an individual NPDES permit in accordance with Section 6.0 of the "Regulations Governing the Control of Water Pollution." If the Department requires Operator to apply for an individual NPDES permit, the Department will notify the Operator in writing that a permit application is required. This notification will include a brief statement of the reasons for this decision and will provide application information. In addition, if the Operator's discharges are authorized under this Subsection, the notice will set a deadline to file the permit application, and will include a statement that on the effective date of the individual NPDES permit, coverage under this Subsection will terminate. The Department may grant additional time to submit the application if the Operator submits a request setting forth reasonable grounds for additional time. If the Operator is covered and fails to submit an individual NPDES permit application as required by the Department, then the applicability of this permit to the Operator is terminated at the end of the day specified by the Department as the deadline for application submittal. The Department may take enforcement action for any unpermitted discharge or violation of any permit requirement.

9.8.8.2 **Request for Coverage under an Individual NPDES Permit**

The Operator may apply for an individual permit. In such a case, the Operator must submit an individual permit application in accordance with the requirements of Section 6.0 of the "Regulations Governing the Control of Water Pollution", with reasons supporting the request, to the Department. The request may be granted by issuance of an individual permit if the Operator's reasons are warranted.

When an individual NPDES permit is issued to the Operator to discharge a pollutant to Waters of the State as a result of a pesticide application, the Operator's authorization to discharge under this Subsection is terminated on the effective date of the individual permit.

9.8.9 **Operator's Responsibilities (All Operators)**

9.8.9.1 **Requirement to Use Best Management Practices**

Operators are required to comply with all other applicable federal or state laws and regulations that pertain to application of pesticides.

If an Operator's discharge of pollutants results from the application of pesticide that is being used solely for the purpose of Pesticide Research and Development (as defined in 9.8.2), the Operator must use such pesticide consistent with any applicable research plan and experimental use permit.

At a minimum, all Operators must comply with this Subsection and minimize the discharge of pesticides to Waters of the State from the application of pesticides, through the use of Pest Management Measures, as defined in 9.8.2.

9.8.9.1.1 To the extent determined by the Operator, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.

9.8.9.1.2 Maintain pesticide application equipment in proper operating condition by adhering to any manufacturer's specifications and industry practices, and by calibrating, cleaning, and

repairing such equipment on a regular basis to ensure effective pesticide application and pest control. Perform regular maintenance activities to reduce leaks, spills, or other unintended discharges of pesticides associated with the application of pesticides covered herein.

9.8.9.1.3 Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable state and federal requirements.

9.8.9.2 **Requirement to First Evaluate Best Available Technology (BAT) for Pesticide Applications**

Operators must select and implement efficient and effective means to control and manage pests that minimize any discharges (of pollutants) resulting from the application of pesticides from the Pesticide Use Patterns as in 9.8.3. In developing the Pest Management Measures to be implemented for each pest management area, the Operator must first evaluate [and document according to 9.8.10] the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

1. No action
2. Prevention
3. Mechanical or physical methods
4. Cultural methods
5. Biological control agents
6. Pesticides

If a pesticide is selected to manage pests and the application of the pesticide will result in a discharge to a Waters of the State, Operators must:

9.8.9.2.1 Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application. Surveillance may include larval and/or adult life stages, or evaluation of existing larval surveillance data, environmental conditions, or data from adjacent areas; and

9.8.9.2.2 Reduce the impact on the environment and on non-target organisms when applying the pesticide; and

9.8.9.2.3 In situations or locations where practicable and feasible for efficacious control, use larvaecides as a preferred pesticide for mosquito or flying insect pest control; and

9.8.9.2.4 In situations or locations where larvaecide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control; and

9.8.9.2.5 Evaluate the use of pesticides against the most susceptible developmental stage or the target species.

9.8.9.3 **Visual Monitoring Requirements**

During any pesticide application with discharges authorized under this permit, all Operators must, when considerations for safety and feasibility allow, visually assess the area to and around where pesticides are applied for possible and observable adverse incidents, as defined in 9.8.2, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

9.8.9.4 **Observational Monitoring Requirements**

9.8.9.4.1 The amount of pesticide applied shall be monitored to ensure that the lowest effective amount is used to control the pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label.

9.8.9.4.2 Pesticide application activities shall be monitored to ensure that regular maintenance activities are being performed and that application equipment is in proper operating condition to reduce the potential for leaks, spills, or other unintended discharge of pesticides to surface waters.

9.8.9.4.3 Pesticide application activities shall also be monitored to ensure that the application equipment is in proper operating condition by adhering to any manufacturer's conditions and industry practices and by calibrating, cleaning, and repairing equipment on a regular basis.

9.8.9.5 **Water Quality-Based Effluent Limitations and Monitoring**

Although no numeric water-quality based effluent limits are established under this Subsection, all Operators must control discharges as necessary to meet applicable numeric and narrative state water quality standards, for any discharges authorized under this Subsection, with compliance required upon beginning such discharge.

If at any time an Operator becomes aware or the Department determines that the Operator's discharge causes or contributes to an excursion of any applicable water quality standard, the Operator must take corrective action as required in 9.8.11 up to and including the ceasing of the discharge, if necessary. At any time, the Department can require water quality-based monitoring by the Operator when deemed necessary. In this circumstance, test procedures to be used shall be those approved 40 CFR Part 136. Calculations for all limitations that require averaging of measurements must use an arithmetic mean unless otherwise specified by the Department.

9.8.9.6 **Problem Identification**

Prior to pesticide application, all Operators must do the following for each Pest Management Area, as defined in 9.8.2, and for each Pesticide Use Pattern, as established in 9.8.4:

9.8.9.6.1 **Mosquito and Other Flying Insect Pest Control (Adulticide and larvaecide)**

9.8.9.6.1.1 Establish densities for larval and adult mosquito or flying insect pest populations or identify environmental condition(s), either current or based on historical data for implementing Pest Management Measures;

9.8.9.6.1.2 Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;

9.8.9.6.1.3 Identify known breeding sites for source reduction, larval control program, and habitat management;

9.8.9.6.1.4 Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems; and

9.8.9.6.1.5 In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in 9.8.9.6.1.

9.8.9.6.2 **Weed and Algae Pest Control**

9.8.9.6.2.1 Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);

9.8.9.6.2.2 Identify target pest(s);

9.8.9.6.2.3 Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc.);

9.8.9.6.2.4 Establish any pest-and site-specific action threshold, as defined in 9.8.2; and

9.8.9.6.2.5 In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in 9.8.9.6.2.

9.8.9.6.3 **Animal Pest Control**

9.8.9.6.3.1 Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);

9.8.9.6.3.2 Identify target pest(s);

9.8.9.6.3.3 Identify possible factors causing or contributing to the problem (e.g., nutrients, invasive species).

9.8.9.6.3.4 Establish any pest-and site-specific action threshold, as defined in 9.8.2; and

9.8.9.6.3.5 In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in 9.8.9.6.3.

9.8.9.6.4 **Forest Canopy Pest Control**

9.8.9.6.4.1 Establish any pest-and site-specific action threshold, as defined in 9.8.2;

9.8.9.6.4.2 Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;

9.8.9.6.4.3 Identify current distribution of the target pest and assess potential distribution in the absence of Pest Management Measures; and

9.8.9.6.4.4 In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in 9.8.9.6.4.

9.8.10 **Pesticide Discharge Management Plan (PDMP) Requirements**

9.8.10.1 A Pesticide Discharge Management Plan (PDMP) must be developed only by the following Operators:

(1) All State of Delaware Operators who perform pesticide application under the realm of this Subsection as part of their job duties; or,

(2) Operators that are considered to be a Large Entity (as defined in 9.8.2) exceeding the Annual Treatment Thresholds (as defined in 9.8.2).

9.8.10.2 Applicable Operators as defined in 9.8.10.1 must prepare a Pesticide Discharge Management Plan (PDMP) within ninety (90) days of regulatory promulgation, or prior to the first pesticide application covered under this permit thereafter (except for any application made in response to a Declared Pest Emergency). It is the Operator's responsibility to keep the plan up-to-date for the duration of coverage. The Operator will be required to develop a PDMP consistent with the deadlines outlined in Table 2 below.

The PDMP documents how Operators will implement the non-numeric effluent limitations, including the evaluation and selection of Pest Management Measures to meet those non-numeric effluent limitations in order to minimize discharges. In the PDMP, Operators may incorporate by reference any procedures or plans in other documents that meet the requirements of this Subsection. If Operators rely upon other documents to comply with the non-numeric effluent limitations, such as a preexisting pest management plan, the Operator(s) must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the non-numeric effluent limitations.

9.8.10.3 **Contents of the Pesticide Discharge Management Plan**

The PDMP must include the following elements:

9.8.10.3.1 Location and address of where PDMP, records, and associated documents are kept

9.8.10.3.2 Identification of the persons (by name and contact information) who compose the Pesticide Management Team as well as each person's individual responsibilities, including person(s) responsible for managing pests in relation to the pest management area; person(s) responsible for developing and revising the PDMP; and, person(s) responsible for developing, revising, and implementing corrective actions and other non-numeric effluent limitation requirements.

9.8.10.3.3 Problem Identification as described within 9.8.9.6 (Problem Identification)

9.8.10.3.4 General location map. In the plan, include a general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the areas to which the plan applies and locations of the Waters of the State.

9.8.10.3.5 Documentation of the considerations given to the use of Best Available Technologies, as described in 9.8.9.2: No action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, Operators shall consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant previous Pest Management Measures.

9.8.10.3.6 Procedures for Reporting Necessary Corrective Actions for Adverse Incidents and Spills and Leaks as specified within 9.8.11.3. Such procedures shall include notification, both internal to the Operator's agency/organization and external. Contact information for state/federal permitting agency, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

9.8.10.3.7 Documentation to support eligibility considerations under other federal laws;

9.8.10.3.8 Signature page per requirements in 9.8.10.6 and 9.8.14.

9.8.10.3.9 Additional recordkeeping as described in 9.8.12.

9.8.10.4 **Pesticide Discharge Management Plan Modifications**

Operators shall modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in 9.8.11 or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 90 days after any change in pesticide application activities. The revised PDMP must be signed and dated in accordance with 9.8.10.6.

9.8.10.5 **Pesticide Discharge Management Plan Availability**

The Operator shall retain a copy of the current PDMP, along with all supporting maps and documents, at the address provided on the NOI form. The PDMP and all supporting documents must be readily available to the Department, upon request, and copies of any of these documents provided, upon request, to the Department. If requested, the Department may provide copies of the PDMP to members of the public in accordance with Delaware's Freedom of Information Act, 29 **Del.C.** §10002(d)(2).

9.8.10.6 **Signature Requirements**

9.8.10.6.1 The Operator shall sign, date, and certify the PDMP in accordance with 9.8.14.

9.8.10.6.2 Any Pesticide Discharge Management Plan (PDMP), including changes made to the PDMP to document any corrective actions taken as required by 9.8.11 and 9.8.12 and all requested reports submitted to the Department, must be signed by a person described in 9.8.14 or by a duly authorized representative of that person. A person is a duly authorized representative only if the following are true:

9.8.10.6.2.1 The authorization is made in writing by a person described in 9.8.14.

9.8.10.6.2.2 The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

9.8.10.6.2.3 The signed and dated written authorization is included in the PDMP. A copy must be submitted to the Department, if requested.

9.8.10.6.3 All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.

9.8.10.6.4 The most current PDMP must be signed in accordance with 9.8.14, and must include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained 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 fine and imprisonment for knowing violations."

9.8.10.6.5 Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance will, upon conviction, are subject to the provisions of 7 **Del.C.** §6013.

9.8.11 **Corrective Action (All Operators)**

All Operators must comply with the provisions herein, and file associated written reports, for any authorized discharges, with compliance required upon beginning such discharge.

The occurrence of any situation as identified below may constitute a violation of this Subsection. Correcting the situation according to this subsection does not absolve the Operator of liability for any original violation. However, failure to comply with this Subsection constitutes an additional violation. The Department will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

The Department or a court may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action, or schedules and requirements more stringent than specified in this Subsection. The requirements and schedules will supersede those requirements below if such requirements conflict.

9.8.11.1 **General Corrective Action**

9.8.11.1.1 **Situations Requiring General Corrective Action**

Operators must review and, as necessary, revise the evaluation and selection of Pest Management Measures, Best Management Practices, and utilization of Best Available Technology as described in 9.8.9.1 and 9.8.9.2 for the following situations:

9.8.11.1.1.1 An unauthorized release or discharge associated with the application of pesticides (e.g., discharge not authorized by this or another NPDES permit) occurs.

9.8.11.1.1.2 Operators become aware, or the Department concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards.

9.8.11.1.1.3 Any monitoring activities indicate failure to meet applicable Technology-Based Limitations in 9.8.9.1 and 9.8.9.2 and applicable Water Quality-Based Effluent Limitations in 9.8.9.5.

9.8.11.1.1.4 An inspection or evaluation of activities by an EPA official or the Department reveals that modifications are necessary to meet the effluent limitations in this permit.

9.8.11.1.1.5 Any Operator observes or is otherwise made aware of an adverse incident as defined in 9.8.2 (refer to adverse incident reporting in 9.8.11.2).

9.8.11.1.2 **General Corrective Action Deadlines and Documentation**

If an Operator determines that changes to Pest Management Measures, Best Management Practices, and Utilization of Best Available Technology as in 9.8.9.1 and 9.8.9.2 are necessary, such changes must be made before or, if not practicable, as soon as possible after the next pesticide application that results in a discharge.

For situations identified in 9.8.11.1.1, all Operators must document the situation triggering corrective action and planned corrective action within five (5) calendar days of becoming aware of that situation, and retain a copy of this documentation (no submission requirement to the Department). This documentation must include the following information:

9.8.11.1.2.1 Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;

9.8.11.1.2.2 Brief description of the situation;

9.8.11.1.2.3 Date the problem was identified;

9.8.11.1.2.4 Brief description of how the problem was identified and how the Operator learned of the situation and date the Operator learned of the situation;

9.8.11.1.2.5 Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and,

9.8.11.1.2.6 Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

9.8.11.2 **Adverse Incidents**

9.8.11.2.1 **Immediate Adverse Incident Notification**

Except as provided for in 9.8.11.2.4, if an Operator observes or is otherwise made aware of an adverse incident as defined in 9.8.2, which may have resulted from a discharge from a pesticide application, the Operator must immediately notify the Department utilizing the 24-hour HOTLINE at (800) 662-8802. Operators must also report any noncompliance which may endanger health or the environment. If an Operator is unable to notify the Department immediately of becoming aware of the situation, the Operator must do so as soon as possible and also provide the rationale for why the Operator was unable to provide such notification.

An operator becoming aware of the adverse incident and must provide at least the following information:

9.8.11.2.1.1 The caller's name and telephone number;

9.8.11.2.1.2 Operator name and mailing address;

9.8.11.2.1.3 The name and telephone number of a contact person, if different than the person providing notice;

9.8.11.2.1.4 How and when the Operator became aware of the adverse incident;

9.8.11.2.1.5 Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);

9.8.11.2.1.6 The pesticide product (including EPA pesticide registration number), rate of application, method of application for each product applied in the area of the adverse incident;

9.8.11.2.1.7 A description of the circumstances of the adverse incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;

9.8.11.2.1.8 If known, the identity of any other Operators authorized for coverage under this Subsection for discharges from the pesticide application activities that resulted in the adverse incident; and

9.8.11.2.1.9 Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects.

9.8.11.2.2 **Five (5) Day Adverse Incident Written Report**

Except as provided for in9.8.11.2.4, within five (5) calendar days of a reportable adverse incident or situation endangering human health or the environment, Operators must provide a written report of the adverse incident to the Department to the address as provided in 9.8.15. The adverse incident report shall be signed according to signatory requirements in 9.8.14. Documentation shall include at least the following information:

9.8.11.2.2.1 All information also provided in 9.8.11.2.1 above;

9.8.11.2.2.2 Date and time the Operator contacted the Department notifying the Department of the adverse incident, whom the Operator spoke with, and any instructions received;

9.8.11.2.2.3 Magnitude and scope of the affected area (e.g., aquatic square area or total stream distance affected);

9.8.11.2.2.4 Pesticide application rate; intended use site (e.g., on the bank, above waters, or directly to water); method of application, and the name of the pesticide product and EPA registration number.

9.8.11.2.2.5 Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);

9.8.11.2.2.6 If laboratory tests were performed, an indication of which test(s) were performed, and when; additionally, a summary of the test results must be provided within 5 days after they become available if not available at the time of submission of the 5-day report;

9.8.11.2.2.7 Description of actions to be taken to prevent recurrence of adverse incidents; and,

9.8.11.2.2.8 Signatory requirements in accordance with 9.8.14.

9.8.11.2.3 **Adverse Incidents Involving Multiple Operators**

Where multiple Operators are authorized for a discharge that results in an adverse incident, notification and reporting by any one of the Operators constitutes compliance for all of the Operators, provided a copy of the written report is also provided to all of the other authorized Operators within five (5) days of the reportable adverse incident.

9.8.11.2.4 **Instances when Notification is not Required for Adverse Incidents**

Reporting of adverse incidents is not required under this permit in the following situations:

9.8.11.2.4.1 An Operator is aware of facts that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application;

9.8.11.2.4.2 An Operator has been notified by the Department, and retains such notification, that the reporting requirement has been waived for this incident or category of incidents;

9.8.11.2.4.3 An Operator receives information of an adverse incident, but that information is clearly erroneous; or

9.8.11.2.4.4 An adverse incident occurs to pests that are similar in kind to potential target pests identified on the FIFRA label.

9.8.11.3 **Spills and Leaks**

9.8.11.3.1 **Immediate Spill and Leak Notification**

Where a leak, spill, or other release into Waters of the State containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under 7 **Del.C.** §6028 and the Department's Regulations for Reporting the Discharge of a Pollutant or Air Contaminant (7 **DE Admin. Code** §1203) occurs in any 24-hour period, an Operator must notify the Department immediately by calling the Spill Notification 24 hour HOTLINE at (800) 662-8802 as soon as the Operator has knowledge of the release. State or local requirements may necessitate also reporting spills or leaks to local emergency response, public health, or

drinking water supply agencies. An operator becoming aware of the spill or leak must report all relevant information as described under Adverse Incident (9.8.11.2.1).

9.8.11.3.2 **Five (5) Day Written Report for Spills and Leaks**

If an Operator becomes aware of a spill, leak, or other unpermitted discharge in an amount equal to or in excess of a reportable quantity established under 7 **Del.C.** §6028 and the Department's Regulations for Reporting the Discharge of a Pollutant or Air Contaminant (7 **DE Admin. Code** §1203), the Operator must additionally follow the written reporting protocol and report relevant information (in writing) to the Department as described under Adverse Incident (9.8.11.2) within five (5) calendar days.

9.8.12 **Recordkeeping**

Operators must keep written records as required within this Subsection for all discharges covered under this Subsection. These records must be accurate and complete to demonstrate compliance with the conditions of this Subsection. Operators may rely on records and documents developed for other obligations, such as requirements under FIFRA, and state or local pesticide programs, provided all requirements of this Subsection are satisfied.

9.8.12.1 **Recordkeeping for Anyone Hired to Apply Pesticides on Behalf of an Operator**

Anyone hired to apply pesticides on behalf of an Operator who submitted an NOI is to maintain a copy of the NOI and the Department's acknowledgement of permit coverage.

9.8.12.2 **Recordkeeping for Operators that Fall Below Annual Treatment Thresholds**

All Operators that fall below the Annual Treatment Thresholds must report Adverse Incidents and Spills and Leak in accordance with 9.8.11.2 and 9.8.11.3. All Operators must additionally document any Corrective Action as in 9.8.11.1.

9.8.12.3 **Recordkeeping for Operators that Exceed Annual Treatment Thresholds**

9.8.12.3.1 Operators who exceed Annual Treatment Thresholds must keep the following records:

9.8.12.3.1.1 A copy of the most recent (signed) NOI submitted to the Department, which acts as proof of permit coverage;

9.8.12.3.1.2 A copy of all written reports as required under Corrective Action (9.8.11);

9.8.12.3.1.3 Proof of Aquatic Pesticides License through the Delaware Department of Agriculture if applicable;

9.8.12.3.1.4 Documentation of equipment maintenance and calibration (where applicable);

9.8.12.3.1.5 Problem Identification for All Pest Management Options as in 9.8.9.6;

9.8.12.3.1.6 Area description record keeping requirements: description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters, either by name or by location, to which pesticide(s) are discharged;

9.8.13.3.1.7 The brand name of the pesticide used and EPA Registration Number;

9.8.13.3.1.8 Date of treatment;

9.8.13.3.1.9 When applicable, the dilution rate of the pesticide and the amount of diluted material applied per unit (i.e. gallons/acre, lbs/acre);

9.8.13.3.1.10 The pest against which the pesticide was used (i.e. pesticide use pattern as in 9.8.3);

9.8.13.3.1.11 The applicator's name and when applicable, the name of the certified applicator responsible for his supervision;

9.8.13.3.1.12 When label directions advise precaution in regard to drift, on-site weather conditions to include wind velocity and direction, temperature, and relative humidity;

9.8.12.3.1.13 Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

9.8.12.3.2 When applicable, copies of records as required for Licensed Applicators through the 3 **Del.C.** §1206 (a) & (b) or 3 **DE Admin. Code** §601-5.0 can be utilized to satisfy only those specific elements under this Subsection that directly apply.

9.8.12.3.3 All required records must be documented as soon as possible but no later than fourteen (14) days (unless under a different deadline has been specified under Corrective Action, 9.8.11) following completion of each pesticide application. Operators must retain any records required under this permit for minimum of 5 years. Operators must make available to the Department,

including an authorized representative of the Department, all records kept under this Subsection upon request and provide copies of such records upon request.

9.8.12.4 **Recordkeeping for Operators Required to Have a PDMP**

9.8.12.4.1 All Operators that are required to have a PDMP, as outlined in 9.8.10 must keep the following records:

9.8.12.4.1.1 All information as described in 9.8.12.3 above;

9.8.12.4.1.2 A copy of the most recent PDMP; and,

9.8.12.4.1.3 Copy of annual reports submitted to the Department as described in 9.8.13.

9.8.12.4.2 All required records must be documented as soon as possible but no later than fourteen (14) days (unless under a different deadline has been specified under Corrective Action, 9.8.11) following completion of each pesticide application. Operators must retain any records required under this permit for minimum of 5 years. Operators must make available to the Department, including an authorized representative of the Department, all records kept under this Subsection upon request and provide copies of such records upon request.

9.8.13 **Annual Reporting (Operators Required to Have a PDMP)**

9.8.13.1 **Annual Reporting Requirements**

Operators that are required to have a PDMP, as outlined in 9.8.10, must submit an annual report to the Department. Once an Operator meets the obligation to submit an annual report, the Operator must submit the annual report each calendar year thereafter for the duration of coverage under this Subsection, whether or not the Operator has discharges from the application of pesticides in any subsequent calendar year. The annual report must be submitted no later than February 1 of the following year for all pesticide activities covered under this Subsection occurring during the previous calendar year. Annual reporting requirements begin with those discharges occurring during calendar year 2012.

The annual report must contain the following information:

9.8.13.1.1 Operator's name and contact information;

9.8.13.1.2 Delaware Department of Agriculture Applicator Certification Number;

9.8.13.1.3 Contact person name, title, e-mail address (if any), and phone number; and,

9.8.13.1.4 For each treatment area, report the following information:

9.8.13.1.4.1 Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any Waters of the State, either by name or by location, to which pesticide(s) are discharged;

9.8.13.1.4.2 Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);

9.8.13.1.4.3 Company name(s) and contact information for pesticide Operator;

9.8.13.1.4.4 Total amount of each pesticide product applied for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);

9.8.13.1.4.5 Whether this pest control activity was addressed in the PDMP prior to pesticide application;

9.8.13.1.4.6 If applicable, an annual report of any adverse incidents as a result of these treatment(s), for incidents, as described in 9.8.11.2; and,

9.8.13.1.4.7 If applicable, description of any corrective action(s), including spill responses, resulting from pesticide application activities and the rationale for such action(s).

9.8.13.2 **Annual Reporting for All Other Operators**

Annual reporting will not be required for Operators other than as specified above in 9.8.13.1.

9.8.13.3 **Certification**

The annual report must be submitted and signed in accordance with 9.8.14, and must include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the

person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained 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 fine and imprisonment for knowing violations."

9.8.14 **Signatory Requirements**

9.8.14.1 For a corporation: By a responsible corporate officer. For the purpose of this Subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions that govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

9.8.14.2 For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

9.8.14.3 For a municipality, state, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Subsection, a principal executive officer includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Section Manager or Division Director).

9.8.15 **Address for Written Notifications to the Department**

Written correspondence to the Department should be addressed to:

Delaware Department of Natural Resources and Environmental Control

Division of Water

Surface Water Discharges Section – NPDES

89 Kings Highway

Dover, DE 19901

9.8.16 **Standard Conditions**

9.8.16.1 **Penalties for Violations**

Any person who violates conditions of this Subsection may be subject to penalties in accordance with 7 **Del.C.** Ch. 40, 7 **Del.C.** Ch. 60, or both. Violation of this Subsection is also a violation of the Clean Water Act and may be subject to penalties established under that statute.

9.8.16.2 **Duty to Mitigate**

Operators must take all reasonable steps to minimize or prevent any discharge in violation of this Subsection, which has a reasonable likelihood of adversely affecting human health or the environment.

9.8.16.3 **Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for an Operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this Subsection.

9.8.16.4 **Duty to Reapply**

If an Operator wishes to continue an activity regulated by this regulation after the expiration date of this regulation, as stated in 9.8.3.3, the Operator must apply for and obtain authorization as required by Delaware Code.

9.8.16.5 **Other State and Federal Laws**

Nothing shall be construed to preclude the institution of any legal action or relieve any person subject to this Subsection from any responsibilities, liabilities, or penalties established pursuant to any applicable State or Federal law or regulation.

9.8.16.6 **Proper Operation and Maintenance**

Operators must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which the Operators installs or uses to achieve compliance with the conditions of this Subsection. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which the Operator installs only when the operation is necessary to achieve compliance with the conditions of this Subsection.

9.8.16.7 **Property Rights**

Coverage under this Subsection does not convey any property rights of any sort, any exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, State, or local laws or regulations, or any taking, condemnation or use of eminent domain against any property owned by third parties. The Department does not warrant that the Operator's compliance with this Subsection and operation under this Subsection will not cause damage, injury, or use of private property, an invasion of personal rights, or violation of federal, state, or local laws or regulations. The Operator is solely and severably liable for all damage, injury or use of private property, invasion of personal rights, infringement of federal, State, or local laws and regulations, or taking or condemnation of property owned by third parties, which may result from actions taken under the Subsection.

9.8.16.8 **Duty to Provide Information**

The Operator shall furnish to the Department, within a reasonable timeframe, any information which the Department may request to determine cause for modifying, revoking and reissuing, or terminating coverage, or to determine compliance with this Subsection. The Operator shall also furnish to the Department upon request, copies of records required to be maintained by this Subsection.

9.8.16.9 **Inspection and Entry**

Operators must allow the Department upon presentation of credentials and other documents as may be required by law, to do the following:

9.8.16.9.1 Enter upon an Operator's premises where a regulated activity is located or conducted, or where records must be kept under the conditions of this permit;

9.8.16.9.2 Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

9.8.16.9.3 Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,

9.8.16.9.4 Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

9.8.16.10 **Upset**

9.8.16.10.1 Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance. Before an action is taken for noncompliance, any determination made during administrative review of claims that noncompliance was caused by an upset is tentative. Such a determination is not final administrative action subject to judicial review.

9.8.16.10.2 Conditions necessary for a demonstration of upset. An Operator who wishes to establish the affirmative defense for an upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

9.8.16.10.2.1 An upset occurred and that the Operator can identify the cause(s) of the upset;

9.8.16.10.2.2 The permitted activity was at the time being properly operated;

9.8.16.10.2.3 The Operator submitted notice of the upset as required in 9.8.11.2 and 9.8.11.3; and,

9.8.16.10.2.4 The Operator complied with any remedial measures required under this Subsection.

9.8.16.10.3 Burden of proof. In any enforcement proceeding, the Operator, as the one seeking to establish the occurrence of an upset, has the burden of proof.

9.8.16.11 **Severability**

Invalidation of a portion of this regulation does not render the whole Subsection invalid. The Department's intent is that the Subsection will remain in effect to the extent possible; in the event

that any part of this Subsection is invalidated, the remaining parts of the regulation will remain in effect unless the Department issues a written statement otherwise.

9.8.16.12 **Continuation of Regulatory Requirements**

The requirements of this Subsection shall continue in force and will be considered administratively extended until this regulation is re-promulgated.

9 DE Reg. 440 (9/1/05)

14 DE Reg. 482 (11/01/10)

15 DE Reg. 679 (11/01/11)

16 DE Reg. 322 (09/01/12)

10.0 Municipal Compliance Maintenance

10.1 Introduction. This section of the regulations seeks to promote compliance maintenance through pollution prevention practices. It requires owners of sewage treatment works, both publicly and privately owned, to assess plant performance annually and evaluate the plant's ability to maintain compliance. In doing so, the owners will be able to identify future wastewater management needs. This approach encourages responsible planning and proactive decision-making to avoid degradation of receiving water quality and to prevent NPDES permit violations. In addition, this section seeks to promote pollution prevention by encouraging owners to explore and implement alternatives that reduce pollutant loadings and/or flow prior to their generation in accordance with the Federal Pollution Prevention Act of 1990 and the Delaware Waste Minimization/Pollution Prevention Act of 1990. This section of the regulations encourages actions which promote the owner's awareness and responsibility for wastewater treatment needs, maximize the useful life of sewerage facilities through improved operations and maintenance, and initiate facility planning, design and construction before such improvements or additional facilities become a critical factor in maintaining permit compliance and preventing effluent violations.

10.2 Applicability. Compliance Maintenance Annual Report

10.2.1 Purpose: The compliance maintenance annual report (CMAR) describes the physical conditions and the performance of the sewage system during the previous calendar year, summarizes the owner's plans for maintaining compliance, describes the owner's efforts in promoting pollution prevention and the owner's plans for promoting pollution prevention during the upcoming calendar year. The CMAR provides the owner of the treatment works with an objective analysis for determining whether a more detailed evaluation of its sewerage facilities is warranted. The owner and the Department shall use the CMAR to identify needs for future planning actions.

10.2.2 Submission Deadline: (RESERVED)

10.2.3 Content: (RESERVED)

10.2.4 In the case of a publicly owned treatment works, the following additional documentation shall be submitted to the Department with the CMAR: (RESERVED)

11.0 Pollution Prevention

11.1 The purpose of these regulations is to prevent, manage or control the pollution from activities which have reasonable potential to affect the quality of the waters of the State of Delaware. In accordance with 7 **Del.C.** Ch. 78, the policy of the state creates a hierarchy of waste management, with reduction at the source, or pollution prevention as it is defined in these regulations, as the first priority in waste management.

11.2 Pollution prevention practices may include such measures as raw material substitutions; alterations to the production process to reduce the volume of materials released to the environment; equipment modifications; production scheduling; inventory control; housekeeping measures; and in-process recycling that returns waste materials directly to production as raw materials.

12.0 Enforcement and Penalties

12.1 Enforcement

12.1.1 Pursuant to 7 **Del.C.** Ch. 60, the Secretary may enforce the provisions of these regulations, or any condition of any permit issued pursuant to §6003 of the Law by exercising any or a combination of the following options:

12.1.1.1 Seek a civil penalty imposed by Superior Court in accordance with §6005(b)(1) or §6005(b)(2) of the Law;

12.1.1.2 Impose an administrative penalty in accordance with §6005(b)(3) of the Law;

12.1.1.3 Endeavor to obtain voluntary compliance by way of order, warning, notice or other educational means per §6005(b)(2) and §6019 of the Law;

12.1.1.4 Compel compliance through temporary restraining order, injunction or other appropriate remedy under §6005(b)(1) or §6005(b)(2) of the Law;

12.1.1.5 Seek criminal penalties imposed by Superior Court or the courts of the justices of the peace in accordance with §6013 of the Law;

12.1.1.6 In accordance with §6018 of the Law, issue an order to cease and desist from violating these regulations or any permit condition; or

12.1.1.7 In accordance with §6017 of the Law, seal any source required to have a permit which is installed, altered, used or operated without such permit or which is in violation of a cease and desist order.

13.0 Severability

If any part of this regulation, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances and the remainder of these regulations shall not be affected thereby and shall be deemed valid and effective.

6 DE Reg. 1514 (5/1/03)

16 DE Reg. 322 (09/01/12)