

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER RESOURCES

Statutory Authority: 7 **Delaware Code** Chapters 40, 60, 66 and 70 (29 **Del.C.** §§8014(5) and 8025)

7 **DE Admin. Code** 7403

NOTICE OF PUBLIC HEARINGS

PROPOSED

7403 Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds, Delaware

1. Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct two public hearings to gather comments on the proposed Pollution Control Strategy for the Inland Bays including the proposed **Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds**. The proposed Strategy includes both voluntary and regulatory actions which need to be implemented in order to achieve the nitrogen and phosphorus load reductions required by the Total Maximum Daily Loads for these watersheds. The proposed regulations would impact multiple sources of nutrients including point sources, stormwater, and onsite wastewater treatment and disposal systems.

2. Possible Terms of the Agency Action

Following the adoption of the proposed Regulations, various programs to reduce nutrient pollutant loadings will be implemented.

3. Statutory Basis or Legal Authority to Act

The authority to develop a this Pollution Control Strategy associated Regulations is provided by Title 7 of the **Delaware Code**, Chapters 40, 60, 66, and 72 and in Title 29 of the **Delaware Code**, Sections 8014(5) and 8025.

4. Other Legislation That May be Impacted

None

5. Notice of Public Comment

Two public hearings for the proposed **Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds** will be held. One hearing will be held at 6:00 PM on Wednesday, June 13, at the Millsboro Senior Center, 322 Wilson Highway, Millsboro, Delaware. A second hearing will be held at 6:00 PM on Thursday, June 14, at the Georgetown CHEER Community Center, 20520 Sand Hill Road, Georgetown, Delaware.

The hearing record for these proposed Regulations will remain open until 4:30 PM, Friday, June 29, 2007. Please send written comments to Katherine Bunting-Howarth, Division of Water Resources, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901; facsimile: (302) 739-7864; email: (katherine.howarth@state.de.us). All written comments must be received by 4:30 PM, Friday, June 29, 2007. Electronic submission is preferred.

Copies of the proposed regulations and technical support documents for these watersheds are available by mail from Maryann Pielmeier, DNREC, DWR, Watershed Assessment Section, 820 Silver Lake Blvd., Suite 220, Dover, DE 19904-2464, via telephone by calling (302) 739-9939, via e-mail by contacting maryann.pielmeier@state.de.us, or from the DNREC website at the following URL: <http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/>

6. Prepared By

7403 Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds, Delaware

FORWARD

For years, various governmental and private entities have encouraged the use of voluntary practices in order to reduce nutrient loading into the Indian River, Indian River Bay, Rehoboth Bay, Little Assawoman Bay and their tributaries such that water quality standards are achieved in support of their designated uses. While reducing pollutant loads to an extent, these attempts have not resulted in the desired outcome. In order to achieve the Total Maximum Daily Loads (TMDLs), determined through vigorous research and modeling, the following Pollution Control Strategy regulations must be implemented.

In instances where strict interpretation of these regulations would limit land uses as zoning allows, the Department of Natural Resources and Environmental Control may issue permits and approvals based on the use of the best treatment options available to address the TMDL to the greatest extent practicable.

In addition, the Department will consider the use of water quality trading to achieve point and nonpoint source load reductions. All trading proposals will be in support of the TMDL required load reductions and are subject to Department approval.

It is the policy of the Department of Natural Resources and Environmental Control to implement each component of the Pollution Control Strategy and these Regulations in a timely fashion. The Department supports review of all related ordinances, regulations and laws in order to promote consistency among all legal instruments.

1.0 Authority and Scope

1.1 These Regulations are adopted by the Secretary of the Department of Natural Resources and Environmental Control under and pursuant to the authority set forth in 7 Del.C. Ch. 40, 60, 66 and 72 and in 29 Del.C. §§ 8014(5) and 8025.

1.2 These Regulations apply to the lands draining into the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay and their tributaries.

1.3 Unless otherwise stated in these Regulations, the effective date of these Regulations is 60 days from the date of publication of the final Regulations.

1.4 Proposed major subdivision plans, site plans, concept plans, initial stage calculation sheets, requests for service level evaluation, or requests for scoping meetings which have been received by DeIDOT prior to the effective date of this regulation for a development proposal, for the purpose of securing a letter of no objection, support facilities report, entrance location, or entrance approval, are not subject to the stormwater requirements of these Regulations, Section 5. If after 5 years from the effective date, an application for the project has not been submitted to the appropriate county or local government and substantial expenditures have not been made for the project to proceed, all stormwater provisions of these Regulations will be applicable to the project.

In instances where submissions to DELDOT are not required prior to filing an application with Sussex County or local government, projects for which applications have been submitted to the County or a municipality prior to the effective date of these Regulations are not subject to the Stormwater provisions, Section 5, of these Regulations.

For projects within the County, the effective date of Section 5 shall be 10 calendar days after the date of publication of the final Regulations in the Delaware Register of Regulations. For projects on lands located within municipalities as of the date of publication of these Regulations, the effective date of Section 5 of these Regulations shall be one year from the date of publication of the final Regulations in the Delaware Register of Regulations.

1.5 Section 6 of these Regulations will become effective 30 days from the date of publication of the final Regulations.

1.6 Section 7 of these Regulations will become effective 180 days from the date of publication of the final Regulations.

1.6 New systems described in Sections 8.2.1 and 8.3.1 of these Regulations are those proposed projects utilizing Large On-site Wastewater Treatment and Disposal Systems which require submission of a Site

Investigation Report (SIR) and a Preliminary Groundwater Impact Assessment (PGIA) or a Site Selection and Evaluation Report (SSER) and are submitted to the Department 60 days after the date of publication of the final Regulations.

1.7 All permits issued for new and replacement systems described in Section 8.4 after December 31, 2014 will require technologies that achieve Performance Standard Nitrogen level 3.

2.0 Definitions

2.1 The following words and terms, when used in these Regulations, should have the following meaning unless the context clearly indicates otherwise:

"Best Management Practice (BMP)" means a system or procedure that has been determined to be an effective, practical means of preventing or reducing nonpoint source pollution. These include conservation practices or management measures which control soil loss and reduce water quality degradation caused by nutrients, animal wastes, toxins, sediment, and runoff.

"Buffer" means an existing or purposely established area of vegetation which protects water resources from pollution.

"Certified Service Provider" means an individual representative of a manufacturer/supplier who holds a Department Class E System Contractor or Class H System Inspector license, or a Class E System Contractor who is certified, through Department approved training, on the operation and maintenance of the advanced treatment unit or system, or a Class H System Inspector who has become certified through Department approved training on the operation and maintenance of the advanced treatment unit or system, or a homeowner who has obtained Department individual home service provider certification and has been through Department approved training on the operation and maintenance of their advanced treatment unit or system. The Department homeowner certification allows the homeowner to operate and maintain their advanced treatment unit or system at their primary place of residence.

"Clean Water Act (CWA)" means the Federal Water Pollution Control Act, 33 U.S.C. §§1251-1387.

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

"Drainfield" means a system of open-jointed or perforated piping, alternative distribution units, or other seepage systems for receiving the flow from septic tanks or other treatment facilities and designed to distribute effluent for oxidation and adsorption by the soil within the zone of aeration.

"End of Pipe" means the location where effluent discharges from the end of the advanced pretreatment unit before ultimately dispersing into the soil drainfield. This is the location where nitrogen and phosphorus sampling may occur in order to determine compliance with the applicable performance standard.

"High potential for phosphorus mobility" means an area where:

the site's soils have a Fertility Index Value (FIV) of greater than 100 for phosphorus or a soil test value of over 100 parts per million (ppm) by the Mehlich 3 soil test; and

the groundwater phosphorus content is above 0.034 mg/l and there is an indication that groundwater is anoxic due to low dissolved oxygen or oxidation reduction potential below 200 mV; and

the disposal area contains soils with a seasonal high water table above 27 inches.

"Indian River Watershed" means the lands that drain into the Indian River and its tributaries as illustrated in the Delaware watershed map available in the Watershed Assessment Section of the Division of Water Resources in the Department of Natural Resources and Environmental Control.

"Indian River Bay Watershed" means the lands that drain into the Indian River Bay and its tributaries as illustrated in the Delaware watershed map available in the Watershed Assessment Section of the Division of Water Resources in the Department of Natural Resources and Environmental Control.

"Innovative and Alternative (IA) onsite wastewater treatment and disposal systems" means anything other than a conventional onsite wastewater treatment and disposal system.

"Intermittent stream" means a well-defined channel that contains water for only part of the year and is fed by groundwater.

"Little Assawoman Bay Watershed" means the lands that drain into the Little Assawoman Bay and its tributaries as illustrated in the Delaware watershed map available in the Watershed Assessment Section of the Division of Water Resources in the Department of Natural Resources and Environmental Control.

"Major subdivision" means a subdivision of land involving a proposed new street or the extension of an existing street.

"**Mean high water (MHW)**" means the point on the bank, tidal flat, beach or shore, up to which the presence or action of the water leaves a distinct mark, either by erosion, destruction of terrestrial vegetation (non-aquatic), physical markings or characteristics, and known vegetation lines, and may be further identified by tidal gauge data, or any other suitable means delineating the mean height reached by a rising tide.

"**National Pollutant Discharge Elimination System (NPDES)**" means the program prescribed by the Federal Water Pollution Control Act for point sources of pollution.

"**Nonpoint source (NPS) pollution**" means pollution originating from diffuse areas having no well-defined source.

"**Nutrient**" means any element or compound essential as a raw mineral for organism growth and development and, for the purpose of this regulation, is limited to nitrogen and phosphorus.

"**Onsite wastewater treatment and disposal system (OWTDS)**" means a conventional or innovative and alternative wastewater treatment and disposal systems installed or proposed to be installed on the land of the owner or on other land to which the owner has the legal right to install the system.

"**Ordinary high water mark**" means, for nontidal waters, the line where the presence and action of water are continuous enough during ordinary rainfall years to leave a mark upon the soil of the bed or banks of the waterbody.

"**Perennial stream, pond or ditch**" means a stream, portion of a stream, ditch or a pond in line with a perennial stream that flows continuously during periods of average rainfall as a result of groundwater discharge or surface runoff.

"**Performance Standard Nitrogen level 1 (PSN1)**" means where total nitrogen levels achieve either:

- an average annual concentration of 5 mg/l (parts per million (ppm)) total nitrogen in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 90% reduction in the effluent total nitrogen concentration when compared to the influent total nitrogen concentration; or
- an average annual concentration of 5 mg/l beneath any permitted wastewater spray irrigation field as verified by monitoring in-field lysimeters, providing that the design percolate concentration does not exceed 5 mg/l on an average annual basis.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

"**Performance Standard Nitrogen level 2 (PSN2)**" means where total nitrogen levels achieve either:

- an average annual concentration of 10 mg/l (parts per million (ppm)) total nitrogen in effluent sampled at the end-of-pipe of the pretreatment unit; or
- an 80% reduction in effluent total nitrogen concentration when compared to the influent total nitrogen concentration; or
- an average annual concentration of 10 mg/l beneath any permitted wastewater spray irrigation field as verified by monitoring in-field lysimeters, providing that the design percolate concentration does not exceed 10 mg/l on an average annual basis.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

"**Performance Standard Nitrogen level 3 (PSN3)**" means where total nitrogen levels achieve either:

- an average annual concentration of 20 mg/l (parts per million (ppm)) total nitrogen in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 60% reduction in effluent total nitrogen concentration when compared to the influent total nitrogen concentration.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

"**Performance Standard Phosphorus level 1 (PSP1)**" means where total phosphorus levels achieve either:

- an average annual concentration of 3.9 mg/l (parts per million (ppm)) total phosphorus in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 75% reduction in effluent total phosphorous concentration when compared to the influent

total phosphorus; or

- an average annual concentration of 3.9 mg/l beneath any permitted wastewater spray irrigation field as verified by monitoring in-field lysimeters, providing that the design percolate concentration does not exceed 3.9 mg/l on an annual average basis.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

"Performance Standard Phosphorus level 2 (PSP2)" means where total phosphorus levels achieve either:

- an average annual concentration of 7.85 mg/l (parts per million (ppm)) total phosphorus in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 50% reduction in effluent total phosphorus concentration when compared to the influent total phosphorus concentration.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

"Person" means any individual, business enterprise, or business entity, including but not limited to, a trust, firm, joint stock company, partnership corporation (including government corporation), limited liability company or association, any state, municipality, commission, or political subdivision of a state, any federal agency, any interstate body, or other such entities as allowed by law.

"Point source pollution" means pollution discharged directly from a specific site such as a municipal sewage treatment plant or an industrial outfall pipe.

"Pollution Control Strategy (PCS)" means a document that specifies actions necessary to systematically achieve pollutant load reductions specified by a Total Maximum Daily Load for a given waterbody. The regulatory actions are included in these Regulations.

"Pre-engineered plan" means a design using packaged mechanical devices such as equipment of cataloged design which complies with all applicable regulations and approved by the Department, or listed by a third party testing authority for a specific application recognized and approved by the Department.

"Rehoboth Bay Watershed" means the lands that drain into the Rehoboth Bay and its tributaries as illustrated in the Delaware watershed map available in the Watershed Assessment Section of the Division of Water Resources in the Department of Natural Resources and Environmental Control.

"Site plan" means a drawing illustrating proposed residential planned communities, conditional uses, dwellings, multiple family dwellings, townhouses, houses of worship, hotels, motels or motor lodges, docks or piers, footbridges or walkways, business and office buildings, commercial buildings or industrial buildings, mobile home parks, campgrounds, borrow pits, or amusement places, circuses, or carnival grounds.

"Systematically eliminate" means to require the elimination of waste loading into the affected waterbody by point sources on a firm, fixed schedule as approved by the Department. This elimination must occur within five years of the expiration of the facility's current NPDES permit unless a longer period of time is provided for in a State or Federally enforceable Consent Order, Decree, or Administrative Order.

"Total Maximum Daily Load (TMDL)" means the amount of a given pollutant that may be discharged to a waterbody from point, nonpoint, and natural background sources and still allows attainment or maintenance of the applicable narrative and numerical water quality standards. A TMDL is the sum of the individual Waste Load Applications (WLA's) for point sources and Load Allocations (LA's) for nonpoint sources and natural background sources of pollution. 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 matches 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.

"Watershed" means a region or area delineated by a topographical divide and draining ultimately to a particular watercourse.

"Wetlands" means, for the purposes of these Regulations, those regulated by the State of Delaware and the Army Corp of Engineers as mapped or otherwise field verified.

3.0 Point Source Implementation

3.1 Permitted discharges of nutrients into the Indian River, Indian River Bay, Rehoboth Bay, Little Assawoman Bay or their tributaries under the NPDES program shall be systematically eliminated through their NPDES renewal process.

3.2 Subject to approval by the Department, point sources may choose to engage in water quality trading on a case-by-case basis in accordance with the following:

3.2.1 Trades must occur within the same watershed (Indian River, Indian River Bay, Rehoboth Bay, or Little Assawoman Bay) as the point source discharge is located.

3.2.2 Trades must involve a trading ratio of at least 2:1 between nonpoint sources and point sources.

3.2.3 The nutrient load reduction involved in the trade must constitute reductions that occur beyond the baseline or the point or nonpoint source nutrient reductions required under the TMDL and this Pollution Control Strategy.

4.0 Buffer Zone Established (Reserved)

5.0 Sediment and Stormwater Controls

5.1 Sediment and stormwater runoff shall be managed for nutrient reductions where practicable.

5.2 When the Delaware Sediment and Stormwater Regulations require the creation of a permanent sediment and stormwater management plan, that plan shall be designed and implemented to include design criteria to further reduce nutrient contributions. Consistency will be determined at the conceptual stormwater plan process step. Compliance will be determined before approval of final site or subdivision plans.

5.3 Compliance with 5.2 of this Regulation shall be achieved using one of the following methods:

5.3.1 Reduce nutrient contributions by the percentage required by the TMDL for the watershed in which the project is located, based on a comparison between the post-developed condition with and without stormwater quality management best management practices (using the procedures outlined in the guidance document entitled, "Achieving Stormwater Pollution Control Strategy Reductions for Water Quality"); or

5.3.2 Reduce nutrient contributions so as to achieve irreducible concentrations of nutrients (using the procedures outlined in the guidance document entitled, "Achieving Stormwater Pollution Control Strategy Reductions for Water Quality"); or

5.3.3 Reduce nutrient contributions using three practices within a treatment train (using the procedures outlined in the guidance document entitled, "Achieving Stormwater Pollution Control Strategy Reductions for Water Quality"); or

5.3.4 Utilize an average 100-foot buffer landward from the limit of tidal wetlands, as shown on the State wetlands map, or the mean high water line of all tidal waters, whichever extends farther upland, and from the ordinary high water mark of perennial streams, perennial ditches, and ponds in line with these perennial waterbodies provided no portion of the buffer is less than 50 feet wide; or

5.3.5 Utilize a 50-foot buffer landward from the limit of tidal wetlands, as shown on the State wetlands map, or the mean high water line of all tidal waters, whichever extends farther upland, and from the ordinary high water mark of perennial streams, perennial ditches, and ponds in line with these perennial waterbodies and utilize 30-foot buffers from all intermittent streams and preserve at least 30% of existing forest.

5.4 When methods 5.3.4 and 5.3.5 are utilized, the applicant must provide plans of sufficient detail which include the following features and data:

5.4.1 Map showing the footprint of all buffers and the average width, linear length, and acreage of areas to be treated by each buffer;

5.4.2 Map showing the wetlands to be preserved and the total acreage of those wetlands;

5.4.3 Map showing the forested areas to be preserved and protected and the acreage of those forested areas.

5.5 When methods 5.3.4 and 5.3.5 are used, the following applies:

5.5.1 Property owner(s) shall maintain the buffer in perpetuity in accordance with these regulations. Property owners shall install boundary signs or markers or distinctive vegetation identifying the upland edge of the buffer.

5.5.2 Buffers shall be clearly demarcated, designated and recorded on final site plans and final major subdivision plats.

5.5.3 The owner of the property shall provide in the deed restrictions and any lease or agreements of sale for any residential lot or dwelling unit, the following notice: "This property includes a water quality buffer. The buffer is designed to reduce pollutants entering the Inland Bays. The buffer is required to be maintained in vegetation and shall be managed in accordance with the Regulations of the Pollution Control

Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds.”

5.5.4 Buffer property owners or managers shall manage buffers to maintain their water quality benefits.

6.0 On-site Wastewater Treatment and Disposal Systems - General

6.1 This section of the Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds complements sections of the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems. If inconsistencies exist, these Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds control.

6.2 All cesspools or seepage pits are prohibited within Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay watersheds and shall be replaced in accordance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems and these Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds.

6.3 Existing holding tanks must be operated in accordance with their permits and their conditions.

6.4 In instances where central sewer will become available within five years, temporary holding tanks will only be permitted after the Department receives a letter from Sussex County, the appropriate municipality, or the wastewater utility with an approved Certificate of Public Convenience and Necessity (CPCN) stating when central sewer will become available.

6.5 Existing onsite wastewater treatment and disposal systems which are repaired or replaced and new systems on parcels recorded prior to 10 calendar days after the date of publication of these final Regulations in the Delaware Register of Regulations shall be subject to the setback requirements of these Regulations and the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems. However, if it is impossible to comply with such requirements due to lot size limitations, the system shall conform to the maximum extent practicable.

6.6 No new drainfields on parcels recorded 10 calendar days or more after the publication of these final Regulations in the Delaware Register of Regulations may be present within 100 feet landward from the limit of tidal wetlands, as shown on the State Wetlands Map, or the mean high water line of all tidal waters, whichever extends farther upland, and from the ordinary high water mark of perennial streams, perennial ditches, and ponds in line with these perennial waterbodies.

6.7 All innovative and alternative onsite wastewater treatment and disposal systems having flows of less than or equal to 2,500 gallons per day must comply with Performance Standard Nitrogen level 3.

7.0 On-site Wastewater Treatment and Disposal System Operation, Maintenance and Inspection Program

7.1 An operation, maintenance and inspection program for individual onsite wastewater treatment and disposal systems (OWTDS) is hereby established for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay watersheds.

7.2 OWTDS inspections and pumpouts shall be performed once every three years. Pumpouts shall be performed by a licensed Class F Liquid Waste Hauler. Inspections shall be performed by a licensed Class H System Inspector. However, owners of existing conventional systems may serve as system inspectors to perform their own inspection provided they are certified by the Department under Section 5.04045 of the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.

7.3 If the owner of an individual OWTDS provides proof of a licensed operator or has an annual service contract with a certified service provider then the requirements of Section 7.2 have been met.

7.4 The Department will provide notice to OWTDS owners of the need to have an inspection completed within 36 months of the notice.

7.5 Standard inspection forms, developed by the Department, shall be used by the system inspector. The property owner shall provide the system inspector with all available pertinent information. The completed inspection report shall detail the results of the inspection. The system inspector shall provide the Department and the property owner with a written copy of the inspection report.

7.6 If an inspection reveals a malfunctioning or failed OWTDS, the Department shall notify the owner in writing and may provide technical and administrative assistance regarding OWTDS repair or replacement.

7.6.1 If the OWTDS needs to be replaced, technologies selected to replace failed systems shall be consistent with these Regulations and its performance standards, located in Section 8, and those of the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.

7.7 The Department may phase implementation of this Section or alter the inspection schedule by ordering the inspection of any OWTDS when it has been determined that the OWTDS is in need of immediate improvements.

7.8 All properties utilizing an OWTDS that are sold or otherwise transferred to other ownership shall have their systems pumped out and inspected prior to the completion of the sale. If an inspection has occurred within the previous 36 months and the property owner can provide documentation of such pump out and inspection, then such documentation will fulfill the requirements of this section.

7.9 The Department will maintain a list of all licensed Class H System Inspectors and certified service providers which will be available for review.

8.0 On-site Wastewater Treatment and Disposal System Performance Standards

8.1 All OWTDSs in the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds are required to reduce their nutrient wastewater loads.

8.2 Requirements for large OWTDSs having flows greater than 20,000 gallons per day (gpd):

8.2.1 All new systems shall meet Performance Standard Nitrogen level 1 (PSN1).

8.2.2 All replacement systems shall meet Performance Standard Nitrogen level 2 (PSN2).

8.2.3 When the operation and maintenance permit expires for an existing system, the Department will require the system meet Performance Standard Nitrogen level 2 (PSN2). If the Department deems that the OWTDS must be redesigned to meet PSN2, the owner or operator of the system will have up to 60 months based upon the permit expiration date to bring the OWTDS into compliance.

8.2.4 Where the system location is identified as having high potential for phosphorus mobility, new OWTDSs shall meet a Performance Standard Phosphorus level 1 (PSP1).

8.2.5 When the operation and maintenance permit expires for an existing system, and the system location is identified as having high potential for phosphorus mobility, the system must comply with the Performance Standard Phosphorous level 1 (PSP1). If the Department deems that the system must be redesigned to meet PSP1, the owner or operator of the system will have up to 60 months based upon the permit expiration date to bring the system into compliance.

8.3 Requirements for large OWTDSs having flows greater than 2,500 gpd but less than 20,000 gpd:

8.3.1 All new systems shall meet a Performance Standard Nitrogen level 2 (PSN2).

8.3.2 All replacement systems shall meet a Performance Standard Nitrogen level 3 (PSN3).

8.3.3 When the operation and maintenance permit expires for an existing system, the system must meet a Performance Standard Nitrogen level 3 (PSN3). If the Department deems that the large OWTDS must be redesigned, the owner of the system will have up to 60 months based upon the permit expiration date to bring the system into compliance.

8.3.4 When the operation and maintenance permit expires for an existing system and the system location is identified as having high potential for phosphorus mobility, the system must comply with the Performance Standard Phosphorous level 2 (PSP2).

8.4 Requirements for small OWTDSs having flows less than or equal to 2,500 gpd:

8.4.1 All new and replacement systems shall meet a Performance Standard Nitrogen level 3 (PSN3).

8.4.2 Department approval and use of advanced treatment units shall be in accordance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems and the Innovative and Alternative System Approval Checklist.

8.4.3 All permit applications shall be prepared in accordance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems and these Regulations.

8.4.4 To provide proper operation and maintenance of the innovative and alternative onsite wastewater treatment and disposal system, the permittee is required to adhere to Department permit conditions. These permit conditions require mandatory operation and maintenance for the life of the system by maintaining a service contract with a certified service provider.

8.4.5 The Department reserves the right to randomly sample any innovative and alternative onsite wastewater treatment and disposal system to ensure they are meeting performance standards.

8.4.6 The Department reserves the right to perform compliance inspections on all innovative and alternative onsite wastewater treatment and disposal systems.

8.5 Large systems will be operated and monitored in accordance with permit conditions, and the following:

8.5.1 Large systems shall be operated by a Department licensed operator. The class level of the operator required and frequencies of inspections will be in accordance with the Regulations for Licensing Operators of Wastewater Facilities.

8.5.2 Large systems shall be sampled as outlined in the permit conditions.

8.5.3 Monitoring results obtained during the previous one (1) month shall be summarized for each month and reported on approved On-Site Effluent Groundwater Monitoring Report Form(s) postmarked no later than the 28th day of the month following the completed reporting period. Signed copies of these, and all other reports required herein, shall be submitted to the Department.

8.6 Failure to meet standards:

8.6.1 If the samples indicate that a large OWTDS is not meeting the appropriate standard, the Department will require the owner/operator to bring the large OWTDS into compliance with the appropriate standard(s).

8.6.2 Failure to meet the performance standards for a particular innovative and alternative system having flows of 2,500 gallons per day or less does not obligate the Department to require replacement of that particular system but will affect continued approval for use and constitute cause for the Department to rescind the approval of the particular treatment technology.

8.6.3 Continued permitting of the innovative and alternative technology for having flows of 2,500 gallons per day or less is based upon confirmation in the field that existing systems of that type in Delaware meet the nutrient reduction standards, are properly operated and maintained, and function effectively.

8.6.4 The Department may, at any time, rescind the use of any innovative and alternative technology for cause.

9.0 Enforcement, Variances and Waivers

9.1 Enforcement of these regulations shall be as outlined in Title 7, Chapter 60, Section 6005 of the Delaware Code.

9.2 Waiver requests from Section 5 shall be determined through the procedures outlined in Section 3.0 of the Delaware Sediment and Stormwater Regulations.

9.3 Waiver requests for all other sections of these Regulations shall follow these procedures. Upon the applicant's request, the Secretary may grant a waiver from the strict application of this Regulation after an opportunity for formal public hearing and review.

9.3.1 Notice shall be provided to all contiguous property owners.

9.3.2 A public hearing will be held if a meritorious request is received within a reasonable time as stated in the advertisement.

9.3.3 A public hearing request shall be deemed meritorious if it exhibits a familiarity with the waiver request and has a reasoned statement of the waiver's probable impact.

9.3.4 No waiver shall be granted unless the said variance meets the following criteria:

9.3.4.1 The action will not result in substantial adverse effect on water quality, in general;
and

9.3.4.2 The waiver must minimize the effects to the water quality goals of these Regulations to the greatest extent possible; and

9.3.4.3 A denial of the desired waiver would preclude a reasonable use of the property;
and

9.3.4.4 The justification for the waiver is not related to a self-imposed special condition.

9.4 In the event that more than one waiver from these Regulations is required, the Secretary may coordinate the review of such waivers.

10.0 Other (Reserved)

10 DE Reg. 1671 (05/01/07) (Prop.)