

APPROVED BY 

DATE 1-19-2011

START ACTION NOTICE (SAN) 2010-26

**1. TYPE OF ACTION:**

Revising the State of Delaware *Regulations Governing the Control of Water Pollution* (Title 7, Delaware Administration Code 7201, 9.1.01 General Permit Program for Industrial Stormwater, 9.1.02 Special Conditions For Storm Water Discharges Associated With Construction Activities).

**2. PURPOSE OF ACTION:**

*Section 9.1.01 General Permit Program for Industrial Stormwater*

This portion of the regulation will be amended to address/incorporate changes made to the EPA's Multi-sector General Permit that became effective in September, 2008, where sampling requirements are more extensive, annual reporting will now be required, and benchmark parameters have been revised. Additionally, there are soon to be new water quality standards approved for the Chesapeake Bay Watershed in the form of a Total Maximum Daily Load (TMDL). The Industrial Stormwater Program will likely be affected by this new mandate, and regulations will likely need to incorporate this requirement.

*Section 9.1.02 Special Conditions For Storm Water Discharges Associated With Construction Activities*

The revision to the *Regulations Governing the Control of Water Pollution* will also include section 9.1.02, Special Conditions For Storm Water Discharges Associated with Construction Activities. This portion of the regulation outlines provisions relating to stormwater discharges from construction activities exceeding one (1) acre of disturbance, and requires full compliance with the *Delaware Sediment and Stormwater Regulations* as established by 7 Del. C. Chapter 40. The *Delaware Sediment and Stormwater Regulations* manage construction site stormwater runoff in addition to post construction stormwater management.

**3. STATUTORY BASIS:**

Title 7, Delaware Code, Chapter 60.

**4. LIKELY AFFECTED PUBLIC:**

Those industries specifically covered by the regulations, including but not limited to producers of timber products, paper, chemicals, asphalt, concrete and gypsum, metals, food products, textile mills, printers, plastics and electronic goods. Stakeholders identified as part of the revisions relating to the construction and post construction will already be considered as part of the regulation re-write for the Delaware Sediment and Stormwater Regulations.

**5. PROPOSED SCHEDULE OF ACTIVITY:**

January 2011 – Hire a consultant to assist with development of the regulations.

Spring 2011 – Hold first meeting of the RAC.

Summer 2011 – continue to draft regulation development.

January - February 2012 – Provide first draft regulation and technical guidance to RAC.

Spring 2012 - Submit Final Draft Regulation to the Legal Office, Division Paralegal, or other qualified staff for review. Make changes as necessary.

Summer 2012 – Schedule and hold public workshops, make necessary changes to the Draft Regulation based on comments received as a result of the workshops.

Fall 2012 - Submit Proposed Draft Regulation to DNREC Registrar of Regulations for publishing. Public notice for proposed draft regulation (30-day public comment period on Proposed Draft Regulation). Hold public hearing and respond to public comments. Finalize regulation.

**6. REVIEW COMMITTEE:**

The review committee will meet as the regulation language is simultaneously being developed by the contractor. The following key individuals have been identified, thus far, for participation on the Industrial Stormwater Regulatory Advisory Committee:

- Robert Underwood, DNREC Surface Water Discharges Section
- Beth Krumrine, DNREC Surface Water Discharges Section
- Steve Mann, DNREC Surface Water Discharges Section
- Representative from the DNREC Sediment and Stormwater Program
- Representative from the Delaware Auto and Truck Recyclers Association
- Douglas Ruhlin, Concrete, Mining and Asphalt Industry Representative
- Representative from the industrial stormwater sector within the Chesapeake Bay Watershed
- Representative from the Watershed Assessment Section (to address TMDL requirements)

**7. RESPONSIBLE STAFF MEMBER:**

Beth Krumrine  
Delaware DNREC  
Surface Water Discharges Section  
89 Kings Highway  
Dover, DE 19901

Phone: (302) 739-9946  
Fax: (302) 739-8369  
Email: [Beth.Krumrine@state.de.us](mailto:Beth.Krumrine@state.de.us)

**8. APPROVALS:**

  
Responsible Staff Member      12/22/2010  
Date

  
Division Director      12/23/10  
Date



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**REQUEST FOR ACTION BY SECRETARY**

**Action Requested**

**Disposition Requested**

For Your Approval/Signature

Return to Gail Henderson

Review & Comment

Mail to \_\_\_\_\_

For Your Information

Other PH: 9038

**Approvals Required Prior to Submission:**

	<u>Initials</u>	<u>Date</u>
Philip Cherry	<i>Ok to sign</i> 	<u>1-18-2011</u>

**Remarks:**

**SAN: 2010-26 Revise Section 9.1.01 and 9.1.02 The General Permit Program of Regulations Governing the Control of Water Pollution**

David Small	None
Jenny Bothell	None
Robert Haynes	None
Lisa Vest	None
Kevin Coyle	None
Kim Chesser	<i>n/a</i>
Lee Ann Walling	
AWM – Marjorie Crofts	None
F&W – Pat Emory	<i>none</i>
P&R – Charles Salkin	None
S&W – Frank Piorko	None
Water-Kathy Bunting-Howarth	<i>none</i>

	<u>Initials</u>	<u>Date</u>
<b>From:</b> Gail Henderson	<u><i>GLH</i></u>	<u>1-18-11</u>
<b>Division:</b> OTS	<b>Phone:</b> 739-9038	



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
FAX: (302) 739-6242

OFFICE OF THE  
SECRETARY

MEMORANDUM TO: Office of the Governor  
Members of the Senate Natural Resources and Environmental  
Control Committee  
Members of the House Environment and Natural Resources  
Committee

FROM : Collin P. O'Mara, Secretary 

SUBJECT : ***START ACTION NOTICE***

DATE : January 19, 2011

Enclosed for your information is APPROVED Start Action Notice:

**2010-26 to revise Section 9.1.01 of The General Permit Program for Industrial Stormwater,  
and Section 9.1.02 Special Conditions for Storm Water Discharges Associated with  
Construction Activities of the Regulations Governing the Control of Water Pollution.**

Division Directors  
Public Affairs  
Those on Start Action Approval List  
Responsible Staff Member

*Delaware's Good Nature depends on you!*

Phil,

Did I give you SAN 2010-25?

*Gail Henderson*  
Administrative Specialist II  
DNREC  
Office of the Secretary  
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Dover, DE 19901  
302-739-9000  
[gail.henderson@state.de.us](mailto:gail.henderson@state.de.us)

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**From:** Meredith William H. (DNREC)  
**Sent:** Friday, January 14, 2011 5:09 PM  
**To:** Henderson Gail L. (DNREC)  
**Cc:** Bunting-Howarth Katherine E. (DNREC); Underwood Robert (DNREC); Mann Stephen M. (DNREC); Emory Patrick J. (DNREC); Richards Ruth D. (DNREC); Moran Thomas (DNREC); Conaway Kenneth (DNREC)  
**Subject:** DFW comments on SAN #2010-25

**GAIL** – with my being on State travel this week from Tuesday thru Thursday, Ruth told me that I've been given an extension until this Monday to provide any comments that I might like to offer regarding this SAN. As such, here goes, now provided by me before Monday's extended deadline!

Comments on **SAN #2010-25** regarding amending DNREC's Water Pollution Control Regulations to now newly capture regulation of aquatic pesticide use:

This is a necessary undertaking on the DW's part, being driven by EPA's complying with a relatively recent 6th Circuit federal court decision. As such, we say full speed ahead for this DW initiative! But our only concern is that by both the 6<sup>th</sup> Circuit's and EPA's current deadlines, the promulgation of a new pesticide use section for our state water pollution regulations needs to be fully completed by April 9, 2011, yet the SAN indicates that this regulatory amendment or expansion won't be completed by the DW until the fall of 2011 (with a September 1, 2011 target date for publication in the Register of Regulations). It's fully understandable and defensible for several procedural reasons beyond DNREC's control as to why the DW won't be able to comply with the federal April 9th deadline; but nonetheless, lack of such compliance on part of DNREC could make aquatic pesticide users in Delaware subject to Clean Water Act citizen lawsuits from April 9<sup>th</sup> onward, which of course is not a good position to be in, especially since the use of aquatic pesticides in Delaware will have to continue after April 9<sup>th</sup>. It seems that given the realities of the State not being able to have this new NPDES permit program up-and-running by April 9<sup>th</sup>, coupled with our wanting to avoid the specter of citizen lawsuits possibly being brought against DNREC or against Delaware's community of aquatic pesticide users (either individually or collectively), then we need either for EPA to request an extension of the 6<sup>th</sup> Circuit Court's current stay-of-mandate for perhaps another 6-12 months, with the Court hopefully then actually granting such reprieve; or alternatively for Congress to somehow quickly intervene not just on Delaware's behalf but on behalf of many other states too, to either delay implementation of this new NPDES permitting program for at least several months, or alternatively to permanently negate the need for such NPDES permits when applying aquatic pesticides. But no matter what, the DFW will diligently and faithfully work with our DW colleagues to try to accomplish whatever might be necessary both for Court and EPA compliance, with our trying to do such in whatever timeframe is practicable and doable for promulgating a major expansion in the DW's regulatory purview.

Cheers, BILL