



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**  
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DOVER, DELAWARE 19901

Office of the  
Secretary

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**Secretary's Order No. 2005-W-0052**

**Re: Adopting Final Regulations to Amend the Regulations Governing Storm Water Discharges Associated with Industrial Activities**

Date of Issuance: **January 28, 2005**

Effective Date: **February 11, 2006**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

On February 10, 2003, the Department approved this proposed rulemaking proceeding Start Action Notice ("SAN") 2003-03 in order to reissue and amend *Regulations Governing Storm Water Discharges Associated with Industrial Activities* ("Regulations"). The Regulations are based upon a federal program that enables the Department to issue a general permit under certain circumstances. The Department determined that the regulation of storm water discharges associated with industrial activities was suitable for the general permit program in order to protect the environment and water quality from the harm posed from unregulated storm water discharges.

The Department drafted proposed regulations, held three public workshops in New Castle County, Kent County and Sussex County on July 6, 7, and 14, 2005, published Proposed Regulations in the September 1, 2005, *Delaware Register of*

*Regulations*, and held a public hearing on September 29, 2005. Based on the record of decision, including the public hearing record reviewed in the December 23, 2005 Hearing Officer's Report ("Report") appended hereto, I find and conclude that the recommended regulations should be adopted as final regulations.

The regulations are well-supported and consistent with the law and regulations. They will allow the Department to exercise its authority to protect the environment from the harm posed from unregulated storm water discharges from industrial activities. The regulations will allow the Department to continue the federal program, but they also reflect considerable improvements, as reviewed by the Report. The result is a significant reduction in the number of regulations through the repeal and consolidation of the existing regulations without any loss of regulatory control. In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts as final regulations the recommended regulations set forth in the Appendix B to the Report;
2. The issuance of the final regulations will protect and improve the environment from possible harm associated with unregulated release of storm water discharges associated with industrial activities;
3. The final regulations are approved by this Order were developed consistent with the applicable law and regulatory standards and are adequately supported by sound technical analysis in the record;
4. The Department provided adequate public notice of the proceeding and the public hearing, held a public hearing, and considered all timely and relevant public comments in making its determination;

5. The Department's proposed regulations, as published in the September 1, 2005, *Delaware Register of Regulations*, and with the minor change set forth in Appendix B to the Report, are well-supported, are consistent with the applicable laws and regulations, and should be approved as final regulations to go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that;

6. The Department shall provide written notice to the persons affected by the Order, as determined by those who participated in this rulemaking at either the public workshop or at the public hearing, including participation through the submission of written comments.

*s/John A. Hughes*

John A. Hughes  
Secretary

## **HEARING OFFICER'S REPORT**

TO: The Honorable John A. Hughes  
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire  
Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

RE: Proposed Amendments to Regulations Governing the Control of Water Pollution  
under the Federal General Permit Program for Storm Water Discharges  
Associated with Industrial Activities

DATE: December 23, 2005

### **I. BACKGROUND AND PROCEDURAL HISTORY**

The Department of Natural Resources and Environmental Control (“Department” or “DNREC”) held a public hearing commencing at 6:00 p.m. on September 29, 2005, at the Department’s offices at 89 Kings Highway, Dover, Kent County, Delaware. The hearing was held to consider public comments on the Department’s proposed amendments to the regulations in Section 9, subsection 1, of the Department’s *Regulations Governing the Control of Water Pollution* (“Regulations”).

On February 10, 2003, Secretary of the Department, John A. Hughes, approved Start Action Notice 2003-03, which commenced the Department’s formal regulatory process to re-issue and amend Section 9, subsection 1 of the Regulations. This provision governs the general permit program for issuing general permits for storm water discharges associated with industrial activities, including special conditions for construction activities. The Department notified all persons on the Department’s list who are to receive notices of its rulemaking proceedings.

On July 6, July 7, and July 14, 2005, the Department’s Division of Water Resources (“DWR”) and Division of Soil and Water Conservation (“DSWC”) jointly held public

workshops in New Castle, Kent and Sussex Counties.<sup>1</sup> The public workshops were to inform the public of the pending process, to receive public comments on a draft of the proposed regulations and to explain the proposed changes.

The Department received some public comments on the draft proposed regulations, and the Department's experts determined that certain changes should be made. The Department prepared a proposed regulation, which was published in the September 1, 2005, *Delaware Register of Regulations*, 9 Del. Reg. 329-73, along with the notice of the public hearing. The Department also published legal notices of the proposed regulations and mailed notice to the persons on the Department's list of interested persons. I presided over a duly noticed public hearing on September 29, 2005, and the period for written public comments closed on October 3, 2005.

## **II. SUMMARY OF THE RECORD**

The public hearing record contains a twelve page verbatim transcript of the public hearing, and documents, marked as Exhibits, which were admitted into the record as hearing exhibits. At the public hearing, only one person presented oral comments, which sought a clarification on the proposed regulations. The Department representatives provided a satisfactory answer to him at the hearing. The City of Harrington submitted written comments on the proposed regulations' "no exposure exclusion" and on the need to test the water quality of storm water runoff. In addition, Centrex, Inc., a home builder, submitted, through its legal counsel, written comments on Section 9, subsection 1, Part 2. Accordingly, I requested that the Department's Division of Soil and Water Conservation ("DSWC") prepare a written response to address the technical issues raised by the comments, and a copy of DSWC's response is attached to this Report as Appendix A and I incorporated it as part of this Report. The record also

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<sup>1</sup> DWR is responsible for Part 1 and DSWC is responsible for Part 2 of the proposed regulations.

includes additional information provided by the Department's experts, which I relied upon and is included in this record of decision.

### **III. DISCUSSION AND REASONS**

Department's proposed regulations, if adopted, essentially would re-issue existing Section 9, subsection 1, of the Regulations with certain amendments. The proposed amendments were developed by the Department's experts in order to improve the current regulations' ability to protect the environment. The proposed regulations would, if adopted, continue the regulation of the discharge of "storm water" associated with "industrial activities," which are defined terms in Section 9.1.01.0 of the current regulations.

The Department's regulation of storm water discharges is pursuant to a general permit authority established by the federal *Clean Water Act*, 33 U.S.C. §§1251 et seq., as amended, and federal regulations of the United States Environmental Protection Agency ("EPA") that administer the Clean Water Act. EPA has delegated to the Department and the Department assumed certain responsibilities for administering the Clean Water Act, including the issuance of National Pollutant Discharge Elimination System ("NPDES") permits. These permits are also issued under state law authority. The Department has statutory authority to issue permits and to promulgate regulations at 7 Del. C. §§6003 and 6010.

The Department determined to issue general NPDES permits for storm water discharges associated with industrial activities by a self-implementing procedure established by regulation. In the present rulemaking proceeding, the Department seeks to continue to issue NPDES permits for storm water discharges associated with industrial activities in Part 1, and special conditions for storm water discharges associated with construction activities in Part 2. These Parts were last

revised on August 7, 1998, by Secretary's Order No. 98-W-0029, which went into effect on September 15, 1998.

The proposed amendment would consolidate the current Regulations' Parts 3 through 14, which apply to specific industries, in the proposed Part 1. The other proposed amendments to Part 1, include: 1) additional definitions in Section 9.1.01.0 for industrial activities, 2) a "no exposure exclusion in Section 9.1.01.1, 3) changes to the standard conditions in Section 9.1.01.2, 4) changes to the no exposure certification form in proposed Section 9.1.01.3, 5) changes to the industry specific monitoring in proposed Section 9.1.01.4, 6) changes to the storm water plan in proposed in Section 9.1.05.5, and 7) the addition of best management practices.

The proposed amendments to Section 9, subsection 1, part 2, include: 1) additional definitions in Section 9.1.01.0 for construction activities, 2) changes to the submission of individual lot stabilization plans for the Department's approval, 3) changes to the regulation of discharges associated with construction activity in Section, and 4) the identification of allowable non-storm water discharges.

NPDES general permits are authorized by EPA regulation at 40 C.F.R. §122.28. The EPA regulations allow general NPDES permits to be issued under certain circumstances, namely: 1) a defined area, 2) similar sources, 3) water quality-based limits, and 4) other requirements. The general permits established by a general permit regulation set self-implementing standards, which are applicable to certain discharges that require NPDES permits. This Department determined that storm water discharges from industrial activities and construction activities should be regulated by NPDES general permit procedures because such discharges are two categories that properly may be regulated by the general permit process authorized by EPA's regulations. The proposed regulations will continue to allow the

Department to exercise its permit issuance authority pursuant the EPA approved general permit authority.

The discharges from storm water point sources of the defined industrial and construction activities share certain similarities that support their administration by the NPDES general permits authorized under *40 C.F.R. §122.28(a)(2)*. I find that the proposed regulations are consistent with the NPDES general permit procedure and recommend the adoption of the proposed regulations as final regulations with certain small, non-substantive revisions. The proposed regulations included an Appendix B; however, I recommend that this Appendix B be reflected as a new section 9.1.01.1.<sup>2</sup> This change reflects the Delaware Register's Style Manual requirements for all state agency regulations. Thus, no substantive change will occur and the Department will be required to maintain a list of best management practices included in Appendix B of the proposed regulations.

I find and conclude that the Department's issuance of the proposed regulations as final as final regulations is an appropriate and lawful way for the Department to issue self-implementing NPDES permits consistent with state and federal law. Under this procedure, the Department issues a permit when an applicant submits a Notice of Intent in accordance with the Regulations, which then subjects the applicant to the NPDES permit as set forth in the Regulations. This permit has a limited term of coverage that extends for only up to five years from when it is issued, as set forth in proposed Section §9.1.01.8. This limited term for a NPDES permit is required by federal law and regulations. This term limit imposes a duty upon the person holding a NPDES permit to re-apply for a permit prior to the permit's term limit in order to remain in compliance with the law and regulations. The Department's proposed regulations, however, would not have any term limit for their continued application. Consequently, the proposed

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<sup>2</sup> The Delaware Register published the Appendix B by reference.

regulations, if adopted, will remain in effect until amended or repealed in a manner consistent with state law.

#### **IV. RECOMMENDED FINDINGS AND CONCLUSIONS**

Based on the record developed, I find and conclude that the record supports approval of the recommended regulations, as set forth in Appendix B hereto, as final regulations. In conclusion, I recommend the Secretary adopt the following findings and conclusions:

1.) The Department has jurisdiction under its statutory authority to make a determination in this proceeding;

2.) The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;

3.) The Department held a public hearing in a manner required by the law and regulations;

4.) The Department considered all timely and relevant public comments in making its determination;

5.) The recommended regulations, as set forth in Appendix B hereto, reasonably relate to protecting Delaware's waters from the harm of pollution from storm water discharges associated with industrial and construction activities, are well-supported by technical and scientific information, and are consistent with the applicable laws and regulations. Consequently, the recommended regulations in Appendix B should be approved as final regulations, and be allowed to go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*; and that

6.) The Department shall submit the proposed regulations as final regulations to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order approving the final regulations.

*s/Robert P. Haynes*  
Robert P. Haynes, Esquire  
Hearing Officer

**APPENDIX A**  
**Division Response Document**

**Memorandum**

TO: Robert P. Haynes, Hearing Officer

FROM: Robert S. Baldwin, Director

DATE: December 5, 2005

SUBJECT: Response to Public Comments Received on Proposed Regulations  
“Special Conditions for Storm Water Discharges  
Associated with Construction Activities”

CC: Frank Piorko, Administrator  
Jamie Rutherford, Program Manager  
Elaine Webb, Engineer III  
Peder Hansen, Program Manager  
Amber Moore, Environmental Scientist III

The following will serve as a response to public comments received October 3, 2005 from Matthew J. Knifton of Thompson & Knight, LLP on behalf of their client, Centax Homes.

1. Thompson & Knight requests “that the applicable Plan and BMP requirement for construction sites be incorporated directly into the permit, rather than incorporating them by general reference to the regulations and the handbook”.

DNREC Response: All sites in Delaware that necessitate coverage under the “Special Conditions for Storm Water Discharges Associated with Construction Activities” will require an approved Sediment and Stormwater Plan prior to the onset of construction. We are proposing a simpler, more streamlined process by not requiring a separate SWPPP, by allowing the Sediment and Stormwater Plan to fulfill the requirements of the SWPPP. We have gained EPA concurrence of our reference to the Delaware Sediment and Stormwater Regulations and Erosion and Sediment Control Handbook in our proposed permit. **No change to the draft regulations is proposed in response to this comment.**

2. Termination of Coverage for Individual Lots

Thompson & Knight requests: “(1) additional language to clarify that a vegetative buffer strip satisfies the requirement for “temporary stabilization including perimeter controls” and (2) that a homebuilder may submit an NOT for an individual lot that is part of a common plan of development. . .”

DNREC response:

(1) The term “temporary stabilization”, in our view, means temporary seeding and mulching in accordance with Delaware Erosion and Sediment Control Handbook Section 3.4; “perimeter controls” references temporary sediment control measures such as perimeter silt fence, earthen berm, and/or stabilized construction entrance. A vegetative buffer, while acceptable in some situations, may not be appropriate for all individual lots, including those with steep slopes. **No change to the draft regulations is proposed in response to this comment.**

(2) It is our expectation that there will be one NOI per site and one NOT per site with the possibility of multiple co-permittees under the same NOI. We will include language in the co-permittee guidance document which allows for termination of coverage on individual lots at the time that final Certificate of Occupancy is achieved. **No change to the draft regulations is proposed in response to this comment.**

3. Co-Permittees and Common Plans of Development

Thompson & Knight requests “clarification regarding the following issues . . . where several homebuilders operate separate lots but stormwater drains into a common area maintained by the master developer:”

(1) “. . . are the developer and homebuilders all co-permittees?”

DNREC Response: Yes

(2) “Are co-permittees jointly liable for permit violations?”

DNREC Response: Homebuilders would be responsible for on-lot controls and for any damage downstream (i.e. sedimentation) that occurs as a result of poor or failed on-lot controls. Violations of the Sediment and Stormwater Plan that occur outside of the individual lot that have not been caused by on-lot activity will be the responsibility of the original permittee (master developer).

(3) “We would urge the Department to allow a homebuilder in a common plan of development to become the sole permittee for its lots by submitting an NOI and having the developer submit an NOT for the lots after the developer’s work is completed. . .”

DNREC Response: Ultimately, site discharges occurring during the homebuilding phase of a project are primarily composed of discharges from the lots themselves, into the storm drain or swale conveyance system, stormwater management facilities, then off the site. To separate the homebuilder from the overall developer in the responsibility for site

discharges is inconsistent with the source of the discharge. **No change to the draft regulations is proposed in response to this comment.**

(4) “. . . a builder in a common plan of development who has all controls in place. . . should have no responsibility if there is a problem regarding storm water discharge from the common plan of development or from construction activities on lots operated by other builders. . .”

DNREC Response: It is not the Department’s intent to bring enforcement action in a violation of the Plan against all co-permittees for a site unless warranted. Co-permittees who contribute to the violation will be held responsible. **No change to the draft regulations is proposed in response to this comment.**

(5) “The term “common plan of development” used in the definition of “construction activity” is not defined . . .”

DNREC Response: The term “common plan of development” will be further defined in the guidance documentation produced to support the proposed regulations. **No change to the draft regulations is proposed in response to this comment.**

(6) “Under what circumstances can homebuilders in a common plan of development rely upon the Sediment and Stormwater Plan and NOI of the master developer?”

DNREC Response: A separate homebuilder phase plan sheet will be incorporated into the Sediment and Stormwater Plan set. One Plan will cover all subsequent homebuilders on a project as will one NOI. Individual homebuilders will be co-permittees to share responsibility for implementing the Plan, not for developing separate Plans. **No change to the draft regulations is proposed in response to this comment.**

#### 4. Department Inspections

(1) “Who is authorized to find a violation of the general permit?”

(2) “Does the Department plan to delegate authority to inspect facilities to anyone not employed by the Department?”

(3) “Is a representative from a local agency part of the “Department”?”

DNREC Response to (1), (2), and (3): Our program operates through delegated agencies: local agencies (county, municipal, conservation district) that implement the Delaware Sediment and Stormwater Program at the local level. In addition to DNREC personnel, delegated agency personnel are authorized to provide construction review of projects within their jurisdictions. We also have a provision in our Regulations that allows private individuals to be trained by the Department and certified as Certified Construction Reviewers (CCRs). CCRs are used as a supplement to our Department and delegated agency inspection staff. Department staff, delegated agency staff, and Certified

Construction Reviewers will be authorized to inspect and identify violations; however, enforcement of the Plan is the responsibility of the Department.

(4) “Is an EPA representative part of the Department?”

DNREC Response: An EPA representative may complete his or her own inspection of the site, not as an inspection to assess compliance with the Delaware Sediment and Stormwater Regulations, but acting on their own. Therefore, an EPA representative is not part of the “Department”.

(5) “What authority does a Department inspector have to insist upon changes to the . . . Plan, and what standards guide those inspectors in demanding additional controls?”

DNREC Response: A standard note on each approved sediment and stormwater plan reads, “If the approved plan needs to be modified, additional sediment and stormwater controls may be required as deemed necessary by the DNREC [or delegated agency]”. Sections 14.6.1 and 14.6.2 of the Delaware Sediment and Stormwater Regulations addresses major and minor revisions to the approved Plan.

(6) “If a permittee disagrees with the Department inspector, what is the procedure for resolving that disagreement?”

DNREC Response: There are provisions in Chapter 60 that allow for due process such as a request for a public hearing. This provision is further reinforced in Section 17.0 of the Delaware Sediment and Stormwater Regulations.

## 5. BMP Repairs and Maintenance

Thompson & Knight: “. . . the general permit should be revised to clarify that a violation only occurs after (1) the damage has been identified by the permittee; and (2) the permittee fails to make the repairs after a reasonable time. . .”

DNREC Response: Inspection standards have been defined in Section 14 of the Delaware Sediment and Stormwater Regulations. It is the practice of Department and delegated agency construction reviewers to work with a site’s responsible personnel to develop an acceptable deadline for BMP repairs prior to issuance of violation notices. **No change to the draft regulations is proposed in response to this comment.**

## 6. Onsite Retention of Records

Thompson & Knight: “. . . it is typical not to have a construction trailer on site. . . we request the addition of the following language . . . **If there is not a construction office or other place of business on site, the documents may be kept in the vehicle of the construction manager/site foreman.** . . .”

DNREC Response: Section 9.1.02.4.B.1 states that during construction the approved Plan should be maintained at the site. If a construction trailer is available, this is obviously the preferred location; however, if a construction trailer is not available at the site, keeping the documents in the vehicle of the construction manager or site foreman would be considered maintaining the Plan at the site while construction progresses. **No change to the draft regulations is proposed in response to this comment.**

We have responded to the public comments submitted regarding the “Special Conditions for Storm Water Discharges Associated with Construction Activities”. Our responses to those comments have produced no changes to the proposed regulations. If you should have any questions, please do not hesitate to contact either Jamie Rutherford or Elaine Webb at (302) 739-9921.

**APPENDIX B**  
**Regulations Recommended for Adoption**

**SECTION 9 THE GENERAL PERMIT PROGRAM**

**Subsection 1 - Regulations Governing Storm Water Discharges Associated with Industrial Activities**

**INDEX**

- Part 1 - Baseline General Permit (§9.1.01)
- Part 2 - Special Conditions for Storm Water Discharges Associated with Construction Activities (§9.1.02)

APPENDIX A - WATER PRIORITY CHEMICALS

**§9.1.01.0**                    **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 (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; 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.

**Co-Permittee:** 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" (§9.1.01.5)

**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 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 §9.1.01.1.A., 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 Areas:** means an area(s), which consists of an impervious surface, such as a floor, that is shielded from precipitation and storm water run-on.

**Equivalent Best Management Practices (BMPs):** 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 § 9.1.01.9.

**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 that covers multiple discharges of a point source category within a designated geographical area, 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 §9.1.01.1.A. 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 Activities:** 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 (MS4):** 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 Pollution*.

**“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 §9.1.01.4. (Monitoring) and §9.1.01.5. (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 Industrial 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 runoff 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 CFR122.26(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 Activities (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.

**Transfer 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) – (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 (a) thru (e) of this definition) are not “waters of the State.”

### **§9.1.01.1 Permit Coverage**

#### **A. 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.

##### **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 byproducts 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.

##### **2. Permit Applicability**

Owners or operators of facilities identified in subparagraphs a. and b. 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 a. and b. are not required to obtain coverage unless specifically designated in writing by the Director as a Sector “AD” facility.

a. Construction Activities: Construction activities including clearing, grading, and excavation activities;

b. 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 §9.1.01.7), from the following sectors. Industrial activities are grouped into thirty (30) 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
<b>Sector A: Timber Products</b>	
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
<b>Sector B: Paper and Allied Products</b>	
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
<b>Sector C: Chemical and Allied Products</b>	
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 In vivo 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
<b>Sector D: Asphalt Paving and Roofing Materials and Lubricants</b>	
2951, 2952	Asphalt Paving and Roofing Materials
2992, 2999	Miscellaneous Products of Petroleum and Coal
<b>Sector E: Glass Clay, Cement, Concrete and Gypsum Products</b>	
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
<b>Sector F: Primary Metals</b>	
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
<b>Sector G: Metal Mining (Ore Mining and Dressing)</b>	
1011	Iron Ores
1021	Copper Ores
1031	Lead and Zinc Ores
1041, 1044	Gold and Silver Ores
1061	Ferrous Alloy Ores, Except Vanadium
1081	Metal Mining Services
1094, 1099	Miscellaneous Metal Ores
<b>Sector H: Coal Mines and Coal Mining Related Facilities</b>	
1221-1241	Coal Mines and Coal Mining-Related Facilities
<b>Sector I: Oil and Gas Extraction and Refining</b>	
1311	Crude Petroleum and Natural Gas
1321	Natural Gas Liquids
1381-1389	Oil and Gas Field Services
2911	Petroleum Refineries
<b>Sector J: Mineral Mining and Dressing</b>	
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
<b>Sector K: Hazardous Waste Treatment, Storage, or Disposal Facilities</b>	
HZ	Hazardous Waste Treatment, Storage, or Disposal Facilities <u>subject to the "Delaware Regulations Governing Solid Waste" (DRGSW)</u>
<b>Sector L: Landfills and Land Application Sites</b>	
LF	Landfills, Land Application Sites and Open Dumps that <u>receive or</u> have received any industrial wastes (waste that is received from any of the facilities described under this Subsection) <u>subject to the DRGSW.</u>
<b>Sector M: Automobile Salvage Yards*</b>	
5015	Automobile Salvage Yards
<b>Sector N: Scrap Recycling Facilities*</b>	

5093	Scrap Recycling Facilities
<b>Sector O: Steam Electric Generating Facilities</b>	
SE	Steam Electric Generating Facilities
<b>Sector P: Land Transportation and Warehousing**</b>	
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
<b>Sector Q: Water Transportation**</b>	
4412-4499	Water Transportation
<b>Sector R: Ship and Boat Building or Repairing Yards</b>	
3731, 3732	Ship and Boat Building or Repairing Yards
<b>Sector S: Air Transportation**</b>	
4512-4581	Air Transportation Facilities
<b>Sector T: Treatment Works***</b>	
TW	Treatment Works
<b>Sector U: Food and Kindred Products</b>	
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
<b>Sector V: Textile Mills, Apparel, and Other Fabric Product Manufacturing, Leather and Leather Products</b>	
2211-2299	Textile Mill Products
2311-2399	Apparel and Other Finished Products Made From Fabrics and Similar Materials
3131-3199 (except 3111)	Leather Products
<b>Sector W: Furniture and Fixtures</b>	
2511-2599	Furniture and Fixtures
2434	Wood Kitchen Cabinets
<b>Sector X: Printing and Publishing</b>	
2711-2796	Printing, Publishing, and Allied Industries
<b>Sector Y: Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries</b>	
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
<b>Sector Z: Leather Tanning and Finishing</b>	

3111	Leather Tanning and Finishing
<b>Sector AA: Fabricated Metal Products</b>	
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
<b>Sector AB: Transportation Equipment, Industrial or Commercial Machinery</b>	
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)
<b>Sector AC: Electronic, Electrical, Photographic and Optical Goods</b>	
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
<b>Sector AD: Non-Classified Facilities</b>	
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 maintenance activities (including 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.	

### 3. Co-Located Activities

Facilities conducting industrial activities identified by two (2) or more sectors indicated in subparagraphs a. and b. 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.

#### B. Eligibility

The following discharges and activities are eligible for coverage under this Subsection (NPDES General Permit Program).

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.

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.

3. No person shall discharge storm water associated with an industrial activity except as authorized by an individual NPDES permit or this Subsection. Part 1 of this Subsection shall apply to all discharges of storm water associated with industrial activities. Part 2 of this Subsection shall apply to construction activities and modifies certain parts of Part 1. Coverage under this Subsection can be obtained by submitting the appropriate form as required by each 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 Form.

#### C. Limits on Eligibility

The following discharges and activities are not eligible for coverage under this Subsection (The General Permit Program).

1. Discharges of storm water associated with industrial activities fully addressed by facilities with individual NPDES permits.

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.

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.

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:

a. Discharges of substances or materials in amounts that are toxic, or that would be toxic to humans, fish, aquatic life, or wildlife;

b. 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

c. 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.

5. Discharges of materials other than storm water are prohibited and are not authorized by this Subsection.

#### D. Individual NPDES Permit Coverage

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\*) 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 activities.

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 §9.1.01.1.C.4.

a. 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.

b. 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.

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.

E. Conditional “No Exposure” Exclusion

1. A Conditional “No Exposure” Exclusion from the requirements of §9.1.01.4. (Monitoring) and §9.1.01.5. (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 §9.1.01.1.A.2.b. 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 that obtains an approved Conditional “No Exposure” Exclusion is covered under this Subsection, but excluded from having to comply with the requirements of §9.1.01.4. and §9.1.01.5.

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.

3. A storm resistant shelter is not required for the following industrial materials and activities:

a. 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.

b. 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.

c. Fueling Activities: Vehicle or vessel maintenance facilities in which the only maintenance activity conducted on-site is 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.

d. Above Ground Storage Tanks: Storm resistant shelters are not required for above ground storage tanks provided the following conditions are met:

1. Above ground storage tanks must be physically separated from and not associated with vehicle maintenance operations;

2. There must be no piping, pumps or other equipment leaking contaminants that could contact storm water;

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;

4. Precipitation collected in secondary containment structures must be properly managed; and

5. A spill containment and clean-up kit must be available for personnel dispensing product.

e. 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:

1. Products that would be mobilized in storm water discharges (e.g., rock salt);

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

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.

4. There are circumstances where permanent, uninterrupted sheltering of industrial activities or materials is not possible. Under such conditions:

a. Materials and activities may be sheltered with temporary covers (e.g., tarpaulins) until permanent enclosure can be achieved; and

b. 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 §9.1.01.1.E.

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.

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.

### **§9.1.01.2                    Standard Conditions**

#### **A. Entry and Inspection**

Any person subject to this Subsection shall allow the Department to:

1. enter the facility subject to this Subsection during standard business hours;
2. inspect and copy at reasonable times, any records that must be kept under the conditions of this Subsection;
3. inspect at reasonable times any facilities or equipment; and
4. perform sampling of the storm water discharges from the site.

#### **B. Signature Requirements**

1. All Notice Of Intent (NOI) Forms and “No Exposure” Certification Forms shall be signed by:
  - a. a president, vice president, secretary or treasurer for a corporation; or
  - b. a general partner or proprietor for a partnership or sole proprietorship; or
  - c. a principal executive officer or ranking official for a municipality or public agency.
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:
  - a. the authorization is made in writing by the person described above and is submitted to the Department; and
  - b. 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).
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."

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. Transfers

1. For industrial activities identified in §9.1.01.1.A.2.a. (construction activities), coverage under this Subsection is transferable. Coverage under this Subsection shall be transferred in accordance with the provisions outlined in §9.1.02.

2. For industrial activities identified in §9.1.01.1.A.2.b., 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.

J. Continuation of Regulatory Requirements

The requirements of this Subsection shall continue in force and effect until this Subsection is re-promulgated.

K. 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.

L. 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.

M. 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.

N. 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.

**§9.1.01.3**                    **Notification**

A. Application For Coverage

1. Any person who intends to obtain coverage for storm water discharges associated with industrial activities 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 acknowledging coverage under this Subsection. Failure to submit a complete and accurate Form will result in the facility being denied coverage under this Subsection.

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.

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 the Transfers provision of §9.1.01.2.I.

B. Deadlines

1. Industrial Activities identified in §9.1.01.1.A.2.b., 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 §9.1.01.1.A.2.b., excluding those facilities classified as Industrial Activity Codes HZ and LF, shall meet the following deadlines.

a. 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”.

b. 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.

c. 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 immediately after becoming aware that coverage is required. In the event that the Department notifies an existing facility of required coverage, the existing facility shall submit an NOI Form or “No Exposure” Certification Form within 7 days of receiving Department notification.

d. 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.

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.

a. Facilities Currently Covered Under This Subsection

Coverage will continue for all facilities with existing coverage under this Subsection unless otherwise notified by the Department.

b. 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.

c. 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.

(1) The requirements of notification will be satisfied when an NOI Form with accompanying information is submitted in accordance with this Subsection.

(2) Persons complying with §9.1.01.3.B.2.c., shall be considered in compliance with the NOI provisions outlined in §9.1.01.3.A., §9.1.01.3.B.1.c. and §9.1.01.3.C., E. and F. of this Subsection.

(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.”

### 3. Construction Activities

Any person who intends to obtain coverage under this Subsection for storm water discharges associated with the industrial activities described in §9.1.01.1.A.2.a. (construction activities), of this Subsection shall comply with the provisions of §9.1.02. of the Regulations.

#### C. Contents of the Notice of Intent Form

The Notice of Intent (NOI) shall be submitted on a form provided by the Department.

1. For industrial activities described in §9.1.01.1.A.2.b., the NOI Form shall include, at a minimum, the following information:

a. The name of the owner, the facility, facility mailing address and location, if different from the mailing address;

b. The latitude and longitude of the facility;

c. Up to four Standard Industrial Classification (SIC) codes that best represent the principal products or activities of the

d. A brief description of the type of industrial activities conducted and products manufactured at the facility;

e. The name, address and telephone number of the individual who is directly responsible for development, implementation, maintenance, and revision of the Storm Water Plan;

f. The name of the receiving waters or municipal storm water system; and

g. 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.”

2. For industrial activities described in §9.1.01.1.A.2.a. (construction activities), the NOI Form shall be submitted in accordance with the provisions of §9.1.02. of the Regulations.

#### D. Contents of the “No Exposure” Certification Form

The Conditional “No Exposure” Certification shall be submitted on a form provided by the Department. The “No Exposure” Certification Form shall include, at a minimum, the following information:

1. The name of the owner, the facility, facility mailing address and location (if different from the mailing address);
2. The latitude and longitude of the facility;
3. Up to four Standard Industrial Classification (SIC) codes that best represent the principal products or activities of the facility;
4. Indication as to whether or not the facility was previously covered under a NPDES storm water permit;
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
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:
  - a. Industrial materials used, stored, or cleaned and that remain and are exposed to storm water;
  - b. Materials or residuals on the ground or in storm water inlets from spills/leaks;
  - c. Materials or products from past industrial activity;
  - d. Material handling equipment (except adequately maintained vehicles);
  - e. Materials or products during loading/unloading or transporting activities;
  - f. 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);
  - g. Materials contained in exposed storage drums, barrels, tanks (provided the tanks do not meet the conditions outlined in §9.1.01.E.3.d.), and similar containers;
  - h. Materials or products handled/stored on roads or railways owned or maintained by the discharger;
  - i. Waste material (except waste in covered, non-leaking containers [e.g., dumpsters]);
  - j. Application or disposal or process wastewater (unless otherwise permitted);
  - k. 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; and

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.”

E. 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.

F. Where to Submit

Persons intending to obtain coverage through this Subsection must submit an NOI or “No Exposure” Certification Form to the following address:

1. Persons intending to obtain coverage under this Subsection for industrial activities identified in §9.1.01.1.A.2.b. 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

2. Persons intending to obtain coverage under this Subsection for industrial activities identified in §9.1.01.1.A.2.a. (construction activities), must submit an application with accompanying information in accordance with the provisions of §9.1.02. (Part 2) of the Regulations.

G. Failure to Notify

Persons who discharge storm water associated with industrial activities, 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.

**§9.1.01.4 Monitoring**

A. Beginning on the effective date of this Subsection, persons conducting industrial activities:

1. identified in §9.1.01.1.A.2.b., 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.

2. identified in §9.1.01.1.A.2.b. as Industrial Activity Codes HZ and LF shall perform monitoring in accordance with the DRGSW.

3. identified in §9.1.01.1.A.2.a. (construction activities) shall perform monitoring in accordance with the provisions of §9.1.02. (Part 2) of this Subsection.

B. Sampling Procedures and Conditions

Storm water must be sampled according to the instructions below.

1. Sample Type

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.

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.

## 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 that 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.

## 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.

## 4. Representative Discharge

If any person subject to this Part reasonably believes that two (2) 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).

## 5. Flow Measurement

For each representative sampled storm event, person subject to this Part must provide the following information:

- a. the date and duration (in hours) of the storm event(s) sampled;
- b. rainfall measurements (in inches) or estimates of runoff (in gallons) of the storm event that generated the sampled runoff;
- c. the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and
- d. an estimate of the total volume (in gallons) of the discharge sampled.

## 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 §9.1.01.4.C., visual monitoring shall be performed on a quarterly basis and analytical monitoring shall be performed on a semi-annual basis.

### C. 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 §9.1.01.4. 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.

1. Quarterly Visual Monitoring

All facilities subject to the monitoring requirements of §9.1.01.4., must perform and document quarterly visual examinations of storm water discharges associated with industrial activities for 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 from visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no runoff occurred.

2. Analytical Monitoring – Benchmark Monitoring Concentrations and Numeric 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) {§9.1.01.5.}. 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.

a. Sector A – General Sawmills and Planning Mills

1. Numeric Effluent Limitations

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
<b>Wet Decking Discharges at Log Storage and Handling Areas (SIC Code 2411)</b>		
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

(2) Benchmark Monitoring Requirements

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
<b>Log Storage and Handling (SIC Code 2411)</b>		
Total Suspended Solids (TSS)	mg/l	100.0
<b>General Sawmills and Planning Mills (SIC Code 2421)</b>		
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
<b>Wood Preserving (SIC Code 2491)</b>		
Total Arsenic	mg/l	0.16854
Total Copper	mg/l	0.0636
pH	standard units	6.0-9.0
<b>Hardwood Dimension and Flooring Mills (SIC Codes 2426, 2429, 2431-2439 (except 2434), 2448, 2449, 2451, 2452, 2499 and 2593)</b>		
Chemical Oxygen Demand (COD)	mg/l	120.0
Total Suspended Solids (TSS)	mg/l	100.0
pH	standard units	6.0-9.0

b. **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
<b>Paperboard Mills (SIC Code 2631)</b>		
Chemical Oxygen Demand (COD)	mg/l	120.0
pH	standard units	6.0-9.0

c. **Sector C – Chemical and Allied Product Manufacturing**

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
<b>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</b>			
Total Phosphorus (as P)	mg/l	105.0	35.0
Fluoride	mg/l	75.0	25.0

pH	standard units	6.0-9.0
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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
<b>Industrial Inorganic Chemicals (SIC Codes 2812-2819)</b>		
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
<b>Plastics, Synthetics, and Resins (SIC Codes 2821-2824)</b>		
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0
<b>Soaps, Detergents, Cosmetics, and Perfumes (SIC Codes 2841-2844)</b>		
Nitrate plus Nitrite Nitrogen	mg/l	0.68
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0
<b>Agricultural Chemicals (SIC Codes 2873-2879)</b>		
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

d. Sector D – Asphalt Paving and Roofing Materials and Lubricant Manufacturers

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
<b>Discharges from areas where production of asphalt paving and roofing emulsions occurs (SIC Codes 2951 and 2952)</b>			
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	

(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
<b>Asphalt Paving and Roofing Materials and Lubricant Manufacturers (SIC Codes 2951 and 2952)</b>		

Total Suspended Solids (TSS)	mg/l	100.0
pH	standard units	6.0-9.0

e. **Sector E – Glass, Clay, Cement, Concrete and Gypsum Products**

(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
<b>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.</b>		
Total Suspended Solids (TSS)	mg/l	50.0
pH	standard units	6.0-9.0

(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
<b>Clay Product Manufacturers (SIC Codes 3245-3259 and 3261-3269)</b>		
Total Recoverable Aluminum	mg/l	0.75
pH	standard units	6.0-9.0
<b>Concrete and Gypsum Product Manufacturers (SIC Codes 3271-3275)</b>		
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

f. **Sector F – Primary Metals**

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
<b>Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC Codes 3312-3317)</b>		
Total Recoverable Aluminum	mg/l	0.75
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0
<b>Iron and Steel Foundries (SIC Codes 3321-3325)</b>		
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
<b>Rolling, Drawing, and Extruding of Nonferrous Metals (SIC Codes 3351-3357)</b>		
Total Recoverable Copper	mg/l	0.0636
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0
<b>Nonferrous Foundries (SIC Codes 3363-3369)</b>		
Total Recoverable Copper	mg/l	0.0636
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0

g. **Sector J – Mineral Mining and Dressing**

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
<b>Mine Dewatering Activities at Construction Sand and Gravel; Industrial Sand; and Crushed Stone Mining Facilities (SIC Codes 1422-1429, 1442 and 1446)</b>			
Total Suspended Solids (TSS)	mg/l	45.0	25.0
pH	standard units	6.0-9.0	

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
<b>Dimension Stone Crushed and Broken Stone and Nonmetallic Minerals (except fuels)(SIC Codes 1411, 1422-1429, 1481 and 1499)</b>		
Total Suspended Solids (TSS)	mg/l	100.0
pH	standard units	6.0-9.0
<b>Sand and Gravel Mining (SIC Codes 1442 and 1446)</b>		
Nitrate plus Nitrite Nitrogen	mg/l	0.68
Total Suspended Solids (TSS)	mg/l	100.0
pH	standard units	6.0-9.0

h. **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
<b>Automobile Salvage Yards (SIC Code 5015)</b>		
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

i **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
<b>Scrap Recycling and Waste Recycling Facilities (SIC Code 5093)</b>		
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

j. **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
<b>Steam Electric Generating Facilities (Industrial Activity Code SE)</b>		
Total Recoverable Iron	mg/l	1.0
pH	standard units	6.0-9.0

k. **Sectors P – Land Transportation and Warehousing**

Benchmark Monitoring Requirements

Facilities identified by SIC Codes 4011-4013, 4111-4173, 4212-4273, 4311 and 5171 shall analyze grab samples for the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
<b>Land Transportation and Warehousing (SIC Codes 4011-4013, 4111-4173, 4212-4273, 4311 and 5171)</b>		

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

**l. Sector Q – Water Transportation**  
Benchmark Monitoring Requirements

Facilities identified by SIC codes 4412-4499 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
<b>Water Transportation Facilities (SIC Codes 4412-4499)</b>		
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

**m. 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
<b>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)</b>		
Biochemical Oxygen Demand (BOD <sub>5</sub> )	mg/l	30.0
Ammonia	mg/l	19.0
Chemical Oxygen Demand (COD)	mg/l	120.0
pH	standard units	6.0-9.0

**n. 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
<b>Grain Mill Products (SIC Codes 2041-2048)</b>		
Total Suspended Solids (TSS)	mg/l	100.0
pH	standard units	6.0-9.0
<b>Fats and Oils Products (SIC Codes 2074-2079)</b>		
Biochemical Oxygen Demand (BOD <sub>5</sub> )	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

**o. Sector Y - Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries**

Benchmark Monitoring Requirements

Facilities identified by SIC codes 3011-3069 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
<b>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)</b>		
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0

**p. Sector Z - Leather Tanning and Finishing**

Benchmark Monitoring Requirements

Facilities identified by SIC code 3111 shall analyze grab samples in accordance with the following parameters:

Parameter	Units	Benchmark Monitoring Concentrations
<b>Leather Tanning and Finishing (SIC Code 3111)</b>		
Total Kjeldahl Nitrogen	mg/l	1.5
pH	standard units	6.0-9.0

**q. Sector AA – Fabricated Metal Product**

Benchmark Monitoring Requirements

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
<b>Fabricated Metal Products Except Coating (SIC Codes 3411-3471, 3482-3499, 3911-3915)</b>		
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
<b>Fabricated Metal Coating and Engraving (SIC Code 3479)</b>		
Total Recoverable Zinc	mg/l	0.117
pH	standard units	6.0-9.0

**r. Coal Pile Runoff**

Numeric Effluent Limitations

Facilities that have discharges of storm water from coal storage piles regardless of a facility's 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
<b>Coal Pile Runoff</b>		
Total Suspended Solids	mg/l	50.0
pH	standard units	6.0-9.0

**D. Record Keeping:**

1. Records of all analytical monitoring shall include the following:
  - a. the date, exact place and time of sampling or measurements;
  - b. the name(s) of the individual(s) who performed the sampling or measurements as well as the procedures used for sample collection and preservation;
  - c. the date and time when the analysis of the samples took place along with the name of the individual(s) who performed the analysis;
  - d. references and written procedures, when available, for the analytical techniques or methods used;
  - e. the results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, used to determine these results; and
  - f. 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 Storm Water Plan (SWP), or identify other areas of the SWP that may require revision in order to meet the goal of the Benchmark Monitoring Concentration values/Numeric Effluent Limitations. Background concentrations of specific pollutants may also be considered during the investigation.
  
2. Records of all quarterly visual monitoring shall include the following:
  - a. the date, outfall location and time of examination;
  - b. the name(s) of the individual(s) who performed the examination;
  - c. the nature of the discharge (i.e., runoff or snowmelt);
  - d. 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
  - e. probable sources of any observed storm water contamination.

**E. Additional Monitoring**

The Secretary may provide written notification to any facility, including those otherwise exempt from sampling requirements, requiring additional storm water monitoring.

**F. Monitoring Waiver**

The Department may waive specific monitoring requirements, as follows:

1. Adverse Climatic Conditions

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.).

## 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 (§9.1.01.5.).

## 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.

a. Samples were collected in four (4) consecutive monitoring periods and the parameter concentrations were below the benchmark monitoring concentration values indicated.

b. 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.

Following the sampling suspension, sampling shall resume as specified in this Part.

### **§9.1.01.5 Storm Water Plan (SWP)**

#### A. Persons covered by this Subsection:

1. Who engage in industrial activities identified in §9.1.01.1.A.2.b., 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 activities at a facility and to assure compliance with the terms and conditions of this Subsection.

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.

3. Who engage in industrial activities identified by §9.1.01.1.A.2.a. (construction activities), shall comply with the provisions of §9.1.02.5. (Sediment and Stormwater Plan) of the Regulations.

B. The SWP shall be signed in accordance with this Subsection and maintained at the facility.

C. 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.

#### D. Keeping the SWP Current

Persons covered by this Subsection shall amend the SWP whenever:

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;

2. the SWP proves to be ineffective in eliminating or significantly minimizing pollutants from Industrial Materials identified in §9.1.01.5.G.2.c., or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activities;

3. any sources or potential sources of pollution identified as a result of a facility's Inspection Program pursuant to §9.1.01.5.G.4.; or

4. notified by the 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 the 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.

#### E. 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.

#### F. SWP Deadlines

##### 1. Existing Facilities

a. 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.

b. 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.

##### 2. New Facilities

New facilities 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.

##### 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.

#### G. 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:

##### 1. Facility Identification

The name, address, and telephone number of the individual who is responsible for development, implementation, maintenance and revision of the SWP.

##### 2. Facility Assessment

a. 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:

1. loading and unloading areas (including areas where chemicals and other materials are transferred);
2. outdoor storage areas;
3. outdoor processing areas;
4. dust producing activities;
5. on-site waste disposal;
6. vehicle/equipment maintenance, cleaning and fueling areas;
7. liquid storage tanks;
8. railroad sidings, tracks, and rail cars; and
9. other.

b. 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:

1. all of the buildings at the facility;
2. the areas where Industrial Materials are stored, handled or used in processes and the types of Industrial Materials associated with each areas;
3. the drainage areas associated with each storm water discharge from the facility/site and the associated ground cover;
4. all storm water related drainage and discharge structures including all conveyances systems and appurtenances;
5. any structural storm water controls (i.e. detention basins, secondary containment, storm water diversions);
6. all surface waters that receive storm water discharges from the facility;
7. directions of storm water flow;
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. locations of non-storm water discharges;
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;
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
12. locations of where major spills or leaks have occurred.

c. 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.

d. 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.

### 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:

#### a. 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.

#### b. 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.

#### c. 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.

#### d. 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.

#### e. 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.

f. Best Management Practices (BMPs)

The SWP shall include a section that establishes BMPs to reduce the discharge and potential discharge of pollutants in storm water. §9.1.01.9 includes a list of BMPs for specific industrial activities. Facilities conducting activities described in § 9.1.01.9 shall implement the corresponding BMPs, as appropriate. Those BMPs listed are considered the minimum set of required structural BMPs for a specific industrial activity.

Nothing in §9.1.01.9 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 §9.1.01.9 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 §9.1.01.9 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.

g. 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.

h. 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.

i. 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.

4. Inspections. The SWP shall detail the following inspection programs. Results of each inspection shall be maintained with the SWP.

a. 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.

b. 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 routine inspections required by this Part. The evaluations may substitute for a routine inspection if it is conducted during the regularly scheduled routine 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:

- (1) areas identified in the Inventory of Industrial Materials of the SWP;
- (2) structural controls, including their maintenance and effectiveness;
- (3) non-structural controls, including good housekeeping measures and spill prevention;
- (4) storm water outfalls and reasonably accessible areas immediately downstream of each storm water outfall that is authorized under this Subsection; and
- (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.

c. 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.

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 §9.1.01.4.

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.

7. Non-Storm Water Certification

The SWP shall include the Non-Storm Water Certification required by §9.1.01.7.

## 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. 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).

a. 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

b. 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.

### H. 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 require treatment 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.

### I. 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.

### J. 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.

## **§9.1.01.6 Outfall Identification**

All persons conducting industrial activities identified in §9.1.01.1.A.2.b. 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.

## **§9.1.01.7 Non-Storm Water**

A. Discharges to a storm water system of anything other than storm water, except those discharges described in paragraph (B) 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.

B. Industrial facilities that qualify for coverage under this Subsection may discharge the following non-storm water discharges, through outfalls identified in the SWP:

1. discharges from fire fighting activities and fire hydrant flushings;
2. uncontaminated potable water sources including waterline flushings;
3. lawn watering and similar irrigation drainage;
4. water from the routine external washing of buildings, conducted without the use of detergents or other chemicals;
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);
6. uncontaminated air conditioner condensate, compressor condensate, and condensate that externally forms on steam lines;
7. water from foundation or footing drains where flows are not contaminated with pollutants (e.g. process materials, solvents, and other pollutants);
8. springs and other uncontaminated ground water; and
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).

C. 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 §9.1.01.2.B. and shall be maintained with the SWP. The certification shall include:

1. the identification of potential sources of non-storm water at the site;
2. a description of the results of any tests or evaluation for the presence of non-storm water discharges;
3. the evaluation criteria or testing method used;
4. the date of any testing or evaluation; and
4. the on-site drainage points that were directly observed during the test.

D. Any facility that is unable to provide the certification required by §9.1.01.7.C., 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:

1. the procedure of any test conducted for the presence of non-storm water discharges;
2. the results of such test or other relevant observations;
3. potential sources of non-storm water discharges to the storm water conveyance system(s); and
4. why adequate tests for such storm water conveyance system(s) were not feasible.

**§9.1.01.8                      Effective Date of Coverage Under This Subsection**

A. 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 §9.1.01.3.

B. 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.

C. Re-notification

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.

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.

**§9.1.01.9 Best Management Practices**

The Department is authorized under the federal regulations (40 CFR 122.44) to impose Best Management Practices (BMPs) to control or abate the discharge of pollutants in lieu of numeric effluent limitations when the Department finds that BMPs are reasonably necessary to achieve effluent limitations and standards, or to carry out the purposes and intent of the State and Federal Acts.

The Department shall maintain a list of Best Management Practices that would eliminate or reduce the contact of industrial materials, areas, and or activities with storm water. These BMPs are a means to meet the requirements for BMPs listed in as applicable and are considered the minimum set of required BMPs for an industrial activity. Equivalent BMPs may be selected which result in equal or better quality of stormwater discharge.

**Part 2 SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES**

**§ 9.1.02.0 Definitions**

**Appropriate Plan Approval Agency:** means the Department, Conservation District, county, municipality, or

**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% ( $0.70 \times 0.50 = 0.35$ ) 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 (MS4):** 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 runoff 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 (a) – (d).

Waste and storm water treatment systems that would otherwise meet this definition are not “waters of the State.”

#### **§ 9.1.02.1            Coverage**

##### **A. Eligibility**

The following discharges and activities are eligible for NPDES General Industrial Storm Water Permit coverage under this Part.

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]

2. Discharges from support activities (e.g., concrete or asphalt plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

- a. The support activity is directly related to the construction site required to have NPDES permit coverage for discharges of storm water associated with construction activity;
- b. 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
- c. Appropriate controls and measures are identified in a Sediment and Stormwater Plan covering the discharges from the support activity areas.

3. Discharges composed of allowable discharges listed in 9.1.02.1.A and 9.1.02.6.B commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.

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.

##### **B. Limits on Eligibility**

The following discharges and activities are not eligible for NPDES General Industrial Storm Water Permit coverage under this Subsection.

1. Discharges of storm water associated with industrial activity fully addressed by facilities with individual NPDES permits.

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.

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:

- a. Discharges of substances or materials in amounts that are toxic, or that would be toxic to humans, fish, aquatic life, or wildlife;
- b. 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

c. Discharges that cause or contribute to degradation or loss of State designated beneficial uses of the receiving waters.

4. Discharges of materials other than storm water are prohibited and are not authorized by this Subsection.

5. Discharges of storm water from post-construction that originate from the site after project completion, including any temporary support activity.

6. Discharges mixed with non-storm water. This exclusion does not apply to discharges identified in 9.1.02.6(B).

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”).

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. 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.

#### C. Individual NPDES Permit Coverage

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.

2. The Secretary may require any person covered by this Subsection to submit an application and seek coverage under an individual NPDES permit.

a. 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.

b. 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.

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.

#### D. 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 §9.1.02.3, 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.

E. Transfer of Authorization

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.

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.

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 §9.1.02.5. All conditions and obligations outlined in this Part will apply to the transferee/new owner upon transfer.

4. The Department will maintain guidance related to Transfer of Authorization.

F. Shared Operational Control (Co-Permittee Status)

1. Construction activities at a permitted site may become the responsibility of multiple persons when more than one person has operational control (see §9.1.02.0 Definitions) of the site. When multiple persons maintain operational control, all are considered co-permittees of the site.

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.

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 §9.1.02.5. All conditions and obligations outlined in this Part will apply to the co-permittees upon completion of the Co-Permittee form.

4. The Department will maintain guidance related to Co-Permittees.

**§ 9.1.02.2 Standard Conditions**

A. Entry and Inspection

Any person subject to this Subsection shall allow the Department to:

1. enter the facility subject to this Subsection during standard business hours;
2. inspect and copy at reasonable times, any records that must be kept under the conditions of this Subsection;
3. inspect at reasonable times any facilities or equipment; and
4. perform sampling of the storm water discharges from the site.

B. Signature Requirements

1. All Notice Of Intent (NOI) Forms shall be signed by:

- a. a president, vicepresident, secretary or treasurer for a corporation; or
- b. a general partner or proprietor for a partnership or sole proprietorship; or
- c. a principal executive officer or ranking official for a municipality or public agency.

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.

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."

C. 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.

D. 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.

E. 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.

F. Transfers

Coverage under this Part is transferable. Coverage under this Part shall be transferred in accordance with the provisions outlined in §9.1.02.1.E.

G. Continuation of Expired Coverage

The requirements of this Part shall continue in force and effect until this Part is re-promulgated.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

**§ 9.1.02.3 Notification**

A. Deadlines

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.

2. Permitted Ongoing Projects

a. 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.

b. 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 § 9.1.02.7.B must submit a Notice of Termination (NOT) within 90 days of re-promulgation of this Part.

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.

#### 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.

##### B. 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.

1. Applicant information including the operator name, contact person, mailing address, and telephone number;
2. Project information including the project name, location, county, and municipality, if applicable;
3. The project type and proposed methods of permanent storm water management;
4. The latitude and longitude of the facility;
5. The name of the receiving waters or municipal separate storm water system;
6. The plan approval agency name;
7. The total land area and the estimated area to be disturbed; and
8. The estimated construction start and project completion dates.

##### C. 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.

##### D. 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

##### E. 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.

##### F. 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.

#### **§ 9.1.02.4 Monitoring**

##### A. 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.

B. For the purposes of monitoring, persons subject to this Part must:

1. During construction, maintain at the site the approved Sediment and Stormwater Plan (see §9.1.02.5).
2. Conduct the following:
  - a. weekly maintenance inspections of erosion and sediment controls, and constructed storm water management measures; and
  - b. inspections of erosion and sediment controls and storm water management practices the next business day after a rainfall event that results in runoff.

C. Record Keeping

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:
  - a. the date and time of the inspection;
  - b. the name(s) of the individual(s) who performed the inspection;
  - c. an assessment of the condition of erosion and sediment controls, and constructed storm water management measures;
  - d. a description of any erosion and sediment control and storm water management measures construction or implementation and maintenance performed on those measures; and
  - e. a description of the site's present phase of construction.
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.

3. Reporting Requirements

Persons subject to this Part must retain the records described in §9.1.02.4, B(1), and §9.1.02.4.C 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

D. Additional Monitoring

The Secretary may provide written notification to any facility, requiring additional monitoring.

**§ 9.1.02.5 Sediment And Stormwater Plan (Plan)**

A. 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.

B. The Plan shall be signed in accordance with this Part and kept at the facility.

C. Persons covered by this Part shall retain records of all information required by the Plan for a minimum of five (5) years.

D. Keeping the Plan Current

1. Persons covered by this Part shall amend the Plan whenever:

- a. 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
- b. 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
- c. To address any sources or potential sources of pollution identified as a result of a site inspection pursuant to §9.1.02.4.B.; or
- d. 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.

2. Persons subject to §9.1.02.5.D.1.(a) 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.

3. Persons subject to Part §9.1.02.5.D.1.(b), (c), and (d) 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.

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.

E. 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.

F. 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.

**§ 9.1.02.6 Non-storm Water Discharges**

A. 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.

B. Industrial facilities that qualify for coverage under this Subsection may discharge the following non-storm water discharges, through outfalls identified in the Plan:

1. discharges from fire fighting activities and fire hydrant flushings;

2. uncontaminated potable water sources including waterline flushings;
3. lawn watering and similar irrigation drainage;
4. water from the routine external washing of buildings, conducted without the use of detergents or other chemicals;
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);
6. uncontaminated air conditioner condensate, compressor condensate, and condensate that externally forms on steam lines;
7. water from foundation or footing drains where flows are not contaminated with pollutants (e.g. process materials, solvents, and other pollutants);
8. springs and other uncontaminated ground water; and
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).

**§ 9.1.02.7 Effective Date Of Coverage**

A. Commencement of Coverage

Coverage under this Part begins when the Department has been notified pursuant to the provisions outlined in §9.1.02.3 of this Part.

B. 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:

1. All items and conditions of the Plan have been satisfied in accordance with the *Delaware Sediment and Stormwater Regulations*,
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
3. Final stabilization has been achieved in accordance with the definition in 9.1.02.0.