

1.0 General Provisions
3/24/2009

February 2009 Working Draft Comments				
Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	1.1	What specifically in the existing regulations is not working? Are the problems the same Up State as they are Down State? The difference in topography and depth to seasonal high water table varies, especially when comparing Up State to Down State, thus making it difficult to treat stormwater management consistently throughout the state.	Sally Ford, Land Design	Policies & Procedures
3/20/2009	1.1	Do you need to reference the Regulations Governing the Pollution Control Strategy?	SCD	Policies & Procedures
3/11/2009	1.1.1.1	Insert following sedimentation: ", and delivery of other nonpoint source pollutants such as nutrients, via stormwater runoff"	Jenn Volk, DWR	Policies & Procedures
3/20/2009	1.1.1.1	Are serious problem still associated with Construction activities? I do not generally agree	John Garcia, Karins	Policies & Procedures
3/11/2009	1.1.1.2	Insert following sediment deposition: ", and nonpoint source runoff of other pollutants"	Jenn Volk, DWR	Policies & Procedures
3/13/2009	1.1.1.2	"decrease in the infiltration capacity of soils" - Provide documentation that this is happening in sandy coastal soils of Sussex Co.	Kevin McBride, MRA	Policies & Procedures
3/13/2009	1.1.1.2	Cite specific damages to ag and industry due to development. Ag owners preference to sell property for development is not a damage it is his right.	Kevin McBride, MRA	Policies & Procedures
3/11/2009	1.1.1.3	The phrase "reduces groundwater discharge" – do you mean 'reduces groundwater recharge'? Section 2.0 "Adverse Impact" does "reduced groundwater recharge" and Section 5.2.1 encourages ground-water recharge.	Anne Mundel, DWR Groundwater Protection Branch	Technical

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3/13/2009	1.2	No mention is made of the benefits of the Sediment Control and Stormwater Management practices already in place. If the construction is done per approved plans (as they exist today) there should be minimal sediment leaving the site. The plans and reviews are very thorough, plus there is a note that allows the reviewing agencies to request additional practices if needed.	Sally Ford, Land Design	Policies & Procedures
3/13/2009	1.2	Current regs only adopted in '05. Have they been accessed for effectiveness. Provide documentation	Kevin McBride, MRA	Policies & Procedures
3/3/09	1.2.1	In the last sentence, strike “possible” and replace with “practicable.”	Ernie Sheppe, MRA	Policies & Procedures
3/13/2009	1.2.1	replace possible w/ practical	Kevin McBride, MRA	Policies & Procedures
3/13/09	1.3	Many project take 2-4 years to get a stormwater management plan to the submittal point (due to a variety of issues, i.e. size, regulatory, market...), a change in the regulation is very costly to these projects that were preliminarily designed under one set of regulation and whose final design will be under a different set of regulations. The effective date to comply with any new regulations needs to adequately reflect this. Grandfather clause needed and defined.	Sally Ford, Land Design	Policies & Procedures
3/20/09	1.3.1	Section 1.3.1 states that a Sediment and stormwater management Plan shall not be approved for a property unless it is consistent with the following: (Does the PCS Reg. – need to be included?)	SCD	Policies & Procedures
3/13/2009	1.3.1.1	Must allow enough time to move from PLUS to final plat which is 3 years. Without a sufficient phase in period projects will incur huge investments in engineering only to be redesigned with loss of value and or usable open space.	Kevin McBride, MRA	Policies & Procedures

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3/11/09	1.3.1.1 & others	Should be "Del.C." bold, no underline throughout document	Jenn Volk, DWR	Policies & Procedures
3/13/09	1.3.1.2	Section statement should end with ", and;" so that section 1.3.1.3 is included in the list.	NCCDLU	Policies & Procedures
3/13/09	1.3.2	Approved by who?	Jared Adkins, KCD	Planning & Land Use
3/13/09	1.3.2	should follow TMDL & PCS grand fathering provision. Needs to be PLUS or DelDOT application not final plat. See above comment.	Kevin McBride, MRA	Planning & Land Use
3/13/09	1.3.2.1	why not use the local sunset provision that render a plan void after a 5 year period.	Kevin McBride, MRA	Planning & Land Use
3/13/09	1.3.2.1	Why are 2 years stipulated as the expiration date for older plans? I would recommend 3 years.	John Garcia, Karins	Planning & Land Use
3/13/09	1.4	There is no exemption for individual residential lots. Does this mean we will need to get a separate stormwater plan approved for every residential house that disturbs over 5,000 square feet? Including management facilities on every lot? How do we manage maintenance of these facilities?	ACEC	Policies & Procedures
3/11/09	1.4.1.2	Has the concept of also using an impervious cover threshold, which the CWP proposed, been ruled out?	Jenn Volk, DWR	Policies & Procedures
3/13/09	1.4.1.3	Why would a project not be required to meet sediment control requirements during construction under this regulation regardless of a post-construction NPDES permit?	Jared Adkins, KCD	Policies & Procedures
3/13/09	1.5	There needs to be a way for a variance to be preliminarily granted earlier in the design phase.	Sally Ford, Land Design	Policies & Procedures
3/12/09	1.5.1	Clarify - Exactly who will make the determination on the Variances and what Appeal Process may be utilized by the Applicant.	Kevin Burdette, KNB Associates	Policies & Procedures

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3/20/09	1.5.1	Suggest giving an example or 2 of a reason to justify a variance.	SCD	Policies & Procedures
3/11/09	1.6.1.1	Are plan review, program administration and inspection fees to be separate or just the inspection fees? Should all the fees or just the plan review fees be collected at time of the preliminary Sediment and Stormwater Management Plan submittal? Are inspection fees to include both construction and future maintenance inspections?	City of Newark	Economic Impacts
3/13/09	1.6.1.1	The fee structure is an issue that needs to be resolved. Per this section the fees can be different in different parts of the State, at the discretion of the delegated agency, yet we are all under the same regulations. The fees are substantially more then \$80 per acre, so this portion of the regulation misrepresents to the legislators what the fees truly are. (Also as a secondary note on policy, requiring the construction inspection fees and stormwater maintenance inspection fees prior to approving permit drawings, is a request for funds much sooner then is justified and is a financial burden. A better scenario would be that the construction inspection fee be due with the letter of notification, 5 days prior to the commencement of construction, and the maintenance fee due after the as-builts are approved. Also if you are requesting these funds upfront, how can you have a limitation on approvals? Section 1.3.2.1)	Sally Ford, Land Design	Economic Impacts
3/13/09	1.6.1.1	This fee seems high compared to current fees and you are reducing work effort according to the PP presentation. Fees should come down if you are going to be more efficient in the review and delegating more of inspection portion.	Kevin McBride, MRA	Economic Impacts
3/13/09	1.6.2.1	The size of the project should be taken into consideration. Does a 1 acre disturbance need to be bonded? The financial guarantee is added time and expense for the smaller jobs.	Sally Ford, Land Design	Economic Impacts

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3/11/09	1.6.1.2.2	Public Works feels education and training should be removed from this section.	City of Newark	Policies & Procedures
3/11/09	1.6.1.2.1- 3	Since the City's program has no outside funding, it does not seem possible to recoup the cost of the program with fees alone.	City of Newark	Economic Impacts
3/12/09	1.6.1.2.2 & 1.6.1.2.3	Clarify – Who & How will the accountability be determined for these Agency costs. Will they be available for public review and comment?	Kevin Burdette, KNB Associates	Economic Impacts
3/13/09	1.6.1.2.3	Seems rather open ended. The additional submittals makes me think that more work during review will be required not less. the delegation of inspection monitoring to the developer with DNREC still conducting their oversight adds cost in fees and construction costs.	Kevin McBride, MRA	Economic Impacts
3/13/09	1.6.1.2.4	"may not eliminate that inspection requirement or fees" - This should most definitely go down! This doesn't belong in the regs however.	Kevin McBride, MRA	Economic Impacts
3/11/09	1.6.2	Will there be a sample document with the preferred language provided as a guide?	City of Newark	Economic Impacts
3/20/09	1.6.2	Define financial guarantee and in what form this should be: bond, escrow, pro-rata, etc. Also describe how these funds would be held and disbursed.	SCD	Economic Impacts
3/12/09	1.6.2.1	Correction Through Out – Financial Guarantee should be capitalized, as it relates to a specific definition	Kevin Burdette, KNB Associates	Economic Impacts

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3/12/09	1.6.2.1	Add Word "reasonable" - The financial guarantee will ensure that action can be taken by the Department or delegated agency to make corrections, at the owner's expense, should the owner fail to initiate or maintain those measures identified in the approved Sediment and Stormwater Management Plan after being given proper notice and within a [<u>reasonable</u>] time specified by the Department or delegated agency.	Kevin Burdette, KNB Associates	Economic Impacts
3/13/09	1.6.2.1	Bonds are already required by Sussex Co. Engineering for 125%. Must clearly state that only one bond is required and that both agencies are not inspecting the work twice resulting in additional fees and delay in release of the bonds.	Kevin McBride, MRA	Economic Impacts
3/20/09	1.6.2.1	What form can the financial guarantee be in? (bond, letter of credit, other)	John Garcia, Karins	Economic Impacts

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3/13/09	1.6.2.2	<p>The previous paragraph states “...financial guarantee will ensure that action can be taken by the department or delegated agency ...those measures identified in the approved Sediment and Stormwater Management Plan...” However, 1.6.2.2 limits the guarantee to just the cost of the stormwater management systems and not all Sediment and Stormwater measures.</p> <p>If the intent is just to cover the stormwater facilities 1.6.2.1 should be changed. If the intent is to cover E&S controls and Stormwater facility construction, 1.6.2.2 should be changed.</p> <p>Additionally, limiting the guarantee to 100% of cost at the beginning of a project may encourage developer to forfeit the guarantee if construction and material costs rise over the course of the project above the initial estimated cost. This has happened to DeIDOT.</p>	Jared Adkins, KCD	Economic Impacts
3/20/09	1.6.2.2	Please clarify limits of Stormwater management system for estimated construction cost. Does this include inlet pipes and culverts?	John Garcia, Karins	Economic Impacts
3/20/09	1.6.2.2	<p>Under section 1.6.2.2 which states the following: “The amount of the financial guarantee shall not exceed 100% of the total estimated construction cost of all stormwater management systems combined.” Typically, financial guarantees are collected at 125% – 150% of the estimated construction cost.</p>	SCD	Economic Impacts
3/20/09	1.6.2.3	Please clarify the procedure for forfeiture of the financial guarantee	John Garcia, Karins	Economic Impacts
3/20/09	1.6.2.4	How is collection of the forfeiture to be done?	John Garcia, Karins	Economic Impacts

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3/20/09	1.6.2.4	how would the delegated agency collect any additional costs from the developer?	SCD	Economic Impacts
3/13/09	1.6.3	One more subsection should be added to this section in reference to the vegetation at the time of transferring the stormwater management facility. In order to release the financial guarantee to the owner, the permanent stormwater management systems should be stabilized with vegetation per their original stormwater plans. (We have encountered so many problems with sites not having an adequate vegetation cover during the acceptance process).	New Castle County Special Services	Policies & Procedures
3/13/09	1.6.3	Stormwater Management Practices are usually one of the first things constructed. A Notice of Completion may not be issued until the last home is built. There needs to be a more finite way to release guarantees, not at the 'discretion' of the delegated agency.	Sally Ford, Land Design	Policies & Procedures
3/12/09	1.6.3.2	Add Wording - At the discretion of the Department or delegated agency, [with a substantial reasonable cause a portion of] the financial guarantee may be extended beyond the time period specified above to cover a reasonable period of time for testing the practices during storm events and for initial maintenance activities.	Kevin Burdette, KNB Associates	Economic Impacts
3/13/09	1.6.3.2	"financial guarantee may be extended ..." - This is ridiculous if designed and approved with your BMP's and constructed properly there should be no testing or monitoring. Should the facility not work as anticipated but as designed what would you do start over or make trial and error adjustments. As-built info and engineers certification should suffice. Maintenance work is continuous and needs to be specified as to what "initial" means.	Kevin McBride, MRA	Economic Impacts
3/20/09	1.6.3.2	Add an establishment period for certain vegetation to take hold and how long it should be monitored. With bio-retention facilities, this type of plant cover needs special care and the period may be longer than 1 year.	SCD	Economic Impacts

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3/11/09	1.6.3.3	Include the following: "Examples of warranted releases include but are not limited to: ... "	Jenn Volk, DWR	Economic Impacts
3/20/09	1.6.3.3	Provisions for partial pro-rata release should be in place with the adoption of the new regulations, not after.	John Garcia, Karins	Economic Impacts
3/12/09	1.6.3.6	Reduce Days from 60 days to 30 days. This is an ample amount of time to be able to release an Owners Financial Guarantee, and there is no reason to place any additional hardship on the Owner.	Kevin Burdette, KNB Associates	Economic Impacts
3/13/09	1.6.4	'Fee-In-Lieu' could be a good idea but could also be misused – some sort of structured fee should be established, or a cost not to exceed per acre	Sally Ford, Land Design	Economic Impacts
3/13/09	1.6.4	Fee in Lieu Program - Based on what criteria? Acres, volume, cost of construction and design? Number of participating land owners.	Kevin McBride, MRA	Economic Impacts
3/20/09	1.6.4	Fee in lieu - Will delegated agencies also have this option?	John Garcia, Karins	Policies & Procedures
3/23/09	1.6.4	Who is going to maintain and control the Fee-In-Lieu program?	Vince Davis, DeIDOT	Policies & Procedures
3/11/09	1.6.4.1	Per section 1.5.1, if the Delegated agency can grant a variance, why can't they accept a Fee In Lieu of? There are many small urbanized sites that some of the proposed BMP's (particularly water quality) may not be very effective or meet the intent of the regulations, where a cash in lieu of fee could provide better benefits elsewhere in the sub-watershed. It seems as if the Fee-In-Lieu program is only for DNREC approved watershed plans. Public Works feels this section should include the delegated agency.	City of Newark	Policies & Procedures
3/13/09	1.6.4.2	There is an extra tab at the beginning of this section that needs removed.	NCCDLU	Policies & Procedures
3/23/09	1.6.4.2.1	Who is going to approve a variance of this type?	Vince Davis, DeIDOT	Policies & Procedures

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3/13/09	1.6.4.2.2	Approved watershed plan - How many are approved and ready to go now? When will this process be completed and what is the cost to taxpayer and or the developer. Should these costs be prohibitive then the entire fee in lieu will never be used. I think this is a good idea but difficult to institute and administer.	Kevin McBride, MRA	Technical; Economic Impacts
3/13/09	1.6.4.2.2	Full or partial compliance - What if only a few of the watershed participants build their share of the facilities, would the remaining be responsible for cost sharing and be subject to a recoupment agreement based on their percent?	Kevin McBride, MRA	Economic Impacts
3/23/09	1.6.4.2.2	Does this account for water quality and quantity or just one? Who determines the fee structure and who determines whether there is full or partial compliance? And what is the difference between full and partial compliance?	Vince Davis, DeIDOT	Technical; Economic Impacts
3/13/09	1.8.1	There is conflict already with the PCS regarding grand fathering, process and design standards such as treatment trains, irreducible levels and open space & buffer credit options negotiated in that regulation.	Kevin McBride, MRA	Policies & Procedures

2.0 Definitions

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3/13/2009	Add Adequate Capacity	Adequate Capacity needs defined	NCCDLU	Technical
3/13/2009	Adequate Conveyance	Adequate Conveyance – which design storm? Should this be worded as conveyance storm? Conveyance Event is defined later on, but design storm is not.	Jared Adkins, KCD	Technical
3/13/2009	Adequate Conveyance	The "design stonn event" should be defined and criteria provided.	ACEC	Technical
3/20/2009	Adeqaute Conveyance	Design storm event and free board should be defined in the definitions section.	John Garcia, Karins	Technical
3/13/2009	Adverse Impact	the definition is unnecessarily expansive. Specific criteria should be given to quantify what constitutes "degradation of water quality", "negative impacts on aquatic organisms", "negative impact on wildlife and other resources", and "threatens public health." More importantly, specific criteria should be given to detennine that a design does not cause an adverse impact.	ACEC	Technical
3/12/2009	As-Built Plans	"As-Built Plans" means a set of engineering or site drawings that delineate the specific approved stormwater management system as actually constructed <u>[on a specific date and / or as portrayed to have been constructed by notations that were compiled from the Contractor of Record installing the system.]</u>	Kevin Burdette, KNB Associates	Policies & Procedures
3/13/2009	As-Built Plans	this should be a set of "surveyed plans" not "engineered plans"	ACEC	Policies & Procedures
3/13/2009	BAT	delete very best and use "most practical"	Kevin McBride, MRA	Policies & Procedures
3/13/2009	BAT	DNREC should publish and maintain a list and standards for such practices. The tenn "very best" is very limiting and implies there is only one acceptable technology, and there is no option for compromise. In addition, the term "capable of being developed" implies we may need to wait for new technologies to be developed before we can complete a design.	ACEC	Technical

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3/13/2009	BMP	DNREC should continue to maintain a list and standards for BMP's.	ACEC	Technical
3/3/2009	Conveyance Event	In the first sentence, insert "annual" so as to read, "...having an <u>annual</u> probability of..." And delete the second sentence in its entirety – the Cv should be defined elsewhere in the regulations or in a guidance manual.	Ernie Sheppe, MRA	Technical
3/13/2009	Conveyance Event	Substitute "a probability" with "an annual probability of occurrence"	Kevin McBride, MRA	Technical
3/13/2009	Conveyance Event	Delete entire sentence from "The Conveyance Event Volume (Cv)...occurrence". This is explained later in regs.	Kevin McBride, MRA	Technical
3/20/2009	Conveyance Event	Suggest using control instead of manage as compared to managing the conveyance under "flooding event."	SCD	Technical
3/12/2009	Dedication	"Dedication" means transferring ownership of a storm water management system to a delegated agency, [<u>Association</u>] public utility, municipality, or stormwater utility along with all associated easements, escrow funds, and maintenance responsibilities.	Kevin Burdette, KNB Associates	Policies & Procedures
3/12/2009	Emergency Project	"Emergency Project" means a project that is immediately necessary to protect life or property such as bridge, culvert, pipe [<u>and any Utility</u>] repairs.	Kevin Burdette, KNB Associates	Policies & Procedures
3/20/2009	Extended Detention	Still needs to be reviewed	John Garcia, Karins	Technical
3/20/2009	Extended Filtration	Still needs to be reviewed	John Garcia, Karins	Technical
3/13/2009	Add Extreme Flooding Event	Extreme Flooding Event needs defined	NCCDLU	Technical

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3/3/2009	Final Stabilization	Hard fescues and other typical turf grasses are not native plants. At (1)(a) delete "native" so as to read "...70% of the background vegetative cover..." And the same applies at (2), "When background native vegetation will cover..."	Ernie Sheppe, MRA	Policies & Procedures
3/12/2009	Final Stabilization	Item currently noted as (3)(c) should be noted as Item #4.	Kevin Burdette, KNB Associates	Policies & Procedures
3/13/2009	Final Stabilization	Criteria 1 (a) needs to be changed to; A uniform (e.g. evenly disturbed) perennial vegetation cover for the area has been established on all the unpaved areas and areas not covered by permanent structures. (Having a percentage makes it more difficult and questionable when it comes to acceptance.) Criteria 2 (b) needs to be changed to; all the Equivalent permanent stabilization measures (such as riprap and etc.) can be employed Per Approved Plan.	New Castle County Special Services	Policies & Procedures
3/13/2009	Final Stabilization	Final Stabilization – - (1)(a) Does Kentucky 31 turf grass meet the definition of native background vegetative cover? Should native be taken out? - (3)(b) Shouldn't this be worded as permanent stabilization (permanent seed mix and mulch applied)?	Jared Adkins, KCD	Policies & Procedures
3/13/2009	Final Stabilization	Reword 1a to read "a uniform, evenly distributed perennial vegetative cover with a density of 70% established on all unpaved areas and areas not covered by permanent structures, or"	Kevin McBride, MRA	Policies & Procedures
3/13/2009	Final Stabilization	Delete 2a and replace with.."Vegetative cover may be reduced by the percentage of arid areas or beaches existing prior to development since no vegetation or stabilization is required."	Kevin McBride, MRA	Policies & Procedures

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3/3/2009	Flooding Event	Similar to the <i>conveyance event</i> above, add the word "annual" and delete the second sentence.	Ernie Sheppe, MRA	Technical
3/13/2009	Flooding Event	Include "annual" prior to probability of occurrence.	Kevin McBride, MRA	Technical
3/3/2009	Impervious Surface	Revise as follows, "...contacting the existing soil and does..."	Ernie Sheppe, MRA	Policies & Procedures
3/13/2009	Impervious Surface	Address compacted gravel and bare earth conditions that are effectively impervious due to years of surface compaction.	Amy Reed, Landmark Engineering	Policies & Procedures
3/13/2009	Impervious Surface	Delete "existing" prior to soil and define "significant amounts" as more than 5 percent	Kevin McBride, MRA	Policies & Procedures
3/13/2009	Impervious Surface	address compacted gravel and bare earth conditions that are effectively impervious due to years of surface compaction	ACEC	Policies & Procedures
3/11/2009	Inactive	"Inactive" is referenced several times throughout the regulations; consider strengthening the definition by adding a time frame.	Jen Mihills, DNS	Policies & Procedures
3/3/2009	Infiltration	This definition should mirror the well established scientific meaning of the term and should read as follows, "the passage of water through into the soil profile." [The movement of water "into" the soil is infiltration. The movement of water "through" the soil is percolation].	Ernie Sheppe, MRA	Technical
3/13/2009	Infiltration	means the passage or movement of water <u>into</u> the soil profile	Kevin McBride, MRA	Technical

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3/13/2009	Mainten-ance	<p>Definitions of routine and non routine maintenance should reflect the same as what we have in our (NCC) codes which have been defined as;</p> <p>Routine or minor maintenance are; "Grass mowing and trimming; debris removal; minor sediment removal; fill all eroded areas and animal burrows; and removal of trees or shrubs on embankments; invasive aquatic vegetation removal like Algae and Primrose".</p> <p>Non-routine or major maintenance are; structural repair, major sediment removal and major erosion.</p> <p>Note; Removal of aquatic invasive vegetation should be part of the routine maintenance at least in NCC.</p>	New Castle County Special Services	Maintenance
3/13/2009	Mainten-ance	Reword second sentence - "routine and non-routine maintenance and repair".	Kevin McBride, MRA	Maintenance
3/13/2009	Add Minimal Discharge	Minimal Discharge needs defined	NCCDLU	Technical
3/13/2009	Notice of Completion	Will a copy of a form or checklist for contents of this notice be developed as part of the regulations?	NCCDLU	Policies & Procedures
3/13/2009	Operation and Maintenance Plan	This is an entirely new plan which will be very costly to prepare and review. Will add more time and expense to housing.	Kevin McBride, MRA	Maintenance
3/13/2009	Operation and Maintenance Plan	We need the guidance to determine the cost implications to engineers and homeowners responsible for maintenance. Provide documentation of how lack of maintenance has been more costly than the proposed requirements.	Kevin McBride, MRA	Economic Impacts

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3/11/2009	Pre-application meeting	Spell out PLUS? Define?	Jenn Volk, DWR	Policies & Procedures
3/13/2009	Pre-application meeting	"...prior to the PLUS meeting..." -This is a new step in the process up front which will cause delay and significant investment in engineering prior to the customary due diligence and feasibility determinations based on zoning, and local land use input that should come first. It will not matter if the project is not approved locally. the SWM/BMP "concept" will change as the plan is revised and modified through the local planning and engineering review process.	Kevin McBride, MRA	Policies & Procedures
3/13/2009	Pre-application meeting	The idea of a "conceptual" approach using BMP's and "green techniques" is generally understood by the design community. However, as we move forward in planning and engineering other constraints will necessitate modification of the agreed upon approach. Flexibility is needed and appears absent from this document with variances coming from DNREC rather than the district. And with the requirement for written justification for any modification to the plan per 3.2.2.	Kevin McBride, MRA	Policies & Procedures
3/13/2009	Pre-application meeting	there should be a provision for exempting or allowing this meeting to be waived for small sites and/or minor disturbances.	ACEC	Policies & Procedures
3/13/2009	Permanent Stabilization	Permanent Stabilization – as worded allows only anchored straw mulch and no other hydraulically applied mulches or erosion control matting.	Jared Adkins, KCD	Policies & Procedures
3/3/2009	Resource Protection Event	Revise to read as follows, "...a storm having a <u>an annual</u> probability of occurrence of 100 <u>99</u> percent." And delete the second sentence.	Ernie Sheppe, MRA	Technical
3/13/2009	Resource Protection Event	Same comment as above	Kevin McBride, MRA	Technical
3/13/2009	Responsible Personnel	Responsible personnel should be written to include "Responsible person"	NCCDLU	Policies & Procedures

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3/3/2009	Runoff Reduction Practices	Note that "CWP to provide definition." With the focus of these new rules on <i>volume control</i> rather than <i>peak control</i> this will be a very important term. We can't properly review an incomplete document.	Ernie Sheppe, MRA	Technical
3/13/2009	Runoff Reduction Practices	Runoff Reduction Practices needs defined	NCCDLU	Technical
3/20/2009	Runoff Reduction Practices	Still needs to be reviewed	John Garcia, Karins	Technical
3/3/2009	Standard Plan	Revise to read as follows, "...that may preclude <u>the need for</u> the preparation of..."	Ernie Sheppe, MRA	Policies & Procedures
3/11/2009	Stabilization	What is the difference between final stabilization (page 8) and permanent stabilization (page 9)?	City of Newark Public Works	Policies & Procedures
3/13/2009	State Waters	change "flow through" to "flow over"; through implies a groundwater connection which is not a nexus	Kevin McBride, MRA	Technical
3/11/2009	Stormwater Impact Study	The definition of "stormwater impact study" as documentation of existing site conditions appears narrower than the intended scope - documentation of existing site conditions and analysis of watershed impact(s).	Jen Mihills, DNS	Technical
3/13/2009	Stormwater Impact Study	This is a new requirement that if done properly should have accurate topography which is not done early in the feasibility phase due to costs. General drainage patterns should be looked at in the planning but a SIS is overkill up front.	Kevin McBride, MRA	Planning & Land Use; Technical
3/13/2009	Stormwater Utility	how is this to be funded-by taxes, impact fees, HOA annual contributions?	Kevin McBride, MRA	Economic Impacts

2.0 Definitions

3/24/2009

Comment Date	Definition	Comment	Commenter	Subcommittee Assignment
3/13/2009	Tidewater	why not use current definitions in other DNREC regs for consistency i.e.. Subaqueous lands regs.	Kevin McBride, MRA	Policies & Procedures
3/3/2009	Unnecessary Hardship	I question the need to define this term in a regulation. I trust the Delaware Court has already defined this legal term. Let's not create confusion by adopting a different definition in a regulation. I suggest the Court has already defined this and that the term be deleted from the regulations, or that we confirm that the definition provided in the regulations is consistent with existing Delaware law.	Ernie Sheppe, MRA	Policies & Procedures
3/13/2009	Unnecessary Hardship	delete definition - courts have determined this standard. to use "impossible" makes this hardship impossible to prove.	Kevin McBride, MRA	Policies & Procedures
3/13/2009	Watershed	should be clarified or to what order stream can the term be applied explained.	ACEC	Technical
3/20/2009	Watershed	Since the term catchment or sub- catchment is often used, suggest adding a definition for it and referencing it to the watershed definition.	SCD	Technical
3/11/2009	Add Definition for "Watershed Plan"	Should you define "watershed plan" and/or "sub-watershed plan" since it is used several times throughout the regs?	Jenn Volk, DWR	Technical
3/11/2009	Add Definition for "Watershed Plan"	In addition to the terms to be defined by the Center for Watershed Protection as indicated in the draft document, consider adding the term "watershed plan" and an associated definition.	Jen Mihills, DNS	Technical

2.0 Definitions
3/24/2009

Comment Date	Definition	Comment	Commenter	Subcommittee Assignment
3/11/2009	Add Definition for "Receiving Waters"	Within the Working Draft, there are references to 'receiving waters'. The term "Receiving Water" is not defined. Would it be possible to define it to include ground water? The definition of State Waters does not explicitly include ground water.	Anne Mundel, DWR Groundwater Protection Branch	Technical

3.0 Plan Approval Procedures and Requirements
3/24/2009

February 2009 Working Draft Comments				
Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/3/2009	General Comment	The three-step process outlined in this Section is overly burdensome and unnecessary for small projects and for redevelopment projects.	Ernie Sheppe, MRA	Urban Considerations / Policies & Procedures
3/3/2009	General Comment	I invite those who work on these matters on a daily basis to expand on this, as you are far more familiar with the process than I am, but as a general comment, the overall process outlined in this Section appears to be a “do loop” that will have the developer and his consultant going in circles.	Ernie Sheppe, MRA	Policies & Procedures
3/11/2009	General Comment	The stormwater impact study and associated findings report are positive additions to the pre-application meeting process. These elements will help better inform the PLUS process.	Jen Mihills, DNW	Technical
3/13/2009	General Comment	Most of Section 3 should be deleted. Bureaucratic delays and indecision already in the system are making it impossible for new businesses to respond to changing economic conditions in a timely fashion. For example, just yesterday (March 10), the Secretary of Transportation agreed that DelDOT must shorten their reponse times dramatically for this reason.	Rich Collins, PGA	Economic Impacts
3/13/2009	General Comment	Section 3 puts the county's lawful land use powers in a secondary position. That is not constitutionally acceptable! Land use powers are delegated to the counties and municipalities. Stormwater is a permitting process, not an approval process.	Rich Collins, PGA	Planning & Land Use
3/13/2009	General Comment	The current pre-application meetings don't work. Agencies routinely change their requirements after they've signed off on a concept. Business plans and financial arrangements have been totally disrupted because government employees can't get their act together. This was a huge complaint at the DelDOT meeting. We can't add another layer in another department that actually has veto power before the local government gets to see a project.	Rich Collins, PGA	Policies & Procedures

3.0 Plan Approval Procedures and Requirements

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	General Comment	Why are all of the procedural steps being added to the regulations instead of outlined in a separate policy document? If it is found that the procedure needs to be changed or modified in the future, does this now mean another regulation change to change procedural steps? As Section 3.0 is written it will add and complicate the review process without adding benefit except in the limited cases.	Jared Adkins, KCD	Policies & Procedures
3/11/2009	3.1	Will the pre-application meeting be required for all projects? Many of the City's projects are redevelopment and infill and this process seems to be an extra step that could add extra time to a project. Public Works questions why can't the preliminary plans be submitted at the time of the pre-application meeting?	City of Newark Public Works	Urban Considerations / Policies & Procedures
3/13/2009	3.1	A Pre-App meeting, Conceptual Plan & Impact Study , are a waste of time and resources if the zoning is not yet approved, A Pre-App meeting, Conceptual Plan & Impact Study is a waste of time and resources if the site plan being presented is not acceptable to the County.	Sally Ford, Land Design	Planning & Land Use
3/20/2009	3.1	Pre Applications Meeting: What happens when the designer/engineer and the department/delegated agency do not agree on a course of action?	John Garcia, Karins	Policies & Procedures
3/13/2009	3.1.1	A pre-application meeting for all application may be onerous. Delegated agencies need some consideration for practices & procedures that are currently in place.	NCCDLU	Policies & Procedures
3/13/2009	3.1.1	"All Owners subject to these regulations are required to hold a pre-application meeting..." This needs to be reworded to exclude projects eligible for standard plans and allow agency discretion to waive the required pre-application in certain cases.	Jared Adkins, KCD	Policies & Procedures
3/13/2009	3.1.1	Small projects should be able to waive this requirement.	Kevin McBride, MRA	Policies & Procedures

3.0 Plan Approval Procedures and Requirements
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/18/2009	3.1.1	Some criteria should be provided for the size of a project which requires preapplications meetings. Small project and projects only involving erosion control should be exempt.	ACEC	Policies & Procedures
3/13/2009	3.1.1 - 3.6.4	Need to state these paragraphs apply to detailed sediment and stormwater plans as opposed to those project that are eligible for standard plans. Need to provide a definition or description of detailed plans verses standard plans.	Jared Adkins, KCD	Policies & Procedures
3/3/2009	3.1.2	The preparation of a SIS is overly burdensome and unnecessary for small projects and for redevelopment projects. In addition, if the developer proposes to provide what I sometimes call "full spectrum" management, or chooses the unit discharge approach, regardless of the size of the project, then the preparation of a SIS serves no useful purpose, as such design approaches ensure that there will be no increase in discharges leaving the project.	Ernie Sheppe, MRA	Urban Considerations / Technical
3/12/2009	3.1.2	The Stormwater Impact Study should ONLY include and be required to provide information that has already been published or available through compiling existing data. This work should NOT require the gathering of any new "Field Data" or information at this point in the process.	Kevin Burdette, KNB Associates	Technical
3/13/2009	3.1.2	very expensive up front cost	Kevin McBride, MRA	Economic Impacts
3/20/2009	3.1.2	SIS- Why is traffic generation diagram needed at this point?	John Garcia, Karins	Planning & Land Use
3/23/2009	3.1.2	Has the Stormwater Impact Study checklist been completed yet?	Vince Davis, DelDOT	Technical
3/13/2009	3.1.3	Stormwater Impact Study (SIS) - Will a checklist of information to be submitted as part of the SIS be developed?	NCCDLU	Technical

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Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	3.1.4	"restoration or enhancement of natural areas such as riparian areas, wetlands, and forests, etc." - Is there a way to reword this to emphasize that generally avoidance would be the best technique when dealing with natural areas. Understandably, some resources will need to be restored. Perhaps "protection and/or avoidance of natural areas. etc. ' rather than " restoration and enhancement."	NCCDLU	Planning & Land Use
3/13/2009	3.1.4	"how stormwater runoff thorough and from the development will be treated and conveyed" - without a site plan this can not be effectively evaluated. treatment trains and BMP's can not be located or sized at this point. The engineers know what is available how to apply it will come later in the design process.	Kevin McBride, MRA	Planning & Land Use
3/11/2009	3.1.5	What does authorization will be provided with the issuance of the Stormwater Impact Study Findings Report mean? What information is to be provided with this report? It sounds like authorization is guaranteed as long as the Stormwater Impact Study Findings Report is issued.	City of Newark Public Works	Policies & Procedures
3/12/2009	3.1.5	How can the DNREC even ask an Owner to enter into an authorization & agreement prior to hearing the comments from the other Agencies at PLUS. Delete this requirement.	Kevin Burdette, KNB Associates	Policies & Procedures
3/13/2009	3.1.5	The Owner, at this point, is not in a position to agree on a stormwater plan concept without the zoning &/or county site plan approval in place.	Sally Ford, Land Design	Planning & Land Use
3/13/2009	3.1.5	"issuance of the SIS Findings report" - Will an example of an SIS Findings report be developed by DNREC or the individual delegated agency?	NCCDLU	Technical
3/13/2009	3.1.5	Forcing the agencies and the owners to have an approved preliminary plan prior to submittal of a sediment and stormwater plan adds steps to the process and will lengthen the review process, especially if there are minor issues with the preliminary plan that can be addressed with the submittal of the sediment and stormwater plan.	Jared Adkins, KCD	Planning & Land Use

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3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	3.1.5	"SIS Findings Report" - This will add addition time and cost to the review process to prepare a findings report which most likely will need to be negotiated with the consultant, owner and DNREC before agreement can be reached.	Kevin McBride, MRA	Economic Impacts
3/13/2009	3.1.5	"...authorization, as well as an agreement..." -Is this agreement binding and will it serve to satisfy the PCS "consistency" requirement in "section 5.3 Compliance". What if a better less costly approach is discovered during the site planning and approval process with the local land use "governing" bodies. They will play an important role in the final outcome of the site plan which will affect the SWM concept.	Kevin McBride, MRA	Policies & Procedures
3/18/2009	3.1.5	Some criteria should be provided for the size of a project which requires Preliminary applications. Small project and projects only involving erosion control should be exempt. Specific criteria for the Stormwater Impact Findings Report should be developed. It is broadly defined in Article 2.	ACEC	Policies & Procedures
3/3/2009	3.1.6	"The pre-application meeting shall be held prior to submittal of the preliminary plan to the local land use approval agency."I am not convinced that this is appropriate. Until the developer has some assurance that the basic plan of development meets all local land use requirements, the preparation of any SWM assessment would be premature and pointless. There may be instances in which simultaneous submittals would be appropriate.	Ernie Sheppe, MRA	Policies & Procedures

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3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/3/2009	3.1.6	“The results of the pre-application meeting will be subject to review by the local land use approval agency.” (Emphasis added).This could easily result in multiple agency reviews and conflicting requirements. This language could easily be read as bestowing what amounts to SWM plan approval authority to an agency other than the “delegated” agency. I don’t know what the Department is attempting to achieve here, or what perceived problem it hopes to address with this language, but I suggest that the phrase “subject to review by” be replaced with “shared with” – I see no reason to withhold federal or state agency comments from local governments.	Ernie Sheppe, MRA	Policies & Procedures / Planning & Land Use
3/11/2009	3.1.6	It seems the pre-application meeting is required prior to sketch plan or subdivision plan. It would seem the City would have to require this at the same time as a preliminary subdivision plan to get feedback from all the departments as to the feasibility of the project to move forward or it would be another step in the approval process.	City of Newark Public Works	Policies & Procedures
3/13/2009	3.1.6	This review obviously will entail changes that will break or possibly severely alter the agreement with DNREC. There must be a clear understanding that local land use overrides any state constraints. Green technology is not like zoning with prescribed setbacks and standards. The SWM can be multi layered with BMP's in series and somewhat flexible in the methods applied.	Kevin McBride, MRA	Planning & Land Use
3/18/2009	3.1.6 - 3.1.7	Holding a pre-application meeting before preliminary submittals to local land use approval agencies or prior to PLUS meetings does not seem justified. There are other aspects of development that many would consider more important than drainage (economic, traffic, etc.) so why make drainage the first hurdle?	ACEC	Planning & Land Use

3.0 Plan Approval Procedures and Requirements

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Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/3/2009	3.1.7	Same concerns as expressed above regarding multiple reviews, conflicting requirements and running in circles. In addition, having the results of the pre-application meeting subject to another review at PLUS flies in the face of delegating the review authority to other agencies – if the Department has so little trust in other agencies to properly enforce the regulations that it feels it necessary to second guess their decisions on every project that comes before PLUS, then the Department should not delegate authority in the first place.	Ernie Sheppe, MRA	Policies & Procedures
3/13/2009	3.1.7	This rigid linear approach is not how planning is done. It is a series of loops and feedback conducted by a team of land planners and engineers with full knowledge of the various agencies requirements. Projects can not be designed by committee. Once a cohesive plan is prepared considering all requirements DNREC should review the plan as part of the PLUS process. If the consultant wishes to meet prior due to a complex project or the desire to advance the state of the art BMP's then a short meeting should ensue with DNREC or the district and the results documented in a short memorandum of understanding or meeting minutes. Why is this becoming so complicated.	Kevin McBride, MRA	Planning & Land Use
3/13/2009	3.2	It appears that there are 3 reviews – Concept/Impact Study, Preliminary Sediment and Stormwater Management Plan, and Final Sediment and Stormwater Management Plan – this adds time and expense to the owner as well as for the delegated agencies (thus they will need additional fees as well)	Sally Ford, Land Design	Economic Impacts
3/12/2009	3.2.1	Who will own the information contained on this document?? There is substantial information that the Owner has paid to have generated, that should remain his intellectual properties if the project does not proceed forward.	Kevin Burdette, KNB Associates	Policies & Procedures

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Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/3/2009	3.2.2	I believe it is already well established that plan approval is an evolutionary process – the plan evolves as it moves through the process of concept, then preliminary and then final. There is nothing to be gained by making the developer provide “written justification of changes”...the plan will change, it is inevitable. Only when the changes are so dramatic that the “refined plan” bears little or no resemblance to the “previous plan” would an explanation be useful. In such circumstances, “written justification” may not be sufficient and a new pre-application meeting may be justified.	Ernie Sheppe, MRA	Policies & Procedures
3/13/2009	3.2.2	"...written justification of changes" - This is crazy. That is why you call it a concept plan. The resulting changes are part of a process and usually result in a better and more cost effective product in the end. This requirement I fear will be used to stall or kill a project and will result in consultants never able to assign a fixed fee for the scope of work. They will simply propose the cheapest safest BMP from the outset, never to improve upon it as design progresses.	Kevin McBride, MRA	Planning & Land Use
3/13/2009	3.2.3	This entire requirement will only cause unnecessary delays. Review times already take too long why put another formal step in the process. Every time it becomes a required step rather than a informal meeting or e-mail exchange it requires a certain amount of finality and formal documentation that seems to take a long time to get the approval letter out. How many times have we heard "I've finished my review but the letter is being typed up" and then it comes weeks later.	Kevin McBride, MRA	Policies & Procedures

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Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/3/2009	3.3.3	While I don't really object to submitting a copy of an approved plan – it's only paper – I fail to understand why the developer would need to send a copy of an approved plan to the very agency that approved it – the agency should already have in its files a copy of every plan it has approved. In addition, I repeat the same comments as above regarding the evolutionary nature of the process. The plan will change and it is unnecessary to force the developer to explain every change to the plan as it evolves, except in those instances where the changes are dramatic, resulting in a new plan that bears little or no resemblance to the previous plan.	Ernie Sheppe, MRA	Policies & Procedures
3/13/2009	3.3.3	This is unnecessary control. Can't the reviewer see that the current plan achieves the goal of the concept simply by applying other better or equal acceptable means. This need for change is generally the result of subsequent input from other agencies that perhaps have equal or greater weight than DNREC. A simple note in the narrative of the SWM report should be all that is necessary. Pleading for departure from a concept should not be required.	Kevin McBride, MRA	Policies & Procedures
3/11/2009	3.3.1	Include "Department or" prior to delegated agency in the first sentence	Jenn Volk, DWR	Policies & Procedures
3/12/2009	3.3.2	How can an Owner certify what a future HOA will actual do?	Kevin Burdette, KNB Associates	Maintenance
3/11/2009	3.3.3	Public Works rarely ever receives a preliminary plan and report that we can approve. Comments for changes are requested and it is not until the final plan and report have incorporated our concerns or comments that we can approve the plan. Approving the preliminary plan would be redundant.	City of Newark Public Works	Policies & Procedures
3/11/2009	3.3.5	Does not mention or include erosion and sediment control measures.	Jared Adkins, KCD	Policies & Procedures

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Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	3.4.1	Include "Management" in Sediment and Stormwater "Management" Plan	Jenn Volk, DWR	Policies & Procedures
3/13/2009	3.4.1	This time frame is seldom achieved now and very few projects are moving through the system. How will this new process result in less overall time if there are more steps, especially when the number of project submittals increase in the future.	Kevin McBride, MRA	Policies & Procedures
3/13/2009	3.4.1 & 3.7.1	All review timeframes should be couched in terms of working days to account for holidays or closures due to a state of emergency.	NCCDLU	Policies & Procedures
3/12/2009	3.4.2	The 30 days should be changed to 10 days.	Kevin Burdette, KNB Associates	Policies & Procedures
3/13/2009	3.4.2	This may be perceived as a delay tactic should funding and staff cutbacks occur. Why can't a cursory review for completeness be done in 5 days with a full review in the remaining 25. Generally we have not had our plans returned as incomplete except once in Kent CD for not sealing the plans on the first submittal. Now that seems a little petty and unwarranted.	Kevin McBride, MRA	Policies & Procedures
3/18/2009	3.4.2	Incomplete applications should be rejected within a week or ten days of submission.	ACEC	Policies & Procedures
3/12/2009	3.4.3	Add Verbiage - If the 30-day time frame cannot be met, the Department or delegated agency shall notify the owner of the reasons for delay <u>[in writing and request a justifiable time frame for an extension]</u> not to exceed an additional 30 days, when that review will be accomplished.	Kevin Burdette, KNB Associates	Policies & Procedures

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Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/12/2009	3.4.4	Add Verbiage - In cases where modifications are required to approve the plan, the delegated agency shall have an additional thirty (30) days to review the revised plan from the initial and any subsequent resubmission dates <u>[as long as the review and comments are associated to items that had previously been noted on the submissions plans by the Agency, but were not adequately addressed by the Owner. The Agency shall NOT be able to add new items for review or discussion that had previously been submitted on the plans.]</u> If the plan is approved, a minimum of one (1) copy bearing the signed approval stamp shall be returned to the owner. If the plan is disapproved, the owner shall be notified in writing of the reasons.	Kevin Burdette, KNB Associates	Policies & Procedures
3/11/2009	3.5	If a project is not initiated within three years and the applicant requests an extension, does the Department or the Delegated Agency conduct an updated review of the plan/require compliance with any new/revised regulations prior to granting the extension?	Jen Mihills, DNW	Policies & Procedures
3/12/2009	3.5.1	Add Verbiage – To allow a plan to be valid for 3 years from the date of an Approval <u>[OR anticipated Construction Starting Date provided by the Owner at the time of the Approval, whichever is longer.]</u>	Kevin Burdette, KNB Associates	Policies & Procedures
3/13/2009	3.5.2	The word “will” should be replaced with “may.”	Jared Adkins, KCD	Policies & Procedures
3/11/2009	3.6	An appeals process for variance requests should be added to the regulations. Is the variance review/appeals process intended to allow for public review and comment prior to the Department's approval?	Jen Mihills, DNW	Policies & Procedures
3/13/2009	3.6	Does this section address only variances of items contained in the regulations or does it address any variance from technical requirements that may come up in the formal review of the plan? If the later is the case, limiting variance request to the preliminary plan submittal stage could be an issue.	Jared Adkins, KCD	Policies & Procedures; legal

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Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/12/2009	Add 3.6.5	APPEAL PROCESS for Variance	Kevin Burdette, KNB Associates	Policies & Procedures
3/18/2009	3.7.4	Minor commercial, institutional, and industrial projects which disturbed under one acre were removed from the Standard Plan criteria. They should be reinstated with the additional condition that they do not create any additional impervious cover.	ACEC	Policies & Procedures
3/12/2009	3.7.4.1	Delete Verbiage – DELETE the word NOT so that the section reads, “Smaller Sites that are a part of a larger, common plan of development or sale that is greater than one acre in size shall be eligible for the Standard Plan.”	Kevin Burdette, KNB Associates	Policies & Procedures
3/13/2009	3.7.4.3	Old regs put no limit on the size of modification or reconstruction of a tax ditch. As word this paragraph limits size of tax ditch project eligible for a standard plan to 1 acre.	Jared Adkins, KCD	Policies & Procedures
3/11/2009	3.7.4.7	Does the 20% impervious coverage threshold referenced in 3.7.4.7 refer to new impervious coverage resulting from the construction activity or to the total impervious coverage for the site?	Jen Mihills, DNW	Policies & Procedures
3/13/2009	3.7.4.7	I have trouble envisioning the construction of non-residential structure without any other site development (access road, parking, etc.) Would you provide clarification on the application and intent of this section?	NCCDLU	Policies & Procedures
3/13/2009	3.7.4.7	As worded, any minor commercial project is no longer eligible for a general permit once the site exceeds 20% impervious regardless of project size. This paragraph also prohibits minor parking lot additions by using the words “non-residential structures.”	Jared Adkins, KCD	Policies & Procedures

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Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/12/2009	3.7.4.8	Delete Word – “ Natural Disaster” and replace it with “Disaster”. If a car runs off the road and destroys a SWM Structure it should be able to be replaced under the Emergency Clause, even though the car is NOT a Natural Disaster.	Kevin Burdette, KNB Associates	Policies & Procedures
3/12/2009	3.8	Through Out Document – ALL references to “qualified design professionals” should read, “Appropriately Licensed Professionals in good standing with the State of Delaware.”	Kevin Burdette, KNB Associates	Policies & Procedures
3/13/2009	3.8.1	First sentence - Does this include standard plans? If not should specify this applies only to detailed plans. Second sentence – what about other applicable requirements, such as small pond code 378? What makes someone qualified to submit plans?	Jared Adkins, KCD	Policies & Procedures
3/18/2009	3.8.1	Preliminary Plans should not be signed and sealed as by their very nature they are not complete.	ACEC	Policies & Procedures
3/13/2009	3.10	Standards for review and approval of the Operation and Maintenance Plan need included.	NCCDLU	Maintenance
3/18/2009	3.10	Under what circumstances is an Operation and Maintenance Plan required? Projects without structural stormwater management facilities should be exempt.	ACEC	Maintenance
3/20/2009	3.10	Operations and Maintenance Plan. Please provide detail of what it is to include.	ACEC	Maintenance

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Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/3/2009	3.10.1	“...each owner shall submit a post construction stormwater management Operation and Maintenance Plan for the entire site.” (Emphasis added).Referring to the bold text, I’m not sure this is the best way to word this, or the best way to express the Department’s intent. The SWM practices subject to the O&M Plan do not occupy the “entire site.” Preparing an O&M Plan for all of the SWM practices would make sense. I suggest the language be revised just a bit to better reflect the Department’s intent.	Ernie Sheppe, MRA	Maintenance
3/12/2009	3.10.2	Clarify – How and What does it mean to have the Tax Ditch Organization “included”?	Kevin Burdette, KNB Associates	Policies & Procedures
3/3/2009	3.11	I suggest those more familiar with past practice and local conditions take a close look at these easement requirements. I would add that a 20-foot minimum easement may be excessive for a small pipe at a shallow depth such as a typical underdrain pipe for a bio-retention facility. I suggest that it would be more appropriate to state the basic criteria in a regulation – e.g., that the size of the easement must accommodate future maintenance, including the equipment needed to perform that maintenance – and then place any specific numerical recommendations in a guidance manual.	Ernie Sheppe, MRA	Maintenance
3/13/2009	3.11	20’ easement for a small pipe is excessive. Sussex County has a standard drainage easement on all subdivision property lines, 10’ from external property lines and right of ways, 5’ from all internal lines (which would combine with the adjacent lot for a 10’ easement. On a commercial development or a development with open space (or condominium ownership) drainage features are outside of the building footprints, therefore accessible for maintenance. Easements need to be site specific not set by regulation. Perhaps the regulation should require access but leave the particulars to the stormwater management review.	Sally Ford, Land Design	Policies & Procedures

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Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	3.11.1	Our stormwater maintenance agreement addresses the right to inspect private property. We only require easements that have BMPs, pipes, swales, etc. crossing other private properties. We do not require easements if the BMP is entirely owned, maintained and located on one private parcel that is not City maintained.	City of Newark Public Works	Maintenance
3/11/2009	3.11.1	"of the permanent stormwater management system" is repetitive	Jenn Volk, DWR	Maintenance
3/20/2009	3.11.1	Can the statement be elaborated to define the distance from a permanent structure to the pond top of bank etc? Many homes in Sussex County are built too close to stormwater ponds. Sussex County does not have a setback requirement from stormwater facilities.	SCD	Maintenance; Planning & Land Use
3/18/2009	3.11.2	Similar to New Castle County, blanket easements should be permitted for nonresidential projects.	ACEC	Maintenance
3/13/2009	3.11.4	This width on swales seems excessive.	Kevin McBride, MRA	Maintenance
3/20/2009	3.11.5 & 3.11.7	Offsite easements should not be required, as they can hold up a project.	John Garcia, Karins	Policies & Procedures
3/13/2009	3.11.6	This requirement is now the 4 th submittal to the Delegated Agency, again, additional time and cost to both the Agency and the Owner.	Sally Ford, Land Design	Policies & Procedures
3/13/2009	3.11.7	Easements need to be limited to the stormwater feature only. If the feature is no longer needed or another land use is established the easements need to expire.	Sally Ford, Land Design	Policies & Procedures
3/18/2009	3.12	The as-built plan discussion never mentions a survey. Is the intent for the as-built documents to be based on a survey, or are they just to be based on a copy of the plan "red-lined" by the contractor? Inspector? Engineer? If there is a survey requirement, should it be by a Professional Land Surveyor?	ACEC	Technical

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3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/3/2009	3.12.2	“As-Built Plans shall not be approved if they exhibit any changes from the approved...Plan. As-Built Plan approval will not be granted until a revised plan...is approved.” (Emphasis added).Perfection is not a standard. What is important is to ensure that the facility was constructed in substantial compliance with the approved plans and specifications. Minor departures from the approved plans that do not significantly alter the performance of the facility should not be cause for rejection of the As-Built. And such minor deviations from the approved plan should not be cause to revise and resubmit the plan for reauthorization.	Ernie Sheppe, MRA	Technical
3/12/2009	3.12.2	Modify Verbiage – As-Built Plans shall not be approved if they exhibit any <u>[functionality]</u> changes from the approved Sediment and Stormwater Management Plan. It is impossible to generate a Construction Site to the EXACT grading shown on any plan. There are always some slight differences.	Kevin Burdette, KNB Associates	Technical
3/13/2009	3.12.2	As-builts are never perfect. This section has no tolerance, it should be limited to an acceptable integrity of the approved plans. ‘Any’ change should be replaced with ‘any substantial change’. It also appears that if there is a change that an entire new Stormwater Management set of plans need to be resubmitted again for approval - post facto, before the As-builts are reviewed (two steps which should be combined into one). When is ‘Final’ inspection, again stormwater management is installed early in the development process. The owner should be entitled to partial release of guarantees once stormwater practices are built and approved. “Final” inspection could be years later when the project is built out. This section needs to reference section 1.6.3 which allows for partial releases	Sally Ford, Land Design	Technical
3/13/2009	3.12.2	Request that a range of acceptable tolerances to the stormwater as-built plan be defined.	NCCDLU	Technical

3.0 Plan Approval Procedures and Requirements

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	3.12.2	This paragraph is awkward. First paragraph states "...shall be approved when those plans comply with the ...checklist..." Second paragraph states "...shall not be approved if they exhibit any changes..." As-built drawings can do both. Should simplify and just say as-builts shall be approved when they demonstrate the constructed stormwater facilities meet the plan requirements.	Jared Adkins, KCD	Technical
3/13/2009	3.12.2	Change "any changes" to "any significant changes". Add "resulting in a reduction of performance"	Kevin McBride, MRA	Technical
3/12/2009	Add 3.13	ADD SECTON – To cover the conveyance of ALL or a portion of an Approved Project to another Owner.	Kevin Burdette, KNB Associates	Policies & Procedures

4.0 Performance Criteria for Construction Site Stormwater Management
3/24/2009

February 2009 Working Draft Comments				
Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/18/2009	General Comment	Will there be performance criteria developed for Sediment and Erosion Control?	ACEC	Technical
3/13/2009	4.1.1	"Revisions and/or updates to any of these documents shall be subject to public review and comment prior to their adoption" - delete from final version.	Kevin McBride, MRA	Policies & Procedures
3/3/2009	4.2.2	It is my understanding that Delaware employs a BMP standard, much like that used in Maryland, to control pollutants in construction site runoff. In other words, a plan is prepared by a licensed design professional based on the criteria published in the state's design manual, the plan is reviewed and ultimately approved by the appropriate agency, and compliance with the approved plan during construction constitutes compliance with the law. While I understand the Department's duty to protect the environment and that there may be rare instances in which the approved SWPPP is found to be inadequate, it is also important that the regulated community have a predictable process. The language used in this section is too open ended, creating an unpredictable regulatory process, and should be revised.	Ernie Sheppe, MRA	Policies & Procedures
3/13/2009	4.2.2	Once the plan has been approved and protective measures have been installed the only modifications should be corrective due to a specific event that may render the approved BMP permanently ineffective. This provision should not be used to endlessly increase the efficiency to a point of diminishing returns. I would add if this is good for development project then shouldn't the same practice be applied to agriculture when the buffers are not functioning to the degree they could.	Kevin McBride, MRA	Policies & Procedures
3/18/2009	4.2.2	Does this section apply to only when stormwater management facilities (such as stormwater/sediment basins) are used for sediment control?	ACEC	Policies & Procedures

4.0 Performance Criteria for Construction Site Stormwater Management
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/20/2009	4.2.2	Turbid discharges needs to be defined (It is open to interpretation), and what are the regulatory requirements for the quality of runoff? Is it still 80% suspended solids removal?	John Garcia, Karins	Policies & Procedures
3/11/2009	4.3	As a practical matter, due to topographical changes and infrastructure requirements, the efficiency, costs and potential marketing of the projects could be negatively impacted, if required in all cases to finish one phase before the next.	City of Newark Public Works	Economic Impacts
3/13/2009	4.3	This section establishes the 20 acre disturbance rule, but then in the next section offers automatic relief. The subsections seem to conflict.	NCCDLU	Policies & Procedures
3/3/2009	4.3.2	“A site specific plan of construction site stormwater management BMPs must be submitted for projects proposing a disturbance exceeding 20 acres that drains to a common discharge point at any one time. The site specific plan shall include supporting design computations for all conveyance, storage, and treatment practices completed in accordance with Department guidance.” (Emphasis added).First, it is my understanding that all SWPPPs are “site specific” plans that are prepared using “Department guidance.” In addition, if the Department anticipates publishing new guidance specific to sites having LOD > 20 acres, then we will need to review this new guidance before commenting on this section.	Ernie Sheppe, MRA	Technical
3/13/2009	4.4.2.1	Natural features needs a definition.	Kevin McBride, MRA	Planning & Land Use

4.0 Performance Criteria for Construction Site Stormwater Management
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	4.4.2.2	<p>In the workshop I attended on December 1, 2008 in the Pricilla Building, Randy mentioned regulations limiting the types of infiltration practices in source water protection areas were going to be included in the new regulations. I did not see this in the Working Draft. Are they in the Guidance?</p> <p>If Section 4.4.2.2., is meant to cover excellent recharge or wellheads it is unfortunate. Though these are natural features, they are not regulated by the State and many of the municipalities and counties did not adopt ordinances that are protective with respect to stormwater facilities. In most cases, they have deferred to the State's Storm Regulations to provide protection in the management of stormwater.</p>	Anne Mundel, DWR Groundwater Protection Branch	Technical
3/13/2009	4.4.2.2	This appears incomplete. However, I am only aware of tidal and subaqueous land regulated by the state. Are you thinking of recharge areas, well heads, forest areas and other SRA's? Please elaborate.	Kevin McBride, MRA	Planning & Land Use
3/13/2009	4.5.1	Should combine second and last sentence to clarify and read better. "Temporary stabilization is required for those areas which...."	Jared Adkins, KCD	Policies & Procedures
3/13/2009	4.5.2	<p>Can a developer/contractor argue that this paragraph allows them to not address poor stabilization until after 60 days? The way this is worded it prevents the delegated agency from requesting stabilization in the cases where seed germinates and then dies off resulting in insufficient stabilization after the 60 day timeframe.</p> <p>Need to simplify and simply state that the delegated agency can require soils testing and additional stabilization anytime there is insufficient stabilization after an appropriate germination period for the seed mix used.</p>	Jared Adkins, KCD	Policies & Procedures

4.0 Performance Criteria for Construction Site Stormwater Management
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	4.5.3	If the definition of final stabilization gets changed, it makes more sense.	New Castle County Special Services	Policies & Procedures
3/13/2009	4.5.3	Again, this section needs to reflect section 1.6.3 and the ability for partial release of guarantee for work completed and approved	Sally Ford, Land Design	Policies & Procedures
3/20/2009	4.5.3	Does section 4.5.3 contradicts section 1.6.3.3., which states that “the Department or delegated agency shall have the discretion to adopt provisions for a partial pro-rata release of the financial guarantee upon the completion of the following stages or phases of development. A partial release of the financial guarantee shall be allowed only to the extent that the work already accomplished would warrant such release.” Section 4.5.3 states that the financial guarantee cannot occur until final stabilization of all exposed areas is achieved.	SCD	Policies & Procedures

5.0 Performance Criteria for Post-Construction Stormwater Management

3/24/2009

February 2009 Working Draft Comments				
Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/18/2009	General Comment	The performance criteria in this section are especially sketchy. It is also unclear if there will be requirements for stormwater quality control or peak rate control.	ACEC	Technical
3/20/2009	General Comment	There is a major discussion as to whether the existing condition needs to be evaluated or if this is just a design regulation that ignores what is present and concentrates on the safety of the design feature applying hydrology and hydraulic principles only to the proposed design feature. The document should address existing conditions so that the impacts of the design can be evaluated. That is the only way to assess the impacts on flow and on water quality. It needs to be explicit in giving the beginning point. There are arguments that the beginning point should be in the natural condition which is the un-drained condition for Sussex County but this is not realistic. For instance, 5.1.1 states "reduce runoff and mimic natural watershed hydrologic processes." I would argue that this means existing conditions and means to evaluate the existing condition but others may take this to mean as it was 400 plus years ago which is the other extreme while others may take it to mean using natural like features to manage stormwater.	SCD	Technical
3/13/2009	5.0	The criteria for Post –Construction Stormwater management in the flatter areas Of Sussex and Kent Counties seems to be sufficient as it is written (Amended Title 7 Code as of Oct 11, 2006).	Chuck Adams, PLS	Technical
3/13/2009	5.1	Why should Stormwater Management reduce runoff, it should manage runoff? The quality of the runoff should be the emphasis, with safe conveyance of larger storms.	Sally Ford, Land Design	Technical
3/13/2009	5.1.1	Guidelines need included for the exercising of discretion.	NCCDLU	Technical
3/13/2009	5.1.1	Substitutue "may" for "shall". Substitute "prioritization" for optimization which implies a somewhat unattainable level and thus a requirement to save and preserve all flow paths and vegetative cover etc. Substitute "conserving" for preserving.	Kevin McBride, MRA	Technical
3/18/2009	5.1.4	Will the "Standards approved by the Department" be a part of this document?	ACEC	Technical
3/18/2009	5.1.4	What are the standards to be developed by the Department?	ACEC	Technical

5.0 Performance Criteria for Post-Construction Stormwater Management

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/18/2009	5.1.5	This section refers to the "latest version of the Department-approved design guidelines and policies." Are such guidelines and policies available?	ACEC	Technical
3/18/2009	5.1.5	What are the Department-approved design guidelines and policies?	ACEC	Technical
3/13/2009	5.1.6	Does this section include protection of both existing and proposed buildings from the flooding event. If so, it may need to be clarified.	NCCDLU	Technical
3/13/2009	5.1.6	Why does this paragraph specifically include only buildings and related structures and exclude roadways and property damage?	Jared Adkins, KCD	Technical
3/20/2009	5.1.6	"The design of permanent stormwater management systems shall not cause or increase flooding of buildings or related structures for regulatory storm events up to and including the 100-year, 24-hours storm." Does this include roadways? Also, what if the area currently floods? The proposed regulation says "shall not cause or increase", but what if it was pre-existing?	SCD	Technical
3/13/2009	5.1.7	What conditions would need to be present to require an off-site drainage easement?	NCCDLU	Technical
3/3/2009	5.1.7	"Concentrated discharges from land development, including permanent stormwater management systems, shall not be discharged onto adjacent property without adequate conveyance in accordance with Department guidance." First, without reviewing the "Department guidance" it is impossible to know what this really means. Second, but perhaps more important, this could create serious problems for a landowner who must discharge the water where it has historically gone – Aqua currit et debet currere solebat (Water runs, and ought to run, as it has used to run) – but is prohibited from doing so by these regulations simply because the downstream landowner has not properly maintained the conveyance on his property, a situation made all the worse when the landowner has no right to enter the adjacent property in order to make the necessary improvements or perform the necessary maintenance. Lastly, I note that this applies to "land development," suggesting that anyone who concentrates the discharge, resulting in damage to his neighbor's land, is apparently free to do so without fear of interference from the Department so long as the offending party is not a developer. I am familiar with the common law as it applies to drainage in	Ernie Sheppe, MRA	Legal

5.0 Performance Criteria for Post-Construction Stormwater Management
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/20/2009	5.1.7	<p>States that “all permanent stormwater management systems, shall not be discharged onto adjacent property without adequate conveyance in accordance with Department guidance.” The definition of adequate conveyance states that it “does not adversely impact the upstream or receiving property”, however, - this can be argued by a farmer whose farm field may be the receiving property. We have many developments that discharge at a non-erosive velocity to a farm field. Will section 5.1.7 prevent these projects from going forward? The definition of “Adverse Impact “states that a “negative impact includes increased risk of flooding”, which is always a possibility for large storm events. 2.1 – Adequate Conveyance states “does not adversely impact”. Suggest adding examples and a degree of that impact. In some cases, the adverse impact may be subjective and may be approved by some higher authority if justified or warranted or mitigated. This deals with safe conveyance and mentions Department guidance. This guidance should be included in this section or as a subsection.</p>	SCD	Technical
3/13/2009	5.1.8	<p>Why do these systems need to be in open space when you are allowing an easement in section 3.11.3 & 4? Does this apply to storm drain systems that convey treated water from one BMP to another. This will make for a difficult situation in rears where no one will assume maintenance for the system. This is because everyone wants to keep common area fees low and frequency is less than what an owner would do on a regular basis. You would still have the easement for periodic inspections and remedial work.</p>	Kevin McBride, MRA	Policies & Procedures

5.0 Performance Criteria for Post-Construction Stormwater Management
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/3/2009	5.1.9	First, the language here is confusing and I suggest that this section read as follows, "If runoff from a land development will flow to a municipal separate storm sewer system (MS4) or other publicly-owned storm sewer system, then the owner developer shall obtain authorization from the system's owner to discharge into the system. The Department, delegated agency, or system owner may require the owner developer to demonstrate that the system has adequate capacity for any increases in peak flow rates and velocities."	Ernie Sheppe, MRA	Policies & Procedures
3/3/2009	5.1.9	Second, it seems this section could give a municipality what amounts to a veto over a project located outside of the municipality. In addition, while I understand the public safety and property damage implications, if the Department's concern here is public safety and/or property damage, then I believe this section should be rewritten so as to make this apparent and to better reflect this concern. As written, the intent is unclear, leaving us with an ambiguous regulation that could easily be misinterpreted and abused. Lastly, I repeat my comment in the previous section regarding common law doctrine in Delaware as it applies to drainage.	Ernie Sheppe, MRA	Policies & Procedures
3/13/2009	5.1.9	Should not be limited to "publicly" owned storm sewer systems. Flow into private system should also require the system owner authorization and delegated agency approval. Second paragraph "...owner may require the owner to.." should be clarified as "system" owner may require the "(land developer, plan owner?)"	Jared Adkins, KCD	Policies & Procedures

5.0 Performance Criteria for Post-Construction Stormwater Management
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	5.1.9	I fear that the state or a town will use this requirement to effectively shut down a project adjacent to a municipality until such time that the owner annexes and pays what is now becoming cost prohibitive annexation and impact fees for sewer and water. This does not even consider the fact that most incorporated municipalities have citizen groups that resist annexing property. That would render the land unusable.	Kevin McBride, MRA	Planning & Land Use
3/18/2009	5.1.9	DeIDOT has a policy (perhaps unwritten) forbidding new discharges into their system. Will DNREC mediate such instances if a proposed discharge is the most logical way to accommodate a development?	ACEC	Planning & Land Use
3/13/2009	5.1.10	Our suggestion is that this kind of the investigation also needs to be performed for all the applicants who are proposing a design of Wet Ponds. (This is the result of our investigations and current experience with some of the existing wet ponds in NCC which cannot maintain their permanent pool elevation due to infiltration into the ground.)	New Castle County Special Services	Technical
3/13/2009	5.1.10	Soil investigations should be performed by licensed soil scientists.	NCCDLU	Technical
3/20/2009	5.1.10	Can the statement be elaborated so that the soil investigation performed is to be performed in accordance with Department guidance; however, a Delegated agency may require additional/more restrictive testing.	SCD	Technical
3/13/2009	5.2	Entire Section - Seems like big pieces are missing here. What if site can not reduce entire post-development R _{Pv} or be limited to existing paved and turfgrass areas?	Jared Adkins, KCD	Technical
3/20/2009	5.2	I understand the intent but it is not spelled out or clear on how and how much of the Resource Protection Event Volume is to be recharged or reduced.	John Garcia, Karins	Technical
3/23/2009	5.2	What if infiltration cannot be accomplished for the R _v ? There does not appear to be anything in these regulations about filtration for the R _v .	Vince Davis, DeIDOT	Technical
3/13/2009	5.3 & 5.4	Both sections are very vague in terms of what will be actually required to control the conveyance and flooding events.	Jared Adkins, KCD	Technical

5.0 Performance Criteria for Post-Construction Stormwater Management

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	5.2, 5.3, 5.4	All of these sections are very poorly written and are not understood. None of the compliance sections require anything as the term "may" is utilized not "shall". Furthermore, it is not clear if all compliance items are to be demonstrated or if just compliance with a single item is sufficient. Lastly, without the inclusion of "Department guidance" the review of these standards is not possible.	NCCDLU	Technical
3/3/2009	5.2.2	I suggest the following changes, "...having a 100 99 percent <u>annual</u> probability of occurrence..."	Ernie Sheppe, MRA	Technical
3/3/2009	5.2.3.1	"The entire post-development RPv shall be reduced using runoff reduction practices listed in [unnamed checklist]." (Emphasis added).As mentioned in Section 2 above, we need to know what these "runoff reduction practices" are. We cannot provide a complete review of an incomplete standard.	Ernie Sheppe, MRA	Technical
3/13/2009	5.2.3.1	"The entire RPv shall be reduced... " - I think it is probably a good idea to try to mimic predeveloped hydrology and release a hydrograph that is as close as possible to the pre discharge for the RP event. However, I don't think it should be required to put the entire volume into the ground. I am familiar with other regulations that require the difference between pre and post of the WQ or 2-yr volume to be put into the ground.	Amy Reed, Landmark Engineering	Technical
3/13/2009	5.2.3.1	It is difficult to fully comment on this section without the checklist.	Sally Ford, Land Design	Technical
3/13/2009	5.2.3.1	The entire post-development RPv shall be reduced using runoff reduction practices listed in [unnamed checklist] - What is a runoff reduction practice? How much reduction will be needed for compliance? How will reduction be computed?	NCCDLU	Technical
3/13/2009	5.2.3.1	Need to see this list	Kevin McBride, MRA	Technical
3/18/2009	5.2.3.1	What does "reducing" the Resource Protection Event Volume entail?	ACEC	Technical
3/20/2009	5.2.3.1	Checklist?	John Garcia, Karins	Technical

5.0 Performance Criteria for Post-Construction Stormwater Management
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	5.2.3.1, 5.3.3.1, &5.4.3.1	When will the checklists and guidelines by DNREC be developed with relation to the adoption and implementation of these regulations? Will the checklist incorporate other options for volume reductions other than infiltration to deal with the high clay content found in many areas within the City?	City of Newark Public Works	Technical
3/13/2009	5.2.3.2	Would you please clarify the intent for this paragraph.	NCCDLU	Technical
3/18/2009	5.3	When is it necessary to control the Conveyance Event Volume? What are the "runoff reduction practices provided in accordance with Department guidance"?	ACEC	Technical
3/20/2009	5.3	Again I understand the intent, but again it is not spelled out or clear on how or how much of the Conveyance Event Volume is to be managed.	John Garcia, Karins	Technical
3/20/2009	5.3	Will safe conveyance be based totally on volume and not peak?	SCD	Technical
3/3/2009	5.3.2 & 5.4.2	I am having difficulty understanding the hydrologic basis for the standard described in this section. The criteria that I remember discussing at the last Technical Subcommittee meeting was the unit discharge alternative. And it was the unit discharge method that was discussed at the RAC meeting on Feb. 9, 2009. The language provided here needs to be clarified.	Ernie Sheppe, MRA	Technical
3/3/2009	5.3.3.1 & 5.3.3.2 and 5.4.3.1 & 5.4.3.2	Note reference to "Department guidance." As stated above, we will need to review this "guidance" before we can fully understand and comment on these regulations.	Ernie Sheppe, MRA	Technical
3/13/2009	5.3.3.1	The Cv shall be reduced using runoff reduction practices as listed in Department guidance - Are these the same runoff reduction practices used in the RPv?	NCCDLU	Technical
3/13/2009	5.3.3.1	Need to see Department guidance	Kevin McBride, MRA	Technical
3/20/2009	5.3.3.1	Where is the Department guidance that is referenced	John Garcia, Karins	Technical
3/23/2009	5.3.3.2	What is the definition of extended filtration? Has the 'Department Guidance' been finalized?	Vince Davis, DeIDOT	Technical

5.0 Performance Criteria for Post-Construction Stormwater Management
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	5.3.3.3	This provision is currently not applied the same in all districts. Some clarification would be helpful this go round.	Kevin McBride, MRA	Technical
3/23/2009	5.3.3.3	Just a reminder that as per 3.11.5, an easement shall be required to the outfall point.	Vince Davis, DeIDOT	Technical
3/11/2009	5.3.3.4 & 5.4.3.4	Public Works thought DNREC was going to decide whether or not projects within certain watersheds would require peak controls not the delegated agencies. Due to Newark's location in the Christina Basin, the City does not agree with the use of the imposition of peak control studies and would like wording that says that this use is at the discretion of the Delegated Agencies?	City of Newark Public Works	Technical
3/3/2009	5.3.3.5	The phrase "minimal discharge" will need to be better defined. My concern here is related to varying interpretations by different agencies. As written, it is ambiguous and therefore prone to misinterpretation and abuse.	Ernie Sheppe, MRA	Technical
3/11/2009	5.3.3.5	How will minimal discharge be defined?	City of Newark Public Works	Technical
3/13/2009	5.3.3.5	Please define minimal discharge	NCCDLU	Technical
3/20/2009	5.3.3.5	Define minimal discharge (it is open to interpretation).	John Garcia, Karins	Technical
3/23/2009	5.3.3.5	What is the definition of minimal discharge?	Vince Davis, DeIDOT	Technical

5.0 Performance Criteria for Post-Construction Stormwater Management
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	5.4	The change proposed in these regulations from the existing regulations have a large impact on Sussex County. Having an Owner go from managing the 10 year storm to managing the 100 year storm has huge impacts. Where the seasonal high watertable is the limiting feature, the size of stormwater practices will double, (they can only expand horizontally). Also, when these stormwater features are located in the flood plains or near tidal waters, ie. Bethany Beach, the tides will flood the land making it impossible to achieve the storage required.	Sally Ford, Land Design	Technical
3/18/2009	5.4	When is it necessary to control the Flooding Event Volume? What are the "runoff reduction practices and associated credits listed in Department guidance"?	ACEC	Technical
3/20/2009	5.4	Flooding Event Criteria - It is not spelled out or clear on how or how much of the flooding event criteria is to be managed?	John Garcia, Karins	Technical
3/23/2009	5.4.3.1	"...and associated credits listed in Department guidance." Where?	Vince Davis, DeIDOT	Technical
3/23/2009	5.4.3.2	What is the definition of extended filtration?	Vince Davis, DeIDOT	Technical
3/11/2009	5.4.3.3	If Runoff is limited to matching existing conditions, then there needs to be a limit on the responsibility of improvements downstream, all contributing properties need to be assessed for these type of improvements.	Sally Ford, Land Design	Technical
3/23/2009	5.4.3.3	Just a reminder that as per 3.11.5, an easement shall be required to the outfall point.	Vince Davis, DeIDOT	Technical

5.0 Performance Criteria for Post-Construction Stormwater Management

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	5.5	The Division of Water Resources would like the Sediment and Stormwater Program and the Regulatory Advisory Committee to consider incorporating stormwater pollution control strategy (PCS) components, similar to those developed in the Inland Bays Watershed, directly into the Sediment and Stormwater Regulations. By doing so, new development activities within watersheds with established Total Maximum Daily Loads will be designed to minimize nutrient contributions and protect waters already classified as impaired. The stormwater management procedures established in the Inland Bays Watershed may be applied state-wide and in doing so through these regulations, improves the efficiency of the PCS development process and protection of Delaware's water resources.	Jenn Volk, DWR	Technical
3/11/2009	5.5	The regulations are quite vague regarding "approved watershed plans" - are these Pollution Control Strategies developed as part of the TMDL process? The regulations should provide greater detail regarding plan requirements and criteria, development and implementation responsibilities, and opportunities for public review and comment. While 5.5.2 specifically refers to "a receiving water body ... identified as impaired, or designated with a specific pollutant reduction target necessary to meet State of Delaware water quality regulations," consideration should also be given to the application of alternative criteria for waterways designated as ERES and/or those that support rare, threatened, or endangered species.	Jen Mihills, DNS	Technical
3/23/2009	5.5.1	Who is going to review and approve this aspect?	Vince Davis, DeIDOT	Technical
3/13/2009	5.5.2	This provision seems very open ended and undefined. Shouldn't all these water bodies be clearly identified at this point and specifically listed. Owners need to know this before beginning design work.	Kevin McBride, MRA	Technical
3/13/2009	5.5.3	"...from a specific source" - Again, these should be identified now and not be left open to debate. If they are not known then the criteria for designating them should be included in these regulations.	Kevin McBride, MRA	Technical

5.0 Performance Criteria for Post-Construction Stormwater Management
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/3/2009	5.6.1	“Compliance with this section shall be accomplished through compliance with guidance and procedures...established by the Department. The approach selected must be...based on the results of the Stormwater Impact Study.” (Emphasis added).First, I repeat that we cannot provide a complete review without the “guidance and procedures.” In addition, requiring a “Stormwater Impact Study” (SIS) places an unnecessary burden on small sites and on redevelopment projects and should not be required on such projects except in unusual circumstances.Nor should a SIS be necessary when the developer chooses a design that maintains the pre-development discharges for a wide spectrum of storm events. Under such circumstances, and regardless of the size of the project, if there is a downstream drainage problem, then the project will not exacerbate this problem. And if there are no downstream problems, then the developer has simply chosen a very conservative design approach. Either way, a SIS would serve no useful purpose.	Ernie Sheppe, MRA	Technical
3/11/2009	5.6.1	When will the guidance and procedure guidelines be established for redevelopment, and infill areas?	City of Newark Public Works	Urban Considerations
3/18/2009	5.6.1	When will infill development criteria be developed by the Department?	ACEC	Urban Considerations
3/12/2009	Add 5.6.3	ADD SECTION - To cover the conveyance of ALL or a portion of an Approved Project to another Owner.	Kevin Burdette, KNB Associates	Policies & Procedures
3/12/2009	Add 5.6.3.1	ADD SECTION – The NEW Owner will be responsible obtaining either an Approved Sediment & Stormwater Plan OR a Standard Plan, as appropriate, prior to any additional construction activities or issuance of any Building Permits.	Kevin Burdette, KNB Associates	Policies & Procedures

5.0 Performance Criteria for Post-Construction Stormwater Management
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/12/2009	Add 5.6.3.2	ADD SECTION – The Original Owner will be allowed to reduce the original Finance Guarantee proportionally to the amount of work required to be undertaken by the New Owner, and provided by the New Owner’s Financial Guarantee.	Kevin Burdette, KNB Associates	Policies & Procedures
3/11/2009	5.7	How will the Department "match" identified watershed projects with proposed construction sites to accommodate fee-in-lieu? The mechanics of this option are quite vague in the draft regulations.	Jen Mihills, DNS	Policies & Procedures
3/13/2009	5.7	How is the Fee-In-Lieu calculated?	NCCDLU	Policies & Procedures
3/13/2009	5.7	"approved watershed plan" - These need to be identified and listed so owners and consultants know ahead of contract negotiations. The method of cost sharing needs to be worked out and any future watersheds subject to fee-in-lieu should be listed.	Kevin McBride, MRA	Policies & Procedures
3/11/2009	5.7.1	Verify that cash in lieu of fees will only be permitted and collected by DNREC and only where there is an approved watershed plan. Public Works feels this section should also apply to municipalities without a watershed plan. The fee shall be applied and received by the municipality for local stormwater project funding.	City of Newark Public Works	Policies & Procedures
3/11/2009	5.7.1	Who is going to control and maintain this operation?	Vince Davis, DeIDOT	Policies & Procedures

6.0 Inspection of Sediment and Stormwater Management Plan
3/24/2009

February 2009 Working Draft Comments				
Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/3/2009	6.1.2	I suggest the following changes. The owner developer shall install and maintain all construction site stormwater management BMPs in accordance with the standards and specifications contained in the Delaware Erosion and Sediment Control Handbook, and approved supplements approved SWPPP. A licensed design professional is responsible for preparing a SWPPP that complies with the "standards and specifications contained in the Delaware Erosion and Sediment Control Handbook, and approved supplements." This plan is then reviewed and ultimately approved by the appropriate government agency, confirming compliance with the state's standards. It is then the developer's responsibility to comply with the approved SWPPP. Compliance with the approved plan is compliance with the law. Said another way, you don't ever want to encourage the developer or his designee (i.e., contractor), to ignore the approved SWPPP in favor of their own peculiar interpretation of the standards. The standards are properly interpreted on a case by case should be included in this section or as a subsection. A note of interference from the Department so long as the offending party is not a developer. I am familiar with the common law as it applies to drainage in Maryland, but not in Delaware.	Ernie Sheppe, MRA	Policies & Procedures
3/11/2009	6.1.3	What over and above contained in these regulations would the Owner have to abide by? How many Owners are going to research what is contained within these regulations to make sure they are in compliance?	City of Newark Public Works	Policies & Procedures
3/13/2009	6.1.3 - 6.1.5	Is this an entirely separate requirement from the CCR, and the certification required of the superintendent of the clearing and grading contractor, both of which are agents of the owner. Are you saying that another layer has been added?	Kevin McBride, MRA	Policies & Procedures

6.0 Inspection of Sediment and Stormwater Management Plan
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/3/2009	6.1.3.1 - 6.1.3.4	It is unnecessary to have the owner/developer perform regular inspections, in addition to those provided by the CCR, when the developer has hired a CCR for just that purpose. I understand that a CCR is not required for smaller sites and I would have no objection to the language provided here if it is made clear that a CCR can act as the "owner's representative" for purposes of compliance with this section. But this option should also be made clear in the regulations on larger sites that do require a CCR. Under such circumstances, having both the owner and the CCR playing identical roles is redundant, wasteful and pointless.	Ernie Sheppe, MRA	Policies & Procedures
3/11/2009	6.1.3.1 & 6.1.3.2	It would seem that as a follow-up to the inspections by the Owner that it would be also a requirement to correct any deficiencies. Will there be any time guidelines for the corrections. The CCR's have 5 days to deliver the report. So deficiencies could most likely be included in two reports since the first report noting the deficiency may not be delivered for five days at which time the next weekly inspection would be due. So, is two weeks a reasonable time to allow for corrections?	City of Newark Public Works	Policies & Procedures
3/13/2009	6.1.3.1 & 6.1.3.3	If the Construction Reviewer makes inspections once a week why does the owner also have to. Also when there is no activity on the site why a need for weekly inspections?	Sally Ford, Land Design	Policies & Procedures
3/13/2009	6.1.3.1 - 6.1.3.4	It is not understood how these sections are a sub-set of 6.1.3, if the referenced code in 6.1.3 includes 6.1.3.1- 6.1.3.4, then it should be stated as such in section 6.1.3	NCCDLU	Policies & Procedures
3/11/2009	6.1.3.3	As was discussed during the last RAC meeting, a template or guidelines should be developed to assist with the reporting of maintenance inspections contemplated in 6.1.3.3.	Jen Mihills, DNS	Policies & Procedures
3/13/2009	6.1.4	This section is poorly worded and should not include Department or delegated agency responsibilities as this section only applies to the owner responsibilities.	NCCDLU	Policies & Procedures

6.0 Inspection of Sediment and Stormwater Management Plan
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	6.1.6	Since DNREC requires all projects with a detailed SWPPP to have a CCR, why wouldn't the delegated agencies do the same? Even though the Owner's or Owner's rep is required to do the weekly inspections, unless someone like a CCR or the delegated agencies oversees their inspections, the quality of the inspections would be suspect.	City of Newark Public Works	Policies & Procedures
3/11/2009	6.1.6	The requirement for CCR inspections on all sites greater than 20 acres is a positive revision from the 50 acre site requirement in the previous regulations.	Jen Mihills, DNS	Policies & Procedures
3/13/2009	6.1.6	This section requires CCR for all projects greater than 20 acres and for any project where a Sediment and Stormwater Management Plan, since any project of 20- acres would most certainly have a SSMP, is not the single criteria of a plan adequate?	NCCDLU	Policies & Procedures
3/13/2009	6.1.6	Second to last sentence, "or delegated agency" should be added after Department	Jared Adkins, KCD	Policies & Procedures
3/11/2009	6.1.7	Public Works prefers third party CCRs (that are not a part of the developer or site contractor's payroll) for projects. Public Works feels that the inspections would more accurately reflect site conditions.	City of Newark Public Works	Policies & Procedures
3/3/2009	6.1.7.3	Requires, among other things, that the CCR report "any inconsistencies with or inadequacies of the approved plan." (Emphasis added). I suggest the bold type above be deleted. With all due respect, I don't believe the CCR, having completed some short training course offered by the Department, is in any position to question the adequacy of the approved plan, a plan prepared by a licensed design professional and then carefully reviewed and approved by the appropriate agency. As stated previously, the approved SWPPP should be followed...Period. Only in rare instances should the approved plan be revisited, and this determination should always be made by the Department or by another appropriate agency having both the expertise and the authority to do so.	Ernie Sheppe, MRA	Policies & Procedures

6.0 Inspection of Sediment and Stormwater Management Plan
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	6.1.7.4	It sounds as if on every site where there are deficiencies that have not been corrected, as noted in the CCR report, the delegated agency will have to notify DNREC verbally within 2 days or 5 days with written notification. Is this the intent? The City has a hierarchy of options that we typically exercise first. What happens where there is no CCR? It seems the Department or delegated agency should be included in all references.	City of Newark Public Works	Policies & Procedures
3/20/2009	6.1.7.4	The Certified Construction Reviewer should not be responsible for enforcement action referral.	John Garcia, Karins	Policies & Procedures
3/3/2009	6.1.8	“Upon documentation by the Department or delegated agency of deficiencies in the performance of the [CCR], and upon notification by the Department or delegated agency, the owner shall employ a new [CCR]. The owner shall employ a new [CCR] during any time of probation or suspension or upon revocation of [CCR] certification.” I think I understand the Department’s intent here, but nevertheless, respectfully suggest that the language be amended. I don’t know that the Department can really dictate who someone chooses to hire or fire and I don’t know that it was really the Department’s intent to go there. I think it is sufficient for the Department to dictate when a CCR is required, and at the risk of stating the obvious, any CCR who has lost his/her certification is no longer a CCR, at least not during the period of probation or suspension, leaving the developer no choice but to find another CCR during that period. One last thought. Both the word “probation” and the word “suspension” indicate a temporary condition. should be included in this section or as a subsection. ar of interference from the	Ernie Sheppe, MRA	Policies & Procedures
3/13/2009	6.2.1 & 6.2.2	It is not understood how these sections are different from one another.	NCCDLU	Policies & Procedures

6.0 Inspection of Sediment and Stormwater Management Plan
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	6.3.1	There are problems that I have heard about with CCR inspection or lack of, and believe The State law should have included Registered Professional Surveyors ,currently licensed and Tested by State agencies, to oversee CCR inspectors if they were the Design Professional for the project. The State Board of Surveyors oversees complaints ,etc. and can fine or remove licenses.	Chuck Adams, PLS	Policies & Procedures
3/13/2009	6.3.4	Section should be reworded to clarify that the performance being evaluated is past-performance. The section could be read that performance during the probation period is under review while not allowing the CCR to perform site review.	NCCDLU	Policies & Procedures
3/3/2009	6.3.6	As noted above, a “suspension” of 6 months (or for any specified period of time) is a temporary condition. A “revocation” typically is not for a specified period of time, but lasts forever.	Ernie Sheppe, MRA	Policies & Procedures
3/11/2009	6.4.2	What would DNREC consider as regular? Public Works often requires the inspection of any permanent stormwater facilities to have a third party CCR or some other qualified professional do the inspections, reports and certifications, as Public Works personnel can not devote the time to adequately perform the necessary inspections. On these projects, Public Works personnel will still check in on projects during construction, but rely on the CCR to provide the in depth and critical inspections of any BMP installations with the proper reporting and checklists required to be provided to Public Works.	City of Newark Public Works	Policies & Procedures

6.0 Inspection of Sediment and Stormwater Management Plan
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	6.4.3	Per sec. 6.1.7.3, the CCR is to inform the delegated agency, owner and contractor. Why wouldn't the delegated agencies deliver their report to the Owner, Owner's representative, developer or contractor, as well? The Owner is often far removed from the project, (out of state for instance) and relies on their representative, developer and/or contractor to make any necessary corrections. There are many instances through out Section 6.0 that references, just the Owner, or the Owner or Owner's representative. Some include the contractor, as well.	City of Newark Public Works	Policies & Procedures
3/13/2009	6.4.4	Should clarify the requirement to submit a revised plan is at the discretion of the Department or delegated agency.	NCCDLU	Policies & Procedures
3/11/2009	6.5.1	What is the application for the Certification Construction Reviewer?	City of Newark Public Works	Policies & Procedures
3/13/2009	6.5.3	Requiring that the pre-construction meeting be held on-site is burdensome.	NCCDLU	Policies & Procedures
3/13/2009	6.5.5	The last sentence says the Department or delegated agency will conduct and document inspections and then that the CCR will conduct this inspection. The section should be re-worded for clarification. Do we want the CCRs to continue to perform this function?	NCCDLU	Policies & Procedures
3/13/2009	6.5.6.3	Again the "Final Stabilization" phrase needs to be clearly defined as to make sure at the time of final inspection there is a good stand of vegetation on all the disturbed areas around the stormwater management facilities when is applicable per plan.	New Castle County Special Services	Policies & Procedures

7.0 Post Construction Maintenance of Permanent Stormwater Management Systems
3/24/2009

February 2009 Working Draft Comments				
Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	7	The maintenance subcommittee recommended that home buyers be informed of stormwater maintenance needs and responsibilities. Is this still an option/need?	Jenn Volk, DWR	Maintenance
3/13/2009	7.1.1	As worded, this paragraph implies the owner does not have responsibility for permanent stormwater management systems until after the Notice of Completion. If this is the case who is responsible?	Jared Adkins, KCD	Maintenance
3/18/2009	7.1.1 & 7.1.2	Seems like some sort of database would need to be kept of permanent BMPs and their responsible party. Will each delegated agency be expected to do this? Is there not an existing property ownership process (such as deed restrictions) that could be applied instead?	ACEC	Maintenance
3/13/2009	7.1.2	It seems like this section should be broken into two situations; prior to notice of completion and after notice of completion. Requiring notification each time a commercial property changes ownership post-construction is unlikely and burdensome. This section does not cover the case where the owner is an LLC and goes defunct without transferring responsibility to a HOA or the case where a HOA simply refuses to accept a stormwater facility. Responsibility should run with the land once the Notice of completion is issued, except in the case of 7.1.3 (dedication to public entity.)	Jared Adkins, KCD	Maintenance
3/18/2009	7.1.2	keeping track of transfer of ownership of maintenance responsibility will be difficult, as owners will not be thinking about these issues when they sell the property. I recommend a recorded instrument be required documenting the maintenance requirements that will come up during the title search. That way everyone will be reminded that this is one other responsibility that needs to be transferred. In reality the maintenance should "run with the land".	ACEC	Maintenance

7.0 Post Construction Maintenance of Permanent Stormwater Management Systems

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	7.1.2.1	This information needs to be transmitted to the new owners. Typically there is a period of time between the HOA resident board of directors and the developer/owner board representation transitioning voting rights and privileges. During this transition several years of maintenance will have taken place. What is the protection for the new owner that ensures that the O & M has been complied with by the previous owner/developer? Generally getting a group of resident board members to accept unanimous responsibility for such a significant cost item is difficult. May need a current inspection or certification that inspections and maintenance has been preformed on schedule and correctly under 7.3.2.	Kevin McBride, MRA	Maintenance
3/11/2009	7.1.2.1 - 7.1.2.4	How is this going to happen? When properties are sold, the Owner's do not notify the Public Works Department. Additionally, once the original owner has transferred ownership of the property, how will that owner be kept on the hook for maintenance, if these items have not been completed?	City of Newark Public Works	Maintenance
3/11/2009	7.1.2.3	Spell out LLC	Jenn Volk, DWR	Maintenance
3/18/2009	7.1.3	This section states that permanent stormwater management systems may be offered for dedication to delegated agencies and others. Do these agencies have to accept the offer for dedication (assuming it is constructed in accordance with the approved plans)?	ACEC	Maintenance
3/11/2009	7.2.2	I believe the maintenance subcommittee recommended that the HOA or contracted private maintenance corporation do annual inspections, and to submit review forms to the delegated agency. Is this still an option/need?	Jenn Volk, DWR	Maintenance
3/13/2009	7.2.2	It is not understood how an inspection after an extreme flooding event will determine if routine maintenance has been provided. Please define extreme flood events.	NCCDLU	Maintenance
3/13/2009	7.2.3	The word "changes" should be revised to "change(s)"	NCCDLU	Maintenance
3/11/2009	7.2.4	While a good idea, how will the Owners be made aware of this requirement?	City of Newark Public Works	Maintenance

7.0 Post Construction Maintenance of Permanent Stormwater Management Systems

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	7.2.4	Maintaining maintenance records for 5 years will be a burden to owners. An inspection of the stormwater system will tell if it is being maintained or not, and the site will be inspected every 2 years per Section 7.3.1.2..	Sally Ford, Land Design	Maintenance
3/11/2009	7.2.5	Does it make sense to move 7.2.5 into section 7.1.2?	Jenn Volk, DWR	Maintenance
3/11/2009	7.3.1.2	Even though it will be less burdensome on the City with the two year inspection requirement, there are many BMP's now that recommend more than one inspection a year and many owners typically will not perform regular maintenance unless notified to do so.	City of Newark Public Works	Maintenance
3/11/2009	7.3.1.2	Consider revising the frequency of maintenance inspections in 7.3 .1.2 to annually rather than biennially.	Jen Mihills, DNW	Maintenance
3/13/2009	7.3.1.2	With being involved in inspections for last few years, I still think the inspection should be performed annually. The reasons are; Right now, with the annual inspections, we are still encountering problems as far as having the Maintenance Corporation to perform their regular and routine maintenance for the facilities in their private open space areas; however, with commercial properties, the magnitude of not inspecting their stormwater management facilities on a yearly basis exacerbates the required maintenance due to the location at intersections, in industrial parks and shopping centers, multiple owners and the cost of this action. As of today we have more than 1,300 SWM facilities in NCC. This number is increasing everyday and with biennial inspections, it wouldn't be beneficial to NCC or to the Maintenance Corporations, as the Private owners. Second reason is our Amnesty program in NCC for the Maintenance Corporation. "A Maintenance Corporation must register and file an annual stormwater management facility inspection and maintenance log with the Department of Special Services to qualify for financial assistance for major repairs, subject to the availability of the funds, as set forth in Section 40.27.320 and Chapter 12, Article 6." If they don't submit their registration form and their maintenance logs by end of each year, their names will be	New Castle County Special Services	Maintenance
3/18/2009	7.3.1.2	Maintenance inspections every two years is counter to somewhat accepted practices of annual inspections.	ACEC	Maintenance

7.0 Post Construction Maintenance of Permanent Stormwater Management Systems
3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	7.3.2	<p>Since routine and non-routine maintenance is often not performed, Public Works would have to send many more notices each year even with only inspecting one half the total sites every year, as most sites are in need of some type of maintenance. Public Works does not have the personnel resources to commit the necessary time to send out first and sometimes second notices, meet with numerous owners and contractors, and provide multiple inspections for many facilities. Currently, we prioritize Owner notification to facilities that have maintenance issues based on emergency, functionality, preventative, and aesthetics. Most of the 15-20 notices we send out each year are for facilities that have some type of functionality concern. The time spent just on these few facilities is very time consuming. With that being said, Public Works does not have the manpower or resources to notify and require all the facilities with any type of deficiency to be corrected in the year following the inspection.</p>	City of Newark Public Works	Maintenance
3/13/2009	7.4.1	<p>Should be;" The Department and or Delegated Agency may seek enforcement action against any owner deemed negligent in fulfilling the requirements of section 7 of these regulations.</p>	New Castle County Special Services	Policies and Procedures

8.0 Enforcement and Penalties

3/24/2009

) Working Draft Comments

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	8.0	This section should include penalties, i.e. fines, revoked plans, stop work, etc.	NCCDLU	Policies & Procedures
3/13/2009	8.0	This section does not address penalties, cease and desist orders, fines or the withholding of permits currently included in the current regulations. This entire section should be strengthened not weakened.	Jared Adkins, KCD	Policies & Procedures
3/13/2009	8.0	No provisions are given to address stopping immediate or eminent discharges.	Jared Adkins, KCD	Policies & Procedures
3/13/2009	8.0	If we are currently having problems with enforcement why is this section not being clarified and strengthen?	Jared Adkins, KCD	Policies & Procedures
3/20/2009	8.0	Section 8 appears to be lacking in requirements/guidance. I would recommend that DNREC discuss further with KCD and SCD on how this section could be strengthened.	SCD	Policies & Procedures

9.0 Delegation of Program Elements
3/24/2009

February 2009 Working Draft Comments

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	9.0	<p>This section does not individually address the program elements as in the past. Public Works has always been delegated for three of the four program elements. They are plan review and approval, inspection during construction, and post construction maintenance inspection. DNREC has always conducted the education and training component. Public Works feels that this program element should be kept with DNREC, especially with the new statewide regulations. Our NPDES permit has a public education and outreach component for construction site storm water runoff only. Through this permit, our educational efforts are focused on water quality only. Public Works does not have the time, money, staff or expertise to educate and train the plan reviewers, consultants, contractors, CCR's, inspectors, and any other individuals involved in stormwater. Rather than have multiple agencies conducting multiple educational and training sessions throughout the state, it would seem more appropriate for DNREC, who, as the authority, all the delegated agencies look to for answers and guidance for their knowledge and expertise, conduct training and education on a state wide level. Additionally, the accuracy, and quality of the education and training is controlled by DNREC, whereby certain standards can be assured. There are also many changes and new technologies adopted by the Department, on an ongoing basis, that could be better disseminated to the stormwater community on a much more timely basis by the Department. The Public Works Department does not want the education and training component of the delegation.</p>	City of Newark Public Works	Policies & Procedures
3/13/2009	9.7	This comment needs to be either deleted or modified.	New Castle County Special Services	Policies & Procedures

10.0 Criteria for Implementation of a Stormwater Utility
3/24/2009

February 2009 Working Draft Comments

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	10.3	Should include any additional administrative and overhead costs related to the sediment and stormwater and/or NPDES program.	City of Newark Public Works	Policies & Procedures
3/11/2009	10.3.2 & 10.7	Both items refer to annual inspection of stormwater facilities if there is a stormwater utility totally administered by someone other than DNREC, but biennially in Sec. 7.3.1.2.	City of Newark Public Works	Policies & Procedures
3/13/2009	10.3.2	This explains that per the utility, the inspection of the stormwater management facilities will be annual. It contradicts with subsection 7.3.1.2.; page # 31 if it goes through. I still think the inspection should be performed annually.	New Castle County Special Services	Policies & Procedures
3/11/2009	10.5	Should include method for issuing stormwater credits.	City of Newark Public Works	Policies & Procedures

General Comments

3/24/2009

February 2009 Working Draft Comments				
Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009	7.0	Having a maintenance bond for the original owner of the BMP's	Steve Sisson, DelDOT	Maintenance
3/11/2009	1.6	Making the performance and Maintenance Bonds Mandatory	Steve Sisson, DelDOT	Policies & Procedures
3/11/2009	6.0	Being consistent with new EPA rules on construction site controls	Steve Sisson, DelDOT	Technical
3/11/2009	10.0	Better establishment of Stormwater Utility	Steve Sisson, DelDOT	Policies & Procedures
3/11/2009	7.0 or 10.0	Allowance for HOA's to buy into a stormwater utility or have mandatory escrow accounts.	Steve Sisson, DelDOT	Maintenance
3/11/2009		<p>Section 10.3.15.6 of the Existing Regulations in part requires infiltration practices designed to handle runoff from impervious parking areas to be a minimum of 150 feet from any drinking water well. I was unable to find this clause in the Draft Regulations. You said that it might have been moved to the Guidance Document. We highly recommend that this be retained in either the regulations or the appropriate siting criteria section of the new guidance manual. [As an aside, may I participate in the development of the appropriate sections of the guidance manual?]</p> <p>The Delaware Regulations Governing the Construction and Use of Wells 4.01 (4) requires public wells to have a minimum of one hundred and fifty (150) feet from a potential source of contamination. We have tried to use your regulation (Section 10.3.15.6) to justify these types of infiltrations as a potential source of contamination. If Section 10.3.15.6 is moved to the guidance manual, we may not be able to justify the isolation distance. Is it possible to retain it in your regulations?</p>	Anne Mundel, DWR, Groundwater Protection Branch	Technical

General Comments

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/11/2009		The regulations should somewhere mention the need for siting criteria even if it must refer to the criteria in one of the several guidance manuals. While we are specifically concerned with siting with respect to potable wells, other criteria must exist for property boundary, foundations, etc.	Anne Mundel, DWR, Groundwater Protection Branch	Technical
3/11/2009		The Delaware Nature Society supports the Department's guiding principles of transitioning from peak-management to volume-management and from sitemanagement to watershed-management, as well as efforts to streamline the plan review/approval process while ensuring water quality goals are met.	Jen Mihills, DNS	Policies & Procedures

General Comments

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009		<p>Development of these regulations should be put on hold! The economic environment has drastically changed. All assumptions about the pace of development should be discarded for the time being. We must wait and see what the future holds in the way of government funding, jobs and declines in standard of living before making large changes in existing government requirements.</p> <p>Sussex County single family home building permits issued: 1996 - 1281 1997 - 1354 1998 - 1594 1999 - 1815 2000 - 1579 2001 - 1797 2002 - 2276 2003 - 2373 2004 - 2664 2005 - 2864 2006 - 2467 2007 - 1968 2008 - 1250</p> <p>The stormwater regs were just updated in 2005. Virtually none of the projects built under those regulations would even be fully developed yet. We should properly evaluate those changes before making major new changes.</p>	Rich Collins, PGA	Economic Impacts
3/13/2009	Rest of document	We will allow those who are professionally qualified to comment on the more technical aspects. It is our understanding, however, that stormwater ponds would have to be vastly larger in Sussex County in order to meet increased retention requirements due to high water tables.	Rich Collins, PGA	Technical

General Comments

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009		This is not acceptable. Ways must be found to make development less expensive, not more. If a way is not found to get tax revenue flowing again, a lot of laid-off state employees will likely need to find new jobs in a very hostile economic environment. Making building more expensive won't help!	Rich Collins, PGA	Economic Impacts
3/13/2009		We support you on the progressive effort that is evident in this initial draft. The inclusion of objectives such as drainage infrastructure and the advancement of post construction responsibilities is a great step forward in the management of stormwater. We are also enthusiastic with regard to the State's movement toward stormwater regulations that fully recognize the impacts of runoff volume.	NCCDLU	Policies & Procedures
3/13/2009	3.0	However, we do have some concern with the extent of process that is embedded into the proposed regulations. Although process is necessary for successful regulation, the inclusion of detailed processes within regulations poses some concerns. First, it removes flexibility when a process or a portion of a process needs to be revised. Initial processes are seldom perfect and require adjustment to achieve the intended objective. This can be difficult and slow to make perpetual improvements when the process is in a regulation instead of policy.	NCCDLU	Policies & Procedures
3/13/2009	3.0	Second, initiating process within the regulations poses the risk of conflicting with existing processes already in place. Certainly, all of the State's delegated agents will need to conform to the new regulations, and some program changes at the municipal level can be expected. Nevertheless, modifying existing land use subdivision processes in entirety is no small task. In light of this concern, we ask that the following recommendations be considered:	NCCDLU	Policies & Procedures

General Comments

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009	3.0	a) Revise the subsequent draft to require that all delegated agents have a plan approval process in place that accomplishes the intent provided in the current draft and relocate the current plan approval process into a policy or model ordinance that can be adopted by any of the delegated agents that lack such a process. In essence, the regulation would create the requirement and act as a place holder referring to a model ordinance that can be adopted in full, or modified as needed, by individual municipalities; or	NCCDLU	Policies & Procedures
3/13/2009	3.0	b) If the State deems it imperative that the plan approval process must remain in the Regulations, provide an exception in the Regulations that exempts a delegated agent of the specified plan approval process where the delegated agent already contains a process which accomplishes the intent of proposed process.	NCCDLU	Policies & Procedures
3/13/2009		We understand that the primary purpose of this draft is to establish the content to be regulated within a coarse framework and that the specific methods of compliance will be determined in the coming months through the subcommittee process. Having been through a similar project in recent years, we also fully appreciate that in order to maintain progress through this venture the initial draft may be proportionally complete in areas of content. That being stated, we have provided some significant examples where this stage of the process has left us with uncertainty of how the regulations will progress in achieving the original objectives. We have highlighted these issues so that they will not be inadvertently disregarded as this project moves into the more detailed and intensive phase of development. We request that following issues be considered in the coming months of work:	NCCDLU	Policies & Procedures

General Comments

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009		a) While navigating through the Regulations is straightforward, the degree of compliance is unclear. The use of terms such as 'minimize' (Sec. 5.2.1) and 'reduce' (Sec. 5.2.3.2) are subjective in nature. Further, we have found that the use of the term 'may' versus 'shall' is significant in the ability to enforce standards instead of just suggesting a course of action. We believe that this issue ultimately resides on whether a code is based on minimum or performance standards. We experienced the same challenge in our own Chapter 12 revisions and we respectfully recommend that in the next stage of the regulatory creation process that all areas requiring enforcement to compliance be established in a distinguishable and clear manner for those regulating and those subject to these regulations;	NCCDLU	Policies & Procedures
3/13/2009		b) We recommend including flexibility to permit delegated agents to invoke and utilize their own enforcement and penalty process. The coordination of enforcement between parent and subordinate agencies is often difficult. We ask that the State consider this option to facilitate a more straight forward and faster response in regulation enforcement; and	NCCDLU	Policies & Procedures
3/13/2009		c) We request clarification on issues that have long been of debate with stormwater management in this State. Specifically, we are unclear on how the proposed regulations will manage such subjects as regulatory compliance for minor residential subdivisions without open space for post construction stormwater controls and guidance on standardized tolerances for numerical analyses.	NCCDLU	Policies & Procedures
3/13/2009		There document has several single sub-section. Typically, there should not be a single subsection. The information in a single sub-section is included with the parent section to avoid a single sub-section. We recommend revising the regulations to eliminate all single sub-sections. Many parent sections do not specify if compliance requires adherence to each sub-section or if the satisfaction of any of the sub-section provides compliance. We recommend clarifying the compliance procedures for all sections.	NCCDLU	Staff

General Comments

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/13/2009		The current regulations (Amended Title 7 Code as of Oct. 11, 2006) are working well in Sussex and Kent Counties as well as the newer projects in New Castle and believe the designated agencies would respond similarly.	Chuck Adams, PLS	Policies & Procedures
3/13/2009		In this time of protracted economic downturn it seems like specific problems should be discussed in all of the categories and then addressed, one by one, to see what the best response is, instead of a all encompassing Change to Stormwater Regulation. (Possible Future Amended 7 Code).	Chuck Adams, PLS	Economic Impacts
3/13/2009		I suppose the thing I would emphasize most is <u>WHY</u> are we doing this <u>NOW</u> ? The governor is telling us one thing while your group is trying to tweak what is at best a subjective engineering concept that has evolved over the past 30 years. This evolution has often contradicted with what in the past has been adhered to as "Gospel". Until we are sure that the practices we are currently employing are not working effectively then we should <u>slow down</u> and try to get this economy back on tract. Let's see how we can streamline the current regs and review time frames. We should coordinate between the districts to brainstorm with the consultants and developer/owners to identify areas of inefficiency. We could agree to voluntarily adopt as many green principles as possible and start emphasizing the clustering, open space and buffers where appropriate, approach outlined in the PCS. Even though we are at odds about the way the PCS was pushed through there were many good concepts that can be implemented immediately. We can start with a voluntary meeting to review the concept without all the formality of the proposed regs.	Kevin McBride, MRA	Technical
3/13/2009		The code seems incomplete. It is difficult to discern the design criteria for stonnwater management and erosion and sediment control. Little to no mention is made of peak rate control, quality control, or the sediment control handbook. The information provided regarding stonnwater volume control in unclear, and there are no criteria or checklists for plan submissions.	ACEC	Policies & Procedures

General Comments

3/24/2009

Comment Date	Subsection	Comment	Commenter	Subcommittee Assignment
3/20/2009		The new requirements will increase design, engineering and construction costs. Time needed to acquire final approvals will increase by the additional layer of approval required.	John Garcia, Karins	Economic Impacts
3/23/2009		Please note that these regulations are mostly written in the context of new developments and how they would interact with the Conservation Districts or other approving authorities. DeIDOT follows these regulations fairly closely, but does have their own way of doing things which is not against the law, but just a little different than what is spelled out in these draft regulations.	Vince Davis, DeIDOT	Policies & Procedures