

1.0 General Provisions

1.1 Findings of Fact

1.1.1 It is determined that:

1.1.1.1 Erosion and sedimentation continue to present serious problems throughout the State.

1.1.1.2 The removal of a stable ground cover in conjunction with the decrease in the infiltration capacity of soils resulting from the creation of additional impervious areas such as roads and parking lots has accelerated the process of soil erosion and sediment deposition resulting in pollution of waters of the State. This damages domestic, agricultural, industrial, recreational, fish and wildlife and other resource uses.

1.1.1.3 Accelerated stormwater runoff increases flood flows and velocities, contributes to erosion, sedimentation and degradation of water quality, overtaxes the carrying capacity of streams and storm sewers, greatly increases the cost of public facilities in carrying and controlling stormwater, undermines floodplain management and flood control efforts in downstream communities, reduces groundwater discharge, and threatens public health, welfare and safety.

1.1.2 The regulation of stormwater runoff from land development activities will control stormwater runoff, soil erosion and nonpoint source pollution and will mitigate the adverse effects of stormwater runoff from development and will minimize threats to public health and safety.

1.2 Purpose

1.2.1 The purpose of this regulation is to enhance and extend the present erosion and sediment control activities and programs of the State for both rural and urban lands and to provide for control and management of stormwater runoff consistent with sound water and land use practices. These activities will reduce to the extent possible any adverse effects of stormwater runoff on the water and lands of the State.

1.3 Applicability

1.3.1 Land disturbing activities for residential, commercial, industrial, agricultural or institutional land uses that are not exempted by these regulations are subject to the requirements within. After [EFFECTIVE DATE], unless a particular activity is exempted by these regulations, a person may not disturb land without an approved Sediment and Stormwater Management Plan from the delegated agency. A Sediment and Stormwater Management Plan shall not be approved for a property unless it is consistent with the following items:

1.3.1.1 7 Del. C. Ch. 40, relating to erosion and sediment control and stormwater management, and;

1.3.1.2 These regulations, or duly adopted county or municipal ordinances that are adopted as a part of the delegation process and relate to the intent of these regulations.

1.3.1.3 7 Del. C. Ch. 60, Section 9.1.02 of the *Regulations Governing the Control of Water Pollution*, known as Special Conditions for Stormwater Discharges Associated with Construction Activities.

1.3.2 A proposed land disturbing activity for which a final plat or plan was approved prior to [EFFECTIVE DATE] shall be governed by the regulations in effect at the time of approval with the following exception:

1.3.2.1 Projects which have been approved prior to [EFFECTIVE DATE], and where site clearing has not been initiated on the project within two years of the project approval date, shall be resubmitted to the Department or delegated agency for review and approval subject to the requirements of these regulations.

1.4 Exemptions

1.4.1 The following activities are exempt from both sediment control and stormwater management requirements established by these regulations:

1.4.1.1 Agricultural land management practices unless the Department or delegated agency determines that the land requires a soil and water conservation plan, and the owner or operator of the land has refused either to apply to a Conservation District for the development of such a plan, or to implement a plan developed by a Conservation District.

1.4.1.2 Developments or construction that disturbs less than 5,000 square feet.

1.4.1.3 Land development activities which are regulated under specific State or federal laws which provide for managing sediment control and stormwater runoff. An example of this exemption would be specific permits required under the National Pollutant Discharge Elimination System when discharges are a combination of stormwater and industrial or domestic wastewater or which must comply with Parts 122, 123, and 124 of Title 40 of the Code of Federal Regulations. The Department shall ensure that all land developments which are regulated under specific State or federal laws are coordinated with delegated agencies to ensure compatibility of requirements.

1.4.1.4 Commercial forest harvesting operations that meet the requirements of the Department of Agriculture under 3 Del.C. Ch. 10, Subchapter VI.

1.4.1.5 Biosolids applications with an approved conservation plan, agricultural utilization permit, agricultural waste plan, and/or nutrient management plan.

1.5 Variances

1.5.1 The Department or delegated agency may grant a written variance from any requirement of these regulations if there are exceptional circumstances applicable to the site such that strict adherence to the provisions of these regulations will result in unnecessary hardship or not fulfill the intent of these regulations. A written request for a variance shall be provided to the Department or delegated agency in accordance with Section 3.6 and shall state the specific variances sought and the reasons for the request. The Department or delegated agency shall not grant a variance unless and until sufficient specific reasons justifying the variance are provided by the owner.

1.5.2 Projects which are emergency in nature that are necessary to protect life or property such as bridge, culvert or pipe repairs and above

ground or underground electric and gas utilities or public utility restoration may require a variance. The emergency nature of a project may preclude prior plan review and approval, but the project would not be exempt from the requirements of the Law or Regulations, and subsequent inspection may necessitate sediment control or site stabilization in accordance with the provision of these regulations. The delegated agency shall be notified verbally or in writing within 24 hours of the initiation of such emergency activity. The delegated agency shall determine and approve of the emergency nature of a project. As-built plans must be provided to the delegated agency in order to obtain post-construction approval. If the nature of the emergency will require more than 120 days to complete construction, formal approval shall be obtained for sediment control and stormwater management. These activities must still comply with other State, federal and local requirements.

1.6 Fees and Financial Guarantees

1.6.1 Fees

1.6.1.1 The delegated agency has the authority to require fees to support local plan review, inspection and program administration. Each owner seeking approval of a Sediment and Stormwater Management Plan shall pay a fee upon submittal of such plan, and shall pay a fee for inspection, as prescribed by the delegated agency. When the Department is the delegated agency, the fees shall not exceed \$80.00 per disturbed acre per project.

1.6.1.2 The establishment of fees, not involving stormwater utilities, shall be in accordance with the following items:

1.6.1.2.1 Delegation of program elements will depend, to a large extent, on funding and personnel commitments. If the delegated agency has a source of funding that is provided through State General or local revenues, then the implementation of the delegated component will not necessitate the imposition of a fee to cover the cost of the delegated program component.

1.6.1.2.2 In the event that one component of an overall sediment and stormwater management program is not funded through the use of general or special funds, a non-refundable fee will be collected at the time that the Sediment and Stormwater Management Plan application is submitted or approved. The fee will provide for the unfunded costs of plan review, administration and management of the delegated agency, construction review, maintenance inspection, and education and training. The delegated agency shall be responsible for the collection of the fee.

1.6.1.2.3 The number of needed personnel and the direct and indirect expenses associated with those personnel shall be developed by the agencies requesting delegation in a specific jurisdiction in conjunction with and with the concurrence of the Department. Those expenses will then form the basis for determining unit plan review, construction inspection and maintenance inspection costs.

1.6.1.2.4 The use of Certified Construction Reviewers for regular site construction review and certification of permanent stormwater management system construction may reduce the inspection

requirements for the delegated agency but may not eliminate that inspection requirement or fees associated with that requirement. Periodic overview inspections will still be necessary to ensure construction management.

1.6.2 Financial Guarantee

1.6.2.1 The Department or delegated agency may require a financial guarantee for construction of the elements of the approved Sediment and Stormwater Management Plan. The owner shall submit to the Department or delegated agency a financial guarantee prior to the onset of construction activities. 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 the time specified by the Department or delegated agency.

1.6.2.2 The amount of the financial guarantee shall not exceed 100% of the total estimated construction cost of all stormwater management systems combined.

1.6.2.3 The financial guarantee, so required, shall include provisions relative to forfeiture for failure to complete work specified in the approved Sediment and Stormwater Management Plan, compliance with all the provisions of these regulations, and other applicable laws and regulations, and any time limitations.

1.6.2.4 If the Department or delegated agency takes such action upon such failure by the owner, the Department or delegated agency shall collect from the owner the difference should the amount of reasonable cost of such action exceed the amount of the financial guarantee held.

1.6.3 Release of Financial Guarantee

1.6.3.1 The financial guarantee furnished pursuant to Section 1.6.2, or the unexpended or unobligated portion thereof, shall be returned to the owner within sixty (60) days of issuance by the Department or delegated agency of a Notice of Completion.

1.6.3.2 At the discretion of the Department or delegated agency, 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. For the purposes of this section, the time shall not exceed 1 year.

1.6.3.3 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.

1.6.3.3.1 Installation and maintenance of construction site stormwater management BMPs, including final stabilization of construction site disturbance;

1.6.3.3.2 Successful installation of permanent stormwater management systems and approval of As Built Plans, and
1.6.3.3.3 Transfer of permanent stormwater management systems to responsible maintenance entity, if applicable.

1.6.4 Fee-In-Lieu Payment

1.6.4.1 The Department may allow a Fee-In-Lieu program in accordance with an approved watershed or sub-watershed plan or stormwater master plan. Such a program shall be subject to review and approval by the Department.

1.6.4.2 Payment of a Fee-In-Lieu may be made only under the following circumstances:

1.6.4.2.1 As part of an approved variance request.

1.6.4.2.2 As part of an approved watershed plan with a structured implementation program that recommends payment for specific projects as part of an overall watershed planning strategy. In this case, the fee may substitute for full or partial compliance with on-site stormwater management requirements.

1.7 Legal Authority

1.7.1 These regulations are adopted pursuant to authority conferred by and in accordance with 7 Del. C. Ch. 40.

1.8 Compatibility with Other Program Requirements

1.8.1 These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of these regulations should be considered minimum requirements, and where any provision of these regulations imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

1.9 Severability

1.9.1 If any section, subsection, sentence, clause, phrase or portion of these regulations is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such provision and such holding shall not affect the validity of the remaining portions of these regulations.

1.10 Liability

1.10.1 Any person who undertakes or causes to be undertaken any land development shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The requirements of these regulations are minimum standards and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize pollution of, or detrimental impacts to receiving waters.

1.11 Hearings

1.11.1 The conduct of all hearings conducted pursuant to these regulations shall be in accordance with the relevant provision of 7 Del.C. Ch. 60.

1.12 Departmental Responsibilities and Authority

1.12.1 The Department is responsible for the implementation and supervision of the sediment and stormwater program which is established by 7 Del. C. Ch. 40.

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2.0 Definitions

2.1 As used in these regulations, the following terms shall have the meanings indicated below:

“Adequate Conveyance” means any conveyance system having sufficient capacity to convey the design storm event; the required freeboard and relief outlet to convey runoff from storm events larger than the design storm to the intended destination; an acceptable discharge location; functions and discharges in a non-erosive manner; and does not adversely impact the upstream or receiving property, drainage area, conveyance system, stormwater facility, or watercourse.

“Adverse Impact” means a negative impact to land or waters resulting from a construction or development activity. The negative impact includes increased risk of flooding; degradation of water quality; increased sedimentation; reduced groundwater recharge; negative impacts on aquatic organisms; negative impacts on wildlife and other resources, and threatened public health.

“Agricultural Land Management Practices” means those methods and procedures generally accepted by the Conservation Districts and used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

“As-Built Plans” means a set of engineering or site drawings that delineate the specific approved stormwater management system as actually constructed.

“Best Available Technology (BAT)” means a level of technology based on the very best (state of the art) sediment and stormwater control and treatment measures that have been developed or are capable of being developed and that are economically achievable.

“Best Management Practices (BMPs)” means schedules of activities, prohibition of practices, maintenance procedures, and other management practices or measures to prevent or reduce the discharge of pollutants. BMPs include the following, among other practices and measures: structural and non-structural controls; treatment requirements; operating procedures and practices to control site runoff.

“Biosolids” means solid or semi-solid material obtained from treated wastewater or animal manure.

“Brownfield” means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

“Certified Construction Reviewer” means those individuals, having passed a Departmental sponsored or approved training course and holding current certification, which provide on-site inspection for sediment control and stormwater management in accordance with these regulations.

“Conservation Plan” means a customized document that outlines the use and best management practices of the natural resources on agricultural lands.

“Conveyance Event” means the runoff event produced by a storm having a probability of occurrence of ten percent. The Conveyance Event Volume (Cv) to be managed is the difference in the volume of runoff produced in the developed condition by the storm having a ten percent probability of occurrence and the storm having a 100 percent probability of occurrence.

“Dedication” means transferring ownership of a stormwater management system to a delegated agency, public utility, municipality, or stormwater utility along with all associated easements, escrow funds, and maintenance responsibilities.

“Delegated Agency” means the Conservation District, county, municipality, or State agency that has accepted responsibility in a jurisdiction for implementation of one or more elements of the Sediment and Stormwater Program within that jurisdiction.

“Delegation” means the acceptance of responsibility by a Conservation District, county, municipality, or State agency for the implementation of one or more elements of the Sediment and Stormwater Program.

“Department” means the Department of Natural Resources and Environmental Control.

“Drainage Area” means that area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line.

“Easement” means a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

“Emergency Project” means a project that is immediately necessary to protect life or property such as bridge, culvert, pipe, or electric and gas utility repairs.

“Engineered Infiltration” means a stormwater runoff best management practice where the runoff volume is discharged into the soil following storage in a pond, underground pipe or storage system, stone-filled trench or other structure.

“Erosion and Sediment Control” means the control of solid material, both mineral and organic, during a land disturbing activity, to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.

“Exemption” means those land development activities that are not subject to the sediment and stormwater requirements contained in these regulations.

“Extended Detention” means... CWP to provide definition

“Extended Filtration” means ... CWP to provide definition

“Final Stabilization” means that:

(1) All soil disturbing activities at the site have been completed and either of the two following criteria are met:

(a) A uniform (e.g. evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or

(b) Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

(2) When background native vegetation will cover less than 100% of the ground (e.g., arid areas, beaches), the 70% coverage criteria is adjusted as follows: if the native vegetation covers 50% of the ground, 70% of 50% ($0.70 \times 0.50 = 0.35$) would require 35% total coverage for final stabilization. On a beach with no natural vegetation, no stabilization is required.

(3) For individual lots in residential construction, final stabilization means that either :

(a) The homebuilder has completed final stabilization as specified above, or

(b) The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.

(c) For construction projects on land used for agriculture purposes (e.g., pipelines across crop or range land, staging areas for highway construction, etc.) final stabilization may be accomplished by returning the disturbed land to its preconstruction agriculture use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to "water of the United States" and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) above.

"Financial Guarantee" means a bond, security, letter of credit, etc. provided by the owner to serve as a payment source should the owner fail to meet the obligations and requirements of the approved Sediment and Stormwater Management Plan.

"Flooding Event" means the runoff event produced by a storm having a probability of occurrence of one percent. The Flooding Event Volume (Fv) to be managed is the difference in the volume of runoff produced in the developed condition by the storm having a one percent probability of occurrence and the storm having a ten percent probability of occurrence.

"Grading" means excavating, filling (including hydraulic fill) or stockpiling of earth materials, or any combination thereof, including the land in its excavated or filled condition.

"Homeowners' Association" (HOA) means an organization of homeowners residing within a residential development whose purpose is to maintain and provide community facilities and services for the common use of the residents of the development.

“Impervious surface” means any constructed surface including asphalt, concrete, and roofs, that prevents precipitation from contacting the existing soil and does not allow significant amounts of water to penetrate the soil.

“Infiltration” means the passage or movement of water through the soil profile.

“Infill” means land development that occurs within designated areas based on local land use, watershed, and/or utility plans where the surrounding area is generally developed, and where the site or area is either vacant or has previously been used for another purpose.

“Inactive” means a construction site that has no construction activity, or the majority of the construction activity is within building structures, or minimal construction activity is occurring on individual building lots.

“Land Disturbing Activity” means a land change or construction activity for residential, commercial, industrial, and institutional land use which may result in soil erosion from water or wind or movement of sediments or pollutants into State waters or onto lands in the State, or which may result in accelerated stormwater runoff, including, but not limited to, clearing, grading, excavating, transporting and filling of land.

“Maintenance” means the work of keeping stormwater management systems including access routes and appurtenances (grade surfaces, walls, drains, dams and structures, vegetation and other protective devices) in a safe and functioning condition as the system was designed. Maintenance includes regular inspections, routine maintenance, and non-routine maintenance. Routine maintenance includes periodic, scheduled activities which must be performed in order to keep the system functioning properly, including mowing, selective vegetation removal and trash removal. , Non-routine maintenance includes structural repairs, aquatic vegetation control via herbicide application, or altering the original system dimensions.

“Notice of Completion” means a document issued by the Department or delegated agency at the end of project construction when all items and conditions of the approved Sediment and Stormwater Management Plan have been satisfied, as-built documentation verifies that the permanent stormwater management systems have been constructed in accordance with the approved Sediment and Stormwater Management Plan, and final stabilization of all disturbed areas on the site has been achieved.

“On-site Stormwater Management” means the design and construction of stormwater management BMPs that are required for a specific land disturbing activity.

“Operation and Maintenance Plan” means the plan which clearly identifies maintenance for all permanent stormwater management systems, and in which the owner of the property acknowledges his/her requirement to maintain these systems according to guidance provided by the Department.

“Owner” means a person undertaking, or for whose benefit, activities covered by these regulations are commenced and/or carried out, and/or the person responsible for maintenance of permanent stormwater management systems constructed to comply with these regulations.

“Person” means any State or federal agency, individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or other political subdivision of this State, any interstate body or any other legal entity.

“Permanent Stabilization” means the establishment of perennial vegetation by application of soil amendments, seed, and anchored straw mulch on disturbed areas that have reached final grade in order to stabilize the soil, prevent erosion, and reduce sediment and runoff to downstream or offsite areas.

“Pre-application Meeting” means a required meeting held with the owner or owner representative, plan designer, and Department or delegated agency plan reviewer prior to submittal of the preliminary plan to the local land use approval agency and/or prior to the PLUS meeting for that project. The purpose of the pre-application meeting is to review the Stormwater Impact Study, review the existing conditions on the site, discuss potential approaches for stormwater design, identify opportunities to use design techniques to reduce runoff rates, volumes, and pollutant loads, and develop a conceptual approach to stormwater management for the project.

“Redevelopment” means a change to previously existing, improved property, including but not limited to the demolition or building of structures, filling, grading, paving, or excavating, but excluding ordinary maintenance activities, remodeling of buildings on the existing footprint, resurfacing of paved areas, and exterior changes or improvements that do not materially increase or concentrate stormwater runoff or cause additional nonpoint source pollution..

“Resource Protection Event” means the runoff event produced by a storm having a probability of occurrence of 100 percent. The Resource Protection Event Volume (RPv) to be managed is the volume of runoff produced by the storm having a 100 percent probability of occurrence.

“Responsible Personnel” means a foreman or superintendent who is in charge of on-site clearing and land disturbing activities for sediment and stormwater control associated with a construction project.

“Runoff Reduction Practices” means... CWP to provide definition

“Sediment” means soils or other surficial materials transported and/or deposited by the action of wind, water, ice or gravity as a product of erosion.

“Sediment and Stormwater Management Plan” means a plan for the control of soil erosion, sedimentation, stormwater quantity, and water quality impacts resulting from any land disturbing activity.

“Standard Plan” means a set of pre-defined standards and/or specifications for minor land disturbing activities that may preclude the preparation of a detailed plan under specific conditions.

“State Waters” means any and all waters, public or private, on the surface of the earth which are contained within, flow through or border upon the State or any portion thereof.

“Stormwater” means the runoff of water from the surface of the land resulting from precipitation or snow or ice melt.

“Stormwater Impact Study” means documentation of existing site conditions developed for the owner by the plan designer and submitted to the Department or delegated agency prior to the pre-application meeting. The Stormwater Impact Study includes a project narrative and existing conditions maps for the project site.

“Stormwater Management System” means a system of vegetative, structural, and other facilities or measures that control the volume, conveyance, and rate of stormwater runoff, and manage water quality impacts of stormwater runoff caused by land disturbing and development activities.

“Stormwater Utility” means an administrative organization that has been established for the purposes of funding sediment control, stormwater management or flood control planning, design, construction, maintenance, and overall resource needs by authorized and imposed charges.

“Temporary Stabilization” means planting quick-growing vegetation and applying anchored straw mulch or other means to stabilize the soil and prevent erosion of a disturbed area until permanent vegetation or other stabilization measures can be established.

“Tidewater” means water that alternately rises and falls due to the gravitational attraction of the moon and sun and is under the regulatory authority of 7 Del.C. Ch. 72. Examples of tidewaters include the Atlantic Ocean, the Delaware Bay, and the Delaware Inland Bays.

“Transfer” means to convey responsibility for maintenance of a stormwater management system to a new owner.

“Unnecessary Hardship” means a deprivation of an owner's right to the beneficial use of property that is caused when these regulations make it impossible to receive a reasonable return from the property. Unnecessary hardship must involve unique characteristics of the property itself, not economic difficulties of the owner.

“Variance” means the modification of the minimum sediment and stormwater management requirements for specific site circumstances where strict adherence of the requirements would result in unnecessary hardship and not fulfill the intent of these regulations.

“Water Quality” means those characteristics of stormwater runoff from a land disturbing activity that relate to the chemical, physical, biological, or radiological integrity of water.

“Water Quantity” means those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff to downstream areas resulting from land disturbing activities.

“Watershed” means the total or partial drainage area contributing stormwater runoff to a single point.

3.0 Plan Approval Procedures and Requirements

3.1 Pre-Application Meeting and Conceptual Sediment and Stormwater Management Plan

3.1.1 All owners subject to these regulations are required to hold a pre-application meeting with the Department or delegated agency.

3.1.2 Prior to the pre-application meeting, the owner must submit a Stormwater Impact Study to the Department or delegated agency.

3.1.3 The purpose of the pre-application meeting is to review the Stormwater Impact Study, review the existing conditions on the site, discuss potential approaches for stormwater design, and identify opportunities to use design techniques to reduce runoff rates, volumes, and pollutant loads.

3.1.4 A conceptual approach to stormwater management will be developed at the meeting which will describe, in general, proposed land cover changes, stormwater discharge points, and how stormwater runoff through and from the development will be treated and conveyed. The approach shall utilize site planning and design techniques that reduce runoff rates, volumes, and pollutant loads. Such techniques include minimization and/or disconnection of impervious surfaces; development design that reduces the rate and volume of runoff; restoration or enhancement of natural areas such as riparian areas, wetlands, and forests; and distributed practices that intercept and treat runoff from developed areas.

3.1.5 The owner may not proceed with submittal of the Preliminary Sediment and Stormwater Management Plan until authorization from the Department or delegated agency is received. Authorization will be provided with the issuance of the Stormwater Impact Study Findings Report. This authorization, as well as an agreement that the owner will proceed with the agreed upon approach will be included in the meeting minutes and signed by both the Department or delegated agency representative and the owner.

3.1.6 The pre-application meeting shall be held prior to submittal of the preliminary plan to the local land use approval agency. The plan presented to the local land use approval agency shall reflect the conceptual approach agreed upon at the pre-application meeting. The results of the pre-application meeting will be subject to review by the local land use approval agency.

3.1.7 For projects subject to review through the Preliminary Land Use Service (PLUS), the pre-application meeting shall be held prior to the PLUS meeting. The plan presented at PLUS shall reflect the conceptual approach agreed upon at the pre-application meeting. The results of the pre-application meeting will be subject to review at PLUS.

3.2 Preliminary Sediment and Stormwater Management Plan

3.2.1 The Preliminary Sediment and Stormwater Management Plan submittal shall include preliminary plans for the site, as well as the schematic erosion and sediment control plan, with supporting hydrologic and

hydraulic calculations necessary for the delegated agency to determine compliance with these regulations.

3.2.2 The owner must submit to the Department or delegated agency written justification of changes in the conceptual approach agreed upon at the pre-application meeting.

3.2.3 The owner may not proceed with submittal of the Sediment and Stormwater Management Plan until approval of the Preliminary Sediment and Stormwater Management Plan is received from the Department or delegated agency.

3.3 Sediment and Stormwater Management Plan

3.3.1 Prior to commencing any land disturbing activity, a Sediment and Stormwater Management Plan, and/or an application for variance must be submitted to and approved by the delegated agency, unless otherwise exempted. No land disturbing activity shall commence until a plan approval is granted. Any land disturbing activity conducted in the absence of the approved Sediment and Stormwater Management Plan or not in conformance with an approved Sediment and Stormwater Management Plan shall be considered in violation of this regulation. The Department or delegated agency shall review the Sediment and Stormwater Management Plan to determine compliance with the requirements of these regulations prior to approval. The approved Sediment and Stormwater Management Plan shall serve as the basis for construction-phase and post-construction stormwater management on all subsequent construction.

3.3.2 The Sediment and Stormwater Management Plan submittal shall include a plan that satisfies the requirements of this section and any standards for design that are developed and approved by the Department or delegated agency, a permanent stormwater management system Operation and Maintenance Plan, and a certification stating that the owner will comply with all requirements of the approved plan. Failure of the owner to demonstrate that the project meets these requirements, as determined by the Department or delegated agency, shall be reason to deny approval of the plan.

3.3.3 A copy of the approved Preliminary Sediment and Stormwater Management Plan shall be submitted with the Sediment and Stormwater Management Plan. The Department or delegated agency shall check the Preliminary Sediment and Stormwater Management Plan for consistency with previous approval, and will require written justification if changes in the site development proposal have been made.

3.3.4 The Sediment and Stormwater Management Plan shall not be considered approved without the inclusion of a Department or delegated agency approval stamp, with signature and date of approval, on the plans.

3.3.5 The Sediment and Stormwater Management Plan shall contain supporting computations, drawings, and sufficient information describing the manner, location, and type of measures to be used to accomplish both construction site stormwater management and post-construction stormwater management for the entire development.

3.4 Review Procedures for Plan Submittals

3.4.1 The Department or delegated agency shall have a maximum of thirty (30) calendar days from receipt of either the Preliminary Sediment and Stormwater Plan or final Sediment and Stormwater Management Plan to complete their review and have either the approval or review comments transmitted to the owner.

3.4.2 The Department or delegated agency shall have the right to reject an incomplete application at any time during the 30-day review period. If an application is rejected for incompleteness, the owner will be informed in writing of the information necessary to complete the application.

3.4.3 If the 30-day time frame cannot be met, the Department or delegated agency shall notify the owner of the reasons for delay, and an expected time frame not to exceed an additional 30 days, when that review will be accomplished.

3.4.4 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. 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.

3.4.5 No changes shall be made to an approved plan without review and written approval by the Department or delegated agency. The Department or delegated agency may request additional data with a plan amendment as may be necessary for a complete review of the plan and to ensure that changes to the plan will comply with the requirements of these regulations.

3.5 Expiration of Plan Approval

3.5.1 Approved plans remain valid for 3 years from the date of an approval, unless specifically extended by the Department or delegated agency. The basis for extension may include, but is not limited to, the following items:

3.5.1.1 Failure to initiate the approved project for reasons acceptable to the Department or delegated agency such as funding or other agency permit delays; or

3.5.1.2 Time duration for a type of activity that typically exceeds three years.

3.5.2 The Department or delegated agency will extend plan approval following a written request for extension providing justification for the extension request.

3.5.3 The Department or delegated agency will provide notification to the owner of the approved plan expiration date.

3.6 Variance Request Review

3.6.1 If a variance will be requested, it shall be submitted in writing to the Department or delegated agency at the time of the Preliminary Sediment and Stormwater Management Plan submittal.

3.6.2 The Department or delegated agency shall review the variance request and provide a written response to the request within 30 days.

3.6.3 If the delegated agency finds that sufficient reasons justifying the variance have been presented, the variance may be approved with or without associated conditions.

3.6.4 Approval of a variance request may include a determination of fee-in-lieu requirements as described in Section 1.6.4.

3.7 Standard Plan Criteria

3.7.1 A standard plan will contain standard conditions for construction site stormwater management. The minimum criteria for the standard plan will be developed by the Department, and may be expanded upon by the delegated agency. The Department or delegated agency shall approve or deny standard plan requests within 14 calendar days of receipt.

3.7.2 The inclusion of an activity into the standard plan classification does not relinquish that activity from the requirements of 7 Del. C. Ch. 40. Rather, the standard plan precludes that activity from the necessity of a detailed plan review for each individual project.

3.7.3 Approval of a standard plan does not relieve the owner from the conditions that are a part of the standard plan approval regarding the implementation of control practices as required by the standard plan. Failure to implement control practices pursuant to conditions included in the standard plan may necessitate appropriate enforcement action as provided in 7 Del. C. Ch. 40 and these regulations.

3.7.4 Those activities that may be eligible for a standard plan, when the disturbed area does not exceed one acre, include the following:

3.7.4.1 Construction of individual detached residential homes. Smaller sites that are part of a larger, common plan of development or sale that is greater than one acre in size shall not be eligible for the standard plan.

3.7.4.2 Highway shoulder and side swale maintenance.

3.7.4.3 The repair, maintenance, and installation of above and underground utilities.

3.7.4.4 Modification or reconstruction of a tax ditch by a tax ditch organization when that tax ditch is not intended to serve new development.

3.7.4.5 Maintenance of approved stormwater management systems.

3.7.4.6 Construction of agricultural structures.

3.7.4.7 Construction of non-residential structures, with no other site development, where the impervious cover does not exceed 20% and runoff reduction techniques will be employed on the site.

3.7.4.8 Reconstruction of existing paved areas, re-grading and replacement of existing turfgrass areas, or rebuilding or repairing of structures damaged by fire, flood, wind, or other natural disaster and where the

disturbed area will return to the original hydrologic condition and land cover at the conclusion of the project.

3.7.5 The Department or delegated agency may place more restrictive conditions upon the standard plan approval including the requirement for detailed plans for any standard plan category if it is determined that site specific conditions warrant a detailed plan.

3.8 Plan Certifications

3.8.1 All plans submitted for review shall be prepared, signed, and sealed by a qualified design professional. It is the obligation of the qualified design professional to ensure that the design of all construction site stormwater management BMPs and permanent stormwater management systems meet the requirements in these regulations.

3.8.2 All Sediment and Stormwater Management Plans submitted for approval shall contain certification by the owner stating that clearing, grading, construction, and development will be accomplished pursuant to the plan and that responsible personnel involved in the land disturbance will have a certificate of attendance at the Contractor Training Program before initiation of the project.

3.8.3 All Sediment and Stormwater Management Plans shall contain certification by the owner of the right of the Department or delegated agency to conduct on-site inspections.

3.9 Coordination with Other Approvals and Permit

3.9.1 No grading or building permit for which sediment and stormwater management is required shall be issued without approval of a Sediment and Stormwater Management Plan.

3.9.2 Approvals issued in accordance with this regulation do not relieve the owner of responsibility for obtaining all other necessary permits and/or approvals from other federal, state, and/or local agencies. If requirements vary, the most restrictive shall prevail.

3.10 Operation and Maintenance Plan Requirements

3.10.1 Prior to approval by the Department or delegated agency of a Sediment and Stormwater Management Plan, each owner shall submit a post construction stormwater management Operation and Maintenance Plan for the entire site.

3.10.2 If the Sediment and Stormwater Management Plan includes structural or nonstructural measures located within a tax ditch right-of-way the Tax Ditch Organization shall be included in the Operation and Maintenance Plan.

3.11 Easements

3.11.1 Easements are required for all portions of the permanent stormwater management system located outside of the public right-of-way to allow for inspection and maintenance of the permanent stormwater management system.

3.11.2 Easements are required to provide an access route from the public right-of-way to the permanent stormwater management system to allow for inspection and maintenance. Access easements may coincide with easements established for inspection and maintenance of the permanent stormwater management system in accordance with 3.11.1.

3.11.3 Underground permanent stormwater management systems, including pipes, shall require a minimum 20-foot wide easement. The pipe must be located in the center of the easement. In the case of multiple pipes, the easement width shall include each of the pipes and the area between the pipes, as well as 10 feet outside from the centerline of the two outermost pipes.

3.11.4 Open permanent stormwater management systems, including swales, shall require a width equal to the width of the system at the proposed ground level plus a minimum 10-foot wide easement outside of the open permanent stormwater management system.

3.11.5 Easements are required for the permanent stormwater management system conveying managed stormwater from the project to the point of discharge. Offsite easements are required as necessary to meet this requirement.

3.11.6 Easements shall be established on the Record Plan and include notation specifying the purpose, use, and maintenance of the easement. The Record Plan containing easements shall be submitted to the Department or delegated agency for review and comment prior to recordation.

3.11.7 Easements, including offsite easements, shall run with the land.

3.12 As Built Plans

3.12.1 As Built Plans shall be submitted to the Department or delegated agency within 60 days of completion for any permanent stormwater management systems that are installed and stabilized in accordance with an approved Sediment and Stormwater Management Plan. The As-Built Plan shall compare the designed and constructed elements of the permanent stormwater management system, meet the criteria for as-built plans in the As-Built Checklist, and bear the seal of a qualified design professional. A final inspection and approval by the Department or delegated agency is required before any financial guarantee shall be released, or issuance of a Notice of Completion.

3.12.2 As-Built Plans shall be approved when those plans comply with the As-Built Plan checklist developed by the Department or delegated agency. As-Built Plans shall not be approved if they exhibit any changes from the approved Sediment and Stormwater Management Plan. As-Built Plan approval will not be granted until a revised plan reflecting the changes is approved.

4.0 Performance Criteria for Construction Site Stormwater Management

4.1 General Criteria

4.1.1 All construction site stormwater management BMPs shall be consistent with the standards and specifications contained in the Delaware Erosion and Sediment Control Handbook, and approved supplements. Revisions and/or updates to any of these documents shall be subject to public review and comment prior to their adoption.

4.2 Installation and Maintenance of Construction Site Stormwater Management BMPs

4.2.1 A sequence of construction shall be contained on all plans describing the relationship between the implementation and maintenance of sediment controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction.

4.2.2 All reasonable measures must be taken to employ best available technology (BAT) to reduce turbid discharges. Following documentation of turbid discharges, the Department or delegated agency may request that the Sediment and Stormwater Management Plan be revised accordingly to address use of BAT. BAT alternatives to be considered include flocculent application, on-site re-use, mechanical filtering, flow diversion or a "treatment train" approach to meet the regulatory requirements.

4.3 Limits on Land Disturbance: Phasing

4.3.1 Use of standard details from the Delaware Erosion and Sediment Control Handbook for design of construction site stormwater management BMPs is limited to sites where no more than 20 acres draining to a common discharge point will be disturbed at any one time. Disturbance shall be limited to 20 acres or less in order to limit the exposure of unstabilized earth and minimize erosion potential at the site. This will necessitate the phasing of construction on sites in excess of 20 acres to minimize areas of land disturbance. Grading of the second 20 acre section may not proceed until temporary or permanent stabilization of the first 20 acre section is accomplished.

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 Departmental guidance.

4.4 Clearing: Limits of Disturbance

4.4.1 A limit of disturbance line (L.O.D.) establishing the maximum necessary extent of land disturbance required to implement and accomplish the permitted site construction shall be required for all land-disturbing activities subject to this regulation.

4.4.2 The following areas shall be excluded from the limits of disturbance and shall be delineated on the approved plan and physically marked in the field:

4.4.2.1 Natural features identified in the natural resources inventory conducted as part of the Stormwater Impact Study in accordance with Section 3 that will be used to meet the stormwater management criteria in Section 5.

4.4.2.2 Natural features regulated by federal, state or local regulations.

4.5 Stabilization

4.5.1 Following soil disturbance or re-disturbance, permanent or temporary stabilization shall be completed within 14 calendar days for all perimeter sediment controls, topsoil stockpiles, and all other disturbed or graded areas on the project site. These requirements do not apply to those areas which are shown on the plan and are currently being used for material storage, or for those areas on which actual earth moving activities are currently being performed. For these areas, temporary stabilization is required if grades will not change for 14 days or more.

4.5.2 If within 60 days permanent or temporary stabilization applied to a disturbed area results in insignificant germination as determined by the Department or delegated agency, a soil test must be completed. Permanent or temporary stabilization shall be re-applied to the disturbed area in accordance with that soil test and the plan requirements within 14 days following the 60-day threshold.

4.5.3 Release of financial guarantee and/or issuance of Notice of Completion shall not occur until final stabilization of all exposed areas is achieved.

5.0 Performance Criteria for Post-Construction Stormwater Management

5.1 General Criteria

5.1.1 Stormwater management designs shall reduce runoff and mimic natural watershed hydrologic processes. This shall be accomplished through an optimization approach by treating runoff at the source, disconnecting impervious surfaces, preserving or enhancing natural flow paths and vegetative cover, preserving or enhancing natural open spaces and riparian areas, and other measures that simulate natural watershed hydrologic processes. The Department or delegated agency shall exercise discretion in the application of this standard, especially in cases of infill development, redevelopment, or other unique circumstances.

5.1.2 All hydrologic computations shall be accomplished using the most recent U.S.D.A. Natural Resources Conservation Service methodologies.

5.1.3 Residential, commercial or industrial developments shall apply these stormwater management criteria to land development as a whole. Smaller sites, such as individual residential lots in new subdivisions, that are part of a larger, common plan of development or sale shall be subject to these requirements as part of that larger plan.

5.1.4 All permanent stormwater management systems shall be designed and constructed in accordance with the standards approved by the Department.

5.1.5 The design of permanent stormwater management systems shall incorporate maintenance accommodation and long-term maintenance reduction features in accordance with the latest version of the Department-approved design guidelines and policies.

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-hour storm.

5.1.7 Velocity dissipation devices shall be placed at outfall locations and, if necessary, along the length of any conveyance system to provide non-erosive flow velocity from the permanent stormwater management system to the receiving stream or channel so that the natural physical and biological characteristics and functions are maintained and protected. Concentrated discharges from land development, including from permanent stormwater management systems, shall not be discharged onto adjacent property without adequate conveyance in accordance with Department guidance.

5.1.8 Permanent stormwater management systems within residential subdivisions that serve multiple lots and/or a combination of lots and roadways shall be located in common open space. All permanent stormwater management systems shall have provisions for access and long-term maintenance.

5.1.9 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 shall obtain authorization from the system's owner to discharge into the system. The Department, delegated agency, or owner may

require the owner to demonstrate that the system has adequate capacity for any increases in peak flow rates and velocities.

5.1.10 All applications that propose to use engineered infiltration or natural infiltration shall include a soil investigation performed in accordance with Department guidance.

5.2 Resource Protection Event Criteria

5.2.1 The Resource Protection Event criteria shall minimize the volume of stormwater runoff generated on a site, recharge groundwater, minimize impacts to downstream channels from runoff leaving the site, and reduce pollutant loads discharged into Delaware waterbodies.

5.2.2 The Resource Protection Event Volume (RPv) is the volume of runoff produced by the storm having a 100 percent probability of occurrence, or the 1-year, 24-hour rainfall event.

5.2.3 Compliance with this section may be accomplished through the following:

5.2.3.1 The entire post-development RPv shall be reduced using runoff reduction practices listed in [unnamed checklist].

5.2.3.2 The proposed project is limited to reconstruction of existing paved areas, re-grading and replacement of existing turfgrass areas, or rebuilding or repairing of structures damaged by fire, flood, wind, or other natural disaster and where the disturbed area will return to the original hydrologic condition and land cover at the conclusion of the project.

5.3 Conveyance Event Criteria

5.3.1 The Conveyance Event criteria shall provide runoff control to optimize watershed conveyance and minimize impacts to downstream channels and conveyance features.

5.3.2 The Conveyance Event Volume (Cv) is the difference in the volume of runoff produced by the post-development storm having a ten percent probability of occurrence, or the 10-year, 24-hour rainfall event, and the post-development storm having a 100 percent probability of occurrence, or the 1-year, 24-hour rainfall event.

5.3.3 Compliance with this section may be accomplished through the following:

5.3.3.1 The Cv shall be reduced using runoff reduction practices as listed in Department guidance.

5.3.3.2 For any portion of the Cv that is not reduced under Section 5.2 or 5.3.3.1, extended detention or extended filtration shall be provided in accordance with Department guidance.

5.3.3.3 Provisions will be made or exist for a nonerosive conveyance system to tidewater by either a closed drainage system or by open channel flow that has adequate capacity to convey the Cv and be non-erosive; or

5.3.3.4 Demonstration that the location of a project within a watershed would aggravate downstream flooding and/or channel erosion

by the imposition of peak control requirements, as evidenced by a downstream analysis approved by the Department or delegated agency.

5.3.3.5 The proposed project will generate only a minimal discharge and will have no adverse impact on the receiving wetland, watercourse, or waterway.

5.4 Flooding Event Criteria

5.4.1 The Flooding Event Criteria shall provide runoff control to optimize watershed storage and reduce downstream flooding.

5.4.2 The Flooding Event Volume (Fv) is the difference in the volume of runoff produced by the post-development storm having a one percent probability of occurrence, or the 100-year, 24-hour rainfall event, and the post-development storm having a ten percent probability of occurrence, or the 10-year, 24-hour rainfall event.

5.4.3 Compliance with this section may be accomplished through the following:

5.4.3.1 The Fv shall be reduced using the runoff reduction practices and associated credits listed in Department guidance.

5.4.3.2 For any portion of the Fv that is not reduced under Section 5.2 or 5.3, extended detention or extended filtration shall be provided in accordance with Department guidance.

5.4.3.3 Provisions will be made or exist for a nonerosive conveyance system to tidewater by either a closed drainage system or by open channel flow that has adequate capacity to convey the Fv and be non-erosive; or

5.4.3.4 Demonstration that the location of a project within a watershed would aggravate downstream flooding and/or channel erosion by the imposition of peak control requirements, as evidenced by a downstream analysis approved by the Department or delegated agency.

5.5 Alternative Criteria

5.5.1 Land development that discharges to waters included in an approved watershed plan, shall meet the alternative criteria identified in the approved watershed plan.

5.5.2. The Department or delegated agency, at its discretion, may require alternative stormwater treatment practices or criteria if a receiving waterbody has been identified as impaired, or designated with a specific pollutant reduction target necessary to meet State of Delaware water quality regulations.

5.5.3 The Department or delegated agency, at its discretion may require alternative stormwater treatment practices designed to reduce pollutant loading from a specific source.

5.6 Redevelopment, Brownfield and Infill Criteria

5.6.1 Redevelopment, brownfield development, and infill development are encouraged while still achieving the intent of these regulations. Compliance with this section shall be accomplished through compliance with

guidance and procedures for redevelopment, brownfield development and infill development criteria established by the Department. The approach selected for a particular site must be approved by the Department or delegated agency based on the results of the Stormwater Impact Study.

5.6.2 In the case of brownfield development, a remediation plan may meet the stormwater management goals and the intent of these regulations.

5.7 Contribution to a Watershed Project: Fee-In-Lieu

5.7.1 Any contribution to a project in an approved watershed plan through a fee-in-lieu payment shall be in accordance with Section 1.6.4.

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6.0 Inspection of Sediment and Stormwater Management Plan

6.1 Owner Responsibilities

6.1.1 The owner shall ensure that all elements of the approved Sediment and Stormwater Management Plan are implemented and all construction site stormwater management BMPs and permanent stormwater management systems are installed and maintained in accordance with that plan.

6.1.1.1 All construction sites, active and inactive, must comply with these regulations.

6.1.2 The owner 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.

6.1.3 The owner shall comply with the requirements contained in 7 Del. C. Chapter 60 Section 9.1.02 of the Regulations Governing the Control of Water Pollution.

6.1.3.1 The owner or owner's representative shall conduct weekly maintenance inspections of construction site stormwater management BMPs and permanent stormwater management systems.

6.1.3.2 The owner or owner's representative shall conduct inspections of construction site stormwater management BMPs and permanent stormwater management systems following rainfall events producing runoff.

6.1.3.3 The owner or owner's representative shall maintain written records of all inspections on the construction site.

6.1.3.4 The owner or owner's representative shall maintain the approved Sediment and Stormwater Management Plan on the construction site.

6.1.4 The owner is responsible for implementation of plan revisions when deficiencies are noted on site by the Department or delegated agency construction reviewer. The Department or delegated agency shall have the authority to require revisions to the approved Sediment and Stormwater Management Plan.

6.1.5 The owner shall certify to the Department or delegated agency that all responsible personnel involved in the construction project will have a certificate of attendance at the Contractor Training Program before initiation of any land disturbing activity. Responsible personnel shall implement the Sediment and Stormwater Management Plan fully through daily oversight of the construction site and guidance of construction personnel.

6.1.6 For all projects 20 acres or greater, the owner shall employ a Certified Construction Reviewer to perform weekly construction reviews of the approved Sediment and Stormwater Management Plan elements as well as construction reviews of installation of permanent stormwater management systems. Any project, regardless of its size, may be required by the Department or delegated agency, to have a Certified Construction Reviewer on a case-by-case basis. All Sediment and Stormwater Management Plans approved by the Department shall have a Certified Construction Reviewer. The Department may,

at its discretion following a written request, modify Certified Construction Reviewer reporting frequency for a particular site due to periods of inactivity. All costs and fees associated with the use of Certified Construction Reviewers shall be the responsibility of the owner.

6.1.7 The Certified Construction Reviewer employed by the owner shall be responsible for monitoring and reporting on the adequacy of construction pursuant to the approved Sediment and Stormwater Management Plan, in addition to the following items:

6.1.7.1 Provision of a construction review of active construction sites on at least a weekly basis;

6.1.7.2 Provision of a construction review of permanent stormwater management system construction at a frequency as needed to accurately complete the stormwater BMP construction checklist.

6.1.7.3 Within five calendar days of the construction review, informing the Department or delegated agency, the owner, and the contractor, by a written construction review report of site conditions including any inconsistencies with or inadequacies of the approved plan.

6.1.7.4 Referral of the project through the delegated agency to the Department for appropriate enforcement action if owner fails to address the items contained in the written construction review report. Verbal notice shall be made to the Department within two working days and written notice shall be provided to the Department within five working days.

6.1.8 Upon documentation by the Department or delegated agency of deficiencies in the performance of the Certified Construction Reviewer, and upon notification by the Department or delegated agency, the owner shall employ a new Certified Construction Reviewer. The owner shall employ a new Certified Construction Reviewer during any time of probation or suspension or upon revocation of Certified Construction Reviewer certification.

6.1.9 Upon written notice by the Department, delegated agency, or Certified Construction Reviewer, any portion of the work which does not comply with the approved Sediment and Stormwater Management Plan or these regulations shall be promptly corrected by the owner.

6.2 Contractor Training Program

6.2.1 Responsible personnel shall obtain a Contractor Training Program certificate of attendance by attending the Contractor Training Program and passing a test required as part of the training program.

6.2.2 Training shall be required of any foreman or superintendent who is in charge of on-site clearing and land disturbing activities for construction projects subject to the requirements of these regulations.

6.2.3 The Contractor Training Program certificate of attendance shall be valid until the Department notifies the individual or announces in local newspapers that additional training is required due to a change in course content.

6.2.4 Enrollment of existing and future responsible personnel is the responsibility of individuals or their employers. The Department shall provide

public notification of the date and location of training programs for attendance by responsible personnel and other interested persons.

6.3 Certified Construction Reviewer Requirements

6.3.1 The Certified Construction Reviewer shall function under the direction of a registered professional engineer licensed to practice engineering in the State of Delaware.

6.3.2 Certified Construction Reviewers shall attend and successfully complete the Departmental sponsored or approved Certified Construction Reviewer course.

6.3.3 The time frame for certification shall not exceed five years unless extended by the Department. A recertification option shall be offered to extend certification for an additional five years.

6.3.4 A Certified Construction Reviewer who is not performing duties as required in Section 6.1.7 may be placed on probation by the Department. During the probation period, the Department will evaluate the performance of the Certified Construction Reviewer and determine corrective action to be taken. While on probation the Certified Construction Reviewer shall not be allowed to provide construction reviews pursuant to these regulations.

6.3.5 If the Secretary or his designee determines that a Certified Construction Reviewer is not performing duties as required in Section 6.1.7, after incurring a period of probation, the Secretary or his designee may suspend or revoke the certification of the construction reviewer.

6.3.6 In any situation where a Certified Construction Reviewer's certification is being suspended or revoked, an opportunity for hearing before the Secretary or his designee shall be provided. During any suspension or revocation, the Certified Construction Reviewer shall not be allowed to provide construction reviews pursuant to these regulations. The minimum time of suspension or revocation shall be 6 months.

6.4 Department or Delegated Agency Construction Reviews

6.4.1 The Department or delegated agency may, at a reasonable time, visit any site subject to these regulations to determine compliance with these regulations, including implementation of the Sediment and Stormwater Management Plan.

6.4.2 The Department or delegated agency shall conduct regular inspections of the construction site at a frequency to ensure that all elements of the approved Sediment and Stormwater Management Plan are implemented and all construction site stormwater management BMPs and permanent stormwater management systems are installed and maintained in accordance with that plan.

6.4.3 All Department or delegated agency construction reviews shall be documented in writing and delivered to the owner. The inspection report shall document site conditions relevant to the Sediment and Stormwater Management Plan, identify deficiencies that warrant correction, and provide a reasonable time frame for the owner to respond to the inspection report.

6.4.4 When the Department or delegated agency determines a deficiency in the approved Sediment and Stormwater Management Plan, a revision to the approved plans may be required. Any change to the approved Sediment and Stormwater Management Plan initiated by the owner must be approved by the Department or delegated agency prior to construction.

6.5 Required Inspections and Notification Steps

6.5.1 The owner shall notify the Department or delegated agency in writing at least five days prior to the initiation of construction. The notification shall include the contact information for the responsible person. The notification shall verify that the Sediment and Stormwater Management Plan for the project has been approved and that permit coverage for Storm Water Discharges Associated with Construction Activity has been gained through submittal of a Notice of Intent to the Department. If there is a Certified Construction Reviewer requirement for the site, the application for Certified Construction Reviewer shall be included with the notification.

6.5.2 Required inspections for Standard Plan applications shall be determined by the Department or delegated agency based upon the project type and land disturbance on a case-by-case basis.

6.5.3 An on-site pre-construction meeting shall be required, unless otherwise waived by the Department or delegated agency. The pre-construction meeting shall include the following: Department or delegated agency personnel, the Certified Construction Reviewer, the owner, the responsible person, and contractor.

6.5.4 Upon completion of installation of perimeter controls, the Department or delegated agency shall conduct a perimeter control inspection prior to proceeding with bulk grading or other construction activities on the site. The perimeter control inspection shall be conducted by the Department or delegated agency personnel in coordination with the Certified Construction Reviewer, if applicable, and the responsible person.

6.5.5 All permanent stormwater management systems shall be inspected during construction with enough frequency to document that the system has been constructed in accordance with the approved Sediment and Stormwater Management Plan, the design specifications, and the appropriate permanent stormwater management system construction checklist. The owner shall provide adequate notice to the Department or delegated agency and Certified Construction Reviewer, if applicable, prior to initiating construction of permanent stormwater management systems. The Department or delegated agency shall be responsible for conducting and documenting these inspections; these inspections shall be conducted by the Certified Construction Reviewer when that requirement exists for the site.

6.5.6 Upon project completion a final inspection shall be conducted by the Department or delegated agency to ensure compliance with the approved Sediment and Stormwater Management Plan. The Department or delegated agency shall issue a Notice of Completion for a project when all of the following criteria have been met:

6.5.6.1 All items and conditions of the approved Sediment and Stormwater Management Plan have been satisfied.

6.5.6.2 As-Built documentation verifies that the permanent stormwater management systems have been constructed in accordance with the approved Sediment and Stormwater Management Plan.

6.5.6.3 Final stabilization of all disturbed areas on the site has been achieved.

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7.0 Post Construction Maintenance of Permanent Stormwater Management Systems

7.1 Responsibility for Maintenance of Stormwater Management Systems

7.1.1 Following the Department or delegated agency issuance of a Notice of Completion the owner assumes responsibility for post construction maintenance of permanent stormwater management systems.

7.1.2 Maintenance responsibility may be transferred from the current owner to a new owner, provided the following conditions are met:

7.1.2.1 A Notice of Completion has been issued by the Department or delegated agency and any financial guarantees related to the permanent stormwater management system construction have been released.

7.1.2.2 The Department or delegated agency has been notified in writing of the transfer of maintenance responsibility. Notification shall contain all pertinent contact information of the new owner.

7.1.2.3 The new owner shall certify to the approved Operation and Maintenance Plan. If in joint ownership, the Operation and Maintenance Plan must be certified by all members of the board or LLC.

7.1.2.4 The new owner shall not be responsible for maintenance of stormwater management systems until the Operation and Maintenance Plan has been transferred to the new owner.

7.1.3 The owner of a permanent stormwater management system required by this regulation may offer for dedication to a delegated agency, public utility, municipality, or stormwater utility, any such stormwater management system, together with such easements and appurtenances as may be reasonably necessary.

7.2 Owner Responsibilities

7.2.1 The owner shall maintain in good condition, and promptly repair and restore, all permanent stormwater management systems and all necessary access routes and appurtenances (grade surfaces, walls, drains, dams and structures, vegetation, and other protective devices) by performing both routine and non-routine maintenance as necessary to ensure proper functioning. Such repairs, restoration, or maintenance shall be conducted in accordance with the approved Sediment and Stormwater Management Plan, the Operation and Maintenance Plan, Standard Guidelines for Operation and Maintenance of Stormwater Management Systems, and any directions provided by the Department or delegated agency resulting from routine maintenance inspections.

7.2.1.1 When the Department or delegated agency gives direction for maintenance, those maintenance activities shall be conducted by the owner within the time established by the Department or delegated agency.

7.2.2 The owner shall conduct regular inspections of permanent stormwater management systems and following extreme flood events to determine that routine maintenance obligations are being met.

7.2.3 Any changes made to the permanent stormwater management system shall require the owner to obtain an approved Sediment and Stormwater Management Plan, and shall be in accordance with the deed of easement and shall necessitate updating the Operation and Maintenance Plan. The owner shall submit any scope of work for non-routine maintenance to the delegated agency for approval prior to implementation.

7.2.4 The owner shall make records of installation, maintenance, repairs, and document any other maintenance of stormwater management systems, and shall retain the records for at least five (5) years. These records shall be made available to the Department or delegated agency during inspection of the practice and at other reasonable times upon request.

7.2.5 The owner shall transfer the responsibility for such maintenance of permanent stormwater management systems to successors in title in accordance with 7.1.2.

7.3 Maintenance Inspections

7.3.1 The Department or delegated agency shall conduct inspections of all permanent stormwater management systems for which a Notice of Completion has been issued.

7.3.1.1 Where the stormwater management system is located on state or federal land, the Department shall be responsible for conducting the inspection.

7.3.1.2 Inspections will be conducted biennially (every two years) unless other permit conditions require more frequent maintenance inspections.

7.3.2 The inspection performed by the Department or delegated agency shall document any maintenance and repair needs and any discrepancies from the approved Operation and Maintenance Plan. The Department or delegated agency shall provide procedures to ensure that deficiencies indicated by inspections are rectified. The procedures shall include the following:

7.3.2.1 Notification to the owner for maintenance of deficiencies including a time frame for repairs;

7.3.2.2 Subsequent inspection to ensure completion of repairs.

7.3.3 The Department or delegated agency has the right of entry for the purposes of inspecting all permanent stormwater management systems at reasonable times and in a reasonable manner. This includes the right to enter a property when the Department or delegated agency has a reasonable basis to believe that a violation of this regulation is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this regulation.

7.4 Enforcement of Maintenance Responsibilities

7.4.1 The Department may seek enforcement action against any owner deemed negligent in fulfilling the requirements of Section 7 of these regulations.

7.4.2 Enforcement will be conducted in accordance with Section 8 of these regulations.

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8.0 Enforcement and Penalties

8.1 Any action or failure to act, which violates the provisions of this regulation, the requirements of an approved Sediment and Stormwater Management Plan, permit, Notice of Intent, inspection report, notice of violation, and/or the requirements of a certified Operation and Maintenance Plan, may be subject to the provisions of Sections 4012, 4013, 4015, 4016 of 7 Del. C., Ch. 40 and/or Sections 6005, 6013, 6018 of 7 Del. C., Ch. 60.

8.2 The delegated agency may, in addition to local enforcement options, refer a site violation to the Department for additional enforcement action.

8.2.1 Referral of a site violation to the Department may initiate a Departmental construction review of the site to verify site conditions. That construction review may result in the following actions:

8.2.1.1 Notification through appropriate means to the owner and the contractor to comply with the approved Sediment and Stormwater Management Plan within a specified time frame; and

8.2.1.2 Notification of plan inadequacy with a time frame for the owner to submit a revised Sediment and Stormwater Management Plan to the Department or delegated agency and to receive its approval with respect thereto. The Department shall notify the delegated agency in a timely manner of what enforcement action is taken on the site.

9.0 Delegation of Program Elements

9.1 The provisions of these regulations may be delegated to the Conservation Districts, counties, municipalities, or State agencies. Initial consideration regarding delegation of program elements shall be given to the Conservation Districts. Program elements that are delegated shall be implemented according to Chapter 40 and these regulations.

9.2 A Conservation District, county, municipality, or State agency requesting or renewing delegation shall submit a written request to the Secretary on or before January 1 of the year immediately preceding the fiscal year for which delegation or renewal of delegation is sought. The request for delegation shall contain sufficient information to determine whether the agency may be considered capable of implementing program elements in accordance with Chapter 40 and these regulations. The Department shall provide guidance to agencies requesting delegation of program elements as to information that shall be submitted with the delegation request.

9.3 The Secretary shall grant delegation of program elements to any Conservation District, county, municipality, or State agency seeking delegation that is found capable of implementing program elements in accordance with Chapter 40 and these regulations.

9.4 The Secretary shall, in writing, grant or deny delegation on or before April 1 of the year during which delegation is sought. The Secretary may not deny a request for delegation unless opportunity has been afforded to the appropriate officials from the agency requesting delegation to present arguments. Delegation shall be effective July 1 of that year and extend no more than three years, unless renewed. In the event that the Department does not act on the renewal request by April 1, the delegated agency submitting the request would be entitled to continue operating for a subsequent three year time period unless action is taken by the Department to suspend the program.

9.5 Delegation of program elements may be granted for a maximum time frame of three years. After three years a new application to the Department must be made. Over the time frame for which delegation has been granted, the Department will evaluate delegation implementation, coordinate review findings with the delegated agency, and determine if the new delegation should be granted.

9.6 Based upon the Department's evaluation of delegated agency performance, the Department may determine that re-delegation of program elements may be granted for a time period of less than three years. A delegation period of less than the maximum of three years shall be considered a probationary delegation and specific improvement items shall be provided to the delegated agency. If program implementation is not improved during the probationary delegation, delegation may not be renewed beyond the probationary delegation period.

9.7 A Conservation District, county, municipality, or State agency which has been granted delegation program elements may establish alternative requirements which are compatible with or are more stringent than Departmental requirements. These alternative requirements may be implemented only when

prior Departmental approval has been granted. These alternative requirements shall apply in lieu of the provisions of these regulations in the specific program element that has been delegated. Alternative requirements shall be implemented only after public notice has been provided which would allow for public review and comment prior to Departmental approval.

9.8 A delegated agency may sub-delegate program elements, with Departmental concurrence, to a stormwater utility or other responsible entity or agency.

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10.0 Criteria for Implementation of a Stormwater Utility

10.1 The implementation of a stormwater utility will necessitate the development of a local utility ordinance prior to its implementation. There are essential components that an ordinance must contain to function as a funding mechanism for stormwater management and those components shall include, but not be limited to, the following items:

10.2 The financing of a stormwater utility with a user charge system must be reasonable and equitable so that each user of the stormwater system pays to the extent to which the user contributes to the need for the stormwater system, and that the charges bear a substantial relationship to the cost of the service. The use of county and municipal taxpayer rolls and accounting systems are allowed for the assessment and collection of fees.

10.3 The intent of the utility must be clearly defined regarding program components that are to be funded through the utility. Those components may include but not be limited to the following activities:

10.3.1 Preparation of long range watershed master plans for stormwater management,

10.3.2 Annual inspections of all stormwater management systems, both public and private,

10.3.3 Undertaking regular maintenance, through contracting or other means, of stormwater management systems that have been accepted for maintenance,

10.3.4 Plan review and inspection of Sediment and Stormwater Management Plans and practices, and

10.3.5 Retrofitting designated watersheds, through contracting or other means, to reduce existing flooding problems or to improve water quality.

10.4 The authority for the creation of the stormwater utility and the imposition of charges to finance sediment and stormwater activities is conferred in 7 Del.C. Ch. 40. The application of a stormwater utility by means of a local ordinance shall not be deemed a limitation or repeal of any other powers granted by State statute.

10.5 The creation of a stormwater utility shall include the following components:

10.5.1 The boundaries of the utility, such as watersheds or jurisdictional boundaries as identified by the local governing body,

10.5.2 The creation of a management entity,

10.5.3 Identification of stormwater problems,

10.5.4 Method for determining utility charges,

10.5.5 Procedures for investment and reinvestment of funds collected, and

10.5.6 An appeals or petition process.

10.6 As established by local ordinance, the local governing agency shall have responsibility for implementing all aspects of the utility including long range planning, plan implementation, capital improvements, maintenance of stormwater systems, determination of charges, billing, and hearing of appeals and petitions.

The local agency also will have responsibility for providing staff support for utility implementation in the event that an agency or department other than the one in which the utility is located is best equipped to undertake a particular task, the local governing agency shall ensure that appropriate interagency charges are determined such that all costs of stormwater management are reflected in the utility budget and that utility charges finance all aspects of stormwater management.

10.7 With respect to new stormwater management systems constructed by private owners, the local governing agency shall develop criteria for use in determining whether these will be maintained by the utility or by the system owner. Such criteria may include whether the system has been designed primarily to serve residential users and whether it has been designed primarily for purposes of stormwater management. In situations where it is determined that public maintenance is not preferable, standards shall be developed to ensure that inspection of facilities occurs annually and that facilities are maintained as needed.

10.8 The use of charges is limited to those purposes for which the utility has been established, including but not limited to: planning; acquisition of interests in land including easements; design and construction of facilities; maintenance of the stormwater system; billing and administration; and water quantity and water quality management, including monitoring, surveillance, private maintenance inspection, construction inspection, and other activities which are reasonably required.