

# Reg Revisions Comments Tracking

Section Number	Subsection:	Comment	Comment Response
General Comment	General Comment	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). ☒	Development of reg revisions is moving forward in accordance with the recommendations of the Governors Surface Water Task Force and to keep current with changing Federal requirements.
General Comment		I don't have any substantive comments regarding the draft regulations other than to tell you I like the Resource Protection and Conveyance Event Criteria. I realize site design issues are not really part of the regulations (presumably more in the technical guidance manual and example stuff), but it would be nice to raise the issue of "conservation design" somewhere in the regulations	Runoff reduction practices shall be used to meet the resource protection event criteria. Conservation design approaches will be credited for their runoff reduction capabilities, but not necessarily called out in the reg language.
General Comment	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:	Department believes that the three steps in the plan review process are all critical and need to be covered. The County or other delegated agencies will have the ability to require more information at each step, but the Department will establish the minimum process.
General Comment	General Comment	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.	An analysis of the economic impacts of the proposed regulation revisions will be conducted.
General Comment	General Comment	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!	An analysis of the economic impacts of the proposed regulation revisions will be conducted.

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General Comment	General Comment	<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. ☐ ☐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>	Development of reg revisions is moving forward in accordance with the recommendations of the Governors Surface Water Task Force and to keep current with changing Federal requirements.
General Comment		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.	No response necessary
General Comment		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.	No response required
General Comment	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.	Department believes that the three steps in the plan review process are all critical and need to be covered. The County or other delegated agencies will have the ability to require more information at each step, but the Department will establish the minimum process.

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General Comment		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.	DeIDOT will be required to follow the regulations with their capital projects but the regulations are being written to state what criteria needs to be met and then the technical document will state how to meet that criteria. DeIDOT and DNREC may need to work together to develop technical guidance specific to DeIDOT projects while still meeting the regulations.
General Comment		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.	1.2.1 eliminated; 1.3.2.1 converted to 1.3.3; 1.4 edited to address eliminate 1.4.1 with subsections, now 1.4 with 1.4.1 through 1.4.5 subsections; 1.7.1, 1.8.1, 1.9.1, 1.10.1, 1.11.1 and 1.12.1 eliminated and combined with main heading; 2.1 eliminated and placed at 2.0; 4.1.1 eliminated; 5.7.1 eliminated; 6.1.1.1 eliminated and combined with 6.1.1; 7.2.1.1 eliminated and combined with 7.2.1; 8.2.1 eliminated and 8.2.1.1 and 8.2.1.2 changed to 8.2.1 and 8.2.2;
General Comment		The code seems incomplete. It is difficult to discern the design criteria for stonwater 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 stonwater volume control is unclear, and there are no criteria or checklists for plan submissions.	Revisions to reg language clarify requirements
General Comment	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	Department believes that the three steps in the plan review process are all critical and need to be covered. The County or other delegated agencies will have the ability to require more information at each step, but the Department will establish the minimum process.

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General Comment		<p>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;</p>	<p>"May" replaced with "shall" in applicable sections throughout the regulation. "Reduce" in Section 5 now provides criteria for achieving reduction, or METF so that there is "no adverse impact"; trying to remove "minimize" in 5.2.1 - not completed yet</p>
General Comment		<p>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:</p>	<p>No response required</p>
General Comment	3.0	<p>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.</p>	<p>Department believes that the three steps in the plan review process are all critical and need to be covered. The County or other delegated agencies will have the ability to require more information at each step, but the Department will establish the minimum process.</p>
General Comment		<p>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</p>	<p>We are pursuing legal advice on how to allow more enforcement options</p>

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General Comment		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.	Governor's Surface Water Task Force recommended revision of the Sediment and Stormwater Regulations to address volume management, flooding, and plan review process improvement. Federal requirements for water quality improvement (TMDL, ELG, etc.) are being addressed as well.
General Comment		I suppose the thing I would emphasize most is WHY are we doing this NOW? 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 slow down 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.	Governor's Surface Water Task Force recommended revision of the Sediment and Stormwater Regulations to address volume management, flooding, and plan review process improvement. Federal requirements for water quality improvement (TMDL, ELG, etc.) are being addressed as well.
General Comment	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.	Technical document and designer training will address options for management in areas with high water tables.
General Comment		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.	Siting criteria will be addressed in the Technical Document

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General Comment		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?]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?	Setback/separation requirements will be contained in the Technical Document
General Comment		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.	The standard plan section of the technical document will address the use of standardized stormwater management runoff reduction methods for minor projects. The guidance document will address how "no adverse impact" will be determined numerically.
Section 1 General Provisions	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.	Grandfather clause will not be provided in the regulation language as this is a temporary condition. A policy for compliance for projects already in the review process will be developed for the transition period.
Section 1 Gener	1.2.1	In the last sentence, strike "possible" and replace with "practicable."	addressed in 1.2

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Section 1 General Provisions	1.6.1.1	The \$80 fee should be removed in favor of a fixed percentage of land value per acre sshould be inserted. By selecting a percentage, the regulation will not need to be changed as costs increase. Also, since property is usually of higher value if in an urban area, along a waterway, etc, the fee will be more in line with the potential costs of building/maintaining the stormwater infrastructure and/or the potential impact on an amenity, including nearby waters of the US. Also, the fee should be for total acreage, not just disturbed acreage. If, for example, a wetland in the area is not "disturbed" it is nonetheless disturbed by any subsequent runoff and the fee should reflect potential environmental damages. Also, the fee should include a sum that would cover any potential environmental damages that may occur during construction.	\$80 per acre only applies to Dept projects and is specified in the Law. Local delegated agencies may take these comments into account when developing their own fee structures.
Section 1 General	1.1.1.2	Insert following sediment deposition: ", and nonpoint source runoff of other pollutants"	Recommended language included; however, we do need a legal opinion since the unmodified language is straight out of the Law.
Section 1 General	1.1.1.1	Are serious problem still associated with Construction activities? I do not generally agree	EPA thinks so as is evidenced by the effluent limitation guidelines.
Section 1 General	1.1.1.1	Insert following sedimentation: ", and delivery of other nonpoint source pollutants such as nutrients, via stormwater runoff"	Recommended language included; however, we do need a legal opinion since the unmodified language is straight out of the Law.
Section 1 General Provisions	1.2	Current regs only adopted in '05. Have they been accessed for effectiveness. Provide documentation	The 2005 and 2005 revisions of the regulations only looked at very small portions of the regulatory language. DNREC has thoroughly assessed the current regulations, first adopted in 1991, for effectiveness over the past 19+ years and believes that this reg revision is necessary. The Governor's Surface Water Task Force recommended revision of the regulations as well.
Section 1 General	1.1	Do you need to reference the Regulations Governing the Pollution Control Strategy?	Section 5.5 will cover TMDL requirements statewide.
Section 1 Gener	1.2.1	replace possible w/ practical	addressed in 1.2

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Section 1 General Provisions	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.	Coincidental peaks from site-based management does not prevent downstream flooding. Proposed stormwater management approach looks at a watershed scale to allow for no adverse impact downstream. Enough options are provided for management to overcome the varying conditions throughout the state.
Section 1 General Provisions	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.	We do not dispute this comment; however, EPA is expecting heightened construction site stormwater management which will be addressed by these reg revisions.
Section 1 General Provisions	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?)	TMDL requirements will be addressed in 5.5; not referencing a reg for a specific watershed in 1.3.1, only statewide requirements.
Section 1 General	1.6.2.1	What form can the financial guarantee be in? (bond, letter of credit, other)	Financial guarantee defined in Sect 2.
Section 1 Gener	1.3.1.1 & others	Should be "Del.C." bold, no underline throughout document	Addressed throughout document
Section 1 General Provisions	1.3.1.2	Section statement should end with ", and;" so that section 1.3.1.3 is included in the list.	This comment has been addressed; in addition 1.3.1.3 is split into two subsections: 1.3.1.3 relating to Ch. 60 and 1.3.1.4 relating specifically to the Construction general permit regulations.
Section 1 General Provisions	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?	Standard plan criteria remain for individual lot construction in Section 3. This is unchanged from the current version of the regulations. Single lots are currently not exempt; they're eligible for a standard plan. *****3/9/10 Single lot development may need to look at stormwater impacts, particularly for infill development, but this would need to be covered by local codes and ordinances; will not be addressed in these regulations.
Section 1 General	1.4.1.2	Has the concept of also using an impervious cover threshold, which the CWP proposed, been ruled out?	This concept was ruled out by the RAC - need to verify

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Section 1 General Provisions	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?	1.4.1.3 is now 1.4.3 and the wording "with concurrence of the Department" has been added. Some land disturbance may be associated with operations of industrial sites already having an NPDES industrial discharge permit. This section requires the two programs to agree upon the best permitting and management of disturbances on industrial sites.
Section 1 General Provisions	1.5	There needs to be a way for a variance to be preliminarily granted earlier in the design phase.	Variance procedure will follow rigorous Ch. 60 procedure. Enough flexibility and options will be provided in the technical requirements that variance requests will be rare and the process should be suitably onerous.
Section 1 General	1.5.1	Clarify - Exactly who will make the determination on the Variances and what Appeal Process may be utilized by the Applicant.	Variance process will be that established under 7 Del. C. Ch. 60, with appeals to Environmental Appeals Board
Section 1 General Provisions	1.5.1	Suggest giving an example or 2 of a reason to justify a variance.	Delegated agencies will not be responsible for approving variances under the Ch. 60 procedure. Enough flexibility and options will be provided in the technical requirements that variance requests will be rare. Examples of justification of variances will not be provided.
Section 1 General Provisions	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.	Grandfather clause will not be provided in the regulation language as this is a temporary condition. A policy for compliance for projects already in the review process will be developed for the transition period.
Section 1 General	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.	1.6.1.2.4 removed from the reg language.
Section 1 General Provisions	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.	The phrase "reduces groundwater discharge" is in the Sediment and Stormwater Law and cannot be changed by these regulations.

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Section 1 General Provisions	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.	An offset provision section will be added in Section 5 that would allow for elimination of 1.6.4 completely.
Section 1 General Provisions	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?	An offset provision section will be added in Section 5 that would allow for elimination of 1.6.4 completely.
Section 1 General	1.6	Making the performance and Maintenance Bonds Mandatory	1.6.2 Financial Guarantee leaves the door open for a local agency to set up a process for requiring financial guarantees.
Section 1 General Provisions	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?	Language generalized - "...upon submittal of such plan, and shall pay a fee for inspection,..." eliminated. It now reads "each owner seeking approval of a ... Plan shall pay a fee prescribed by the delegated agency". Further, the first sentence was generalized as well. "plan review, inspection and program administration" was replaced with "program implementation". *****3/9/10: A list of program elements was included back in the reg language to be consistent with the Law.
Section 1 General Provisions	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)☹️	\$80/acre charged by the Dept could be removed from regulations since it's covered in the Law.

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Section 1 General Provisions	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.	The current Dept fee of \$80/acre covers plan review, construction inspection and maintenance inspection and is not high but is established in the Law. Delegated agencies' fee structures are based upon the actual cost for reviewing, approving and inspecting a project, and are subject to public review prior to adoption.
Section 1 General Provisions	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.	This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	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.	Section 1.6.1 allows a delegated agency to set a fee schedule, following public notice, to support their program. Other delegated agencies are funding their program implementation without significant outside funding.
Section 1 General Provisions	1.6.2.2	Please clarify limits of Stormwater management system for estimated construction cost. Does this include inlet pipes and culverts?	This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	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.	All fee schedules will be subject to public review prior to adoption by the delegated agency.
Section 1 General Provisions	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.	Economic impacts of the regulation revisions will be evaluated
Section 1 General	1.6.2	Will there be a sample document with the preferred language provided as a guide?	This may be provided as part of the Technical Document at a future time; probably not prior to reg promulgation.

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Section 1 General Provisions	1.3.2.1	Why are 2 years stipulated as the expiration date for older plans? I would recommend 3 years.	This subsection is now 1.3.4. Two-year sunset from the approval date has been changed to three years to reflect the time prior to plan expiration; furthermore, the wording has been updated from "projects wich have been approved" to "projects which have received sediment and stormwater management plan approval"; "site clearing" changed to "construction activity"; "project approval" changed to "plan approval".
Section 1 General	1.6.2.1	Correction Through Out – Financial Guarantee should be capitalized, as it relates to a specific definition	Dept does not agree. No change made.
Section 1 General Provisions	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 [reasonable] time specified by the Department or delegated agency. ☐	addressed - wording changed.
Section 1 General Provisions	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.	This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	1.6.2.2	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. ☐☐ 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. ☐☐ 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 DelDOT. ☐	1.6.2.2 through 1.6.2.4 deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.

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Section 1 General Provisions	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.	Financial guarantee definition provided in Section 2; Individual procedures for implementation of a financial guarantee will be developed by the local agency and subject to public review prior to adoption.
Section 1 General Provisions	1.6.2.2	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.	This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	1.6.2.3	Please clarify the procedure for forfeiture of the financial guarantee	1.6.2.3 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	1.1.1.2	"decrease in the infiltration capacity of soils" - Provide documentation that this is happening in sandy coastal soils of Sussex Co.	When even the extremely pervious soils in Coastal Sussex are paved or put under roof, the infiltration capacity has been reduced.
Section 1 General Provisions	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?	1.6.1.2.2 revised to require public review of fee schedules. 1.6.1.2.3 revised to 1.6.1.2.1 to address how fee schedule is developed.
Section 1 General Provisions	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.	1.6.3 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.

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Section 1 General Provisions	1.6.2.2	The amount of the fee should exceed 100% of the total estimated cost of all stormwater management systems combined. As described in in 1.6.3.2 initial maintenance is of concern, so therefore the guarantee should cover that as well. Also, it is well known that developers often deplete the HOA funds (including capital reserves) during the sales period. A developer may raid HOA funds that were to be retained for maintenance activities so that fees do not go up in the sales period. If such funds are depleted, the HOA will have many priorities for funding. The State should require that the HOA fund for stormwater be protected, and this guarantee should serve as that protection.	This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	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). <sup>2</sup>	1.6.3 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	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?	An offset provision section will be added in Section 5 that would allow for elimination of 1.6.4 completely.
Section 1 General Provisions	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.	An offset provision section will be added in Section 5 that would allow for elimination of 1.6.4 completely.
Section 1 General Provisions	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?	An offset provision section will be added in Section 5 that would allow for elimination of 1.6.4 completely.

Section Number	Subsection:	Comment	Comment Response
Section 1 General Provisions	1.6.4	Fee in Lieu Program - Based on what criteria? Acres, volume, cost of construction and design? Number of participating land owners.	1.6.4 has worded to allow the Department or delegated agency to develop a fee-in-lieu or offset program. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the fee-in-lieu or offset option. The Department or delegated agency procedure would be subject to public review prior to adoption. An offset provision section will be added in Section 5 that would allow for elimination of 1.6.4 completely.
Section 1 General Provisions	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	1.6.4 has worded to allow the Department or delegated agency to develop a fee-in-lieu or offset program. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the fee-in-lieu or offset option. The Department or delegated agency procedure would be subject to public review prior to adoption. An offset provision section will be added in Section 5 that would allow for elimination of 1.6.4 completely.
Section 1 General Provisions	1.6.3.1	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.	time period removed completely (imposing a 60-day time frame on the Dept or delegated agency is self-regulating) *****3/9/10: 1.6.3 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	1.6.1.2.2	Public Works feels education and training should be removed from this section.	Wording of 1.6.1.2.2 generalized to "Sediment and Stormwater Program implementation" *****3/9/10: 1.6.1.2.2 eliminated completely.
Section 1 General Provisions	1.6.3.3	Include the following: "Examples of warranted releases include but are not limited to: ..."	1.6.3 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.

Section Number	Subsection:	Comment	Comment Response
Section 1 General Provisions	1.6.3	This section holds that the guarantee shall be returned within 60 days of notice of completion. This should have an additional condition, as identified above, that the HOA fund has been shown to have sufficient funds for at least 1 year of maintenance.	1.6.3 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	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.	1.6.3.2 reworded: "Given substantial reasonable cause, the Department or delegated agency may extend all or 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. For the purposes of this section, the time shall not exceed 1 year."*****3/9/10: 1.6.3 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	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.	reworded to "Given substantial reasonable cause, the Department or delegated agency may extend all or a portion of the financial guarantee 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." *****3/9/10: 1.6.3 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	1.6.2.4	how would the delegated agency collect any additional costs from the developer?	1.6.2.4 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.

Section Number	Subsection:	Comment	Comment Response
Section 1 General Provisions	1.6.2.4	How is collection of the forfeiture to be done?	1.6.2.4 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	General Comment	Consideration should be given to projects that have started under the current regs and have stopped - how will they fit under the proposed requirements? Need to address in regulations what to do with projects that stop construction prior to completion.	1.3.5 placeholder added - needs to be reviewed*****1.3.3 - projects now follow local sunset provisions.
Section 1 General Provisions		When regulations are incorporated by reference into local ordinances, what legal mechanism is necessary for local agencies to enforce those regulations?	Bob Phillips will work on this with NCC.
Section 1 General Provisions	1.3.2	What would be the effective date of the revised regulations? What happens to projects already under design?	Expected that implementation will follow the procedures set forth in the Inland Bays Pollution Control Strategy. 1.3.2 wording changed and 1.3.3 added to be consistent with the implementation strategy of the Inland Bays PCS (EZW 4/30/09) *****3/9/10: Inland Bays PCS implementation strategy will not be followed. Grandfather clause will not be provided in the regulation language as this is a temporary condition. A policy for compliance for projects already in the review process will be developed for the transition period.
Section 1 General Provisions	1.3	Effective date of the proposed regulations should follow the Inland Bays PCS proposed implementation schedule.	In 1.3.1 and 1.3.2 [EFFECTIVE DATE] has been replaced with "the effective date of these regulations". *****3/9/10: The Inland Bays PCS proposed implementation schedule will not be followed as it relies on an outside agency. Grandfather clause will not be provided in the regulation language as this is a temporary condition. A policy for compliance for projects already in the review process will be developed for the transition period.

Section Number	Subsection:	Comment	Comment Response
Section 1 General Provisions	1.6.3.3	Provisions for partial pro-rata release should be in place with the adoption of the new regulations, not after.	1.6.3 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	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.	1.6.3 has been deleted from the reg language. This comment is noted and would be addressed by any policy or procedure developed by the local delegated agency for use of the financial guarantee option. The delegated agency procedure would be subject to public review prior to adoption.
Section 1 General Provisions	1.3.2.1	why not use the local sunset provision that render a plan void after a 5 year period.	1.3.2.1 is now 1.3.4; Two-year sunset from the approval date has been changed to three years to reflect the time prior to plan expiration
Section 1 General Provisions	1.3.2	should follow TMDL & PCS grand fathering provision. Needs to be PLUS or DelDOT application not final plat. See above comment.	1.3.2 revised and 1.3.3 added to reflect Inland Bays PCS implementation strategy. *****3/9/10: Inland Bays PCS implementation strategy will not be followed. Grandfather clause will not be provided in the regulation language as this is a temporary condition. A policy for compliance for projects already in the review process will be developed for the transition period.
Section 1 General Provisions	1.3.2	Approved by who?	1.3.2 wording changed and 1.3.3 added to be consistent with the implementation strategy of the Inland Bays PCS *****3/9/10: Inland Bays PCS implementation strategy will not be followed. Grandfather clause will not be provided in the regulation language as this is a temporary condition. A policy for compliance for projects already in the review process will be developed for the transition period.
Section 1 General Provisions	1.6.4	Fee in lieu - Will delegated agencies also have this option?	Yes - addressed in 1.6.4.1 An offset provision section will be added in Section 5 that would allow for elimination of 1.6.4 completely.

Section Number	Subsection:	Comment	Comment Response
Section 1 General Provisions	1.6.4	Who is going to maintain and control the Fee-In-Lieu program?	1.6.4 has worded to allow the Department or a delegated agency to develop a fee-in-lieu or offset program. An offset provision section will be added in Section 5 that would allow for elimination of 1.6.4 completely.
Section 1 General Provisions	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.	4/24/09: 1.5.1 changed to require all variances to be approved by the Dept. Delegated agencies have been included in the fee in lieu program section 1.6.4.1; 11/4/09: 1.5.1 changed to be consistent with Ch. 60.
Section 1 General	1.6.4.2	There is an extra tab at the beginning of this section that needs removed.	Addressed
Section 1 General	1.6.4.2.1	Who is going to approve a variance of this type?	The Department through Ch. 60 variance process - see revised 1.5.1 *****3/9/10: 1.6.4.2.1 deleted
Section 1 General Provisions	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.	This will be specifically addressed through incorporation of TMDL requirements into the Delaware Sediment and Stormwater Regs statewide.
Section 10 Stormwater	10.3	Should include any additional administrative and overhead costs related to the sediment and stormwater and/or NPDES program.	Program administration is one of the components to be funded by the utility.
Section 10 Stormwater	10.0	Better establishment of Stormwater Utility	Section 10 language reduced significantly to allow for more local options in developing a stormwater utility
Section 10 Stormwater	10.5	Should include method for issuing stormwater credits.	10.5 deleted; will allow for more local options in developing a stormwater utility

Section Number	Subsection:	Comment	Comment Response
Section 10 Stormwater Utility	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.	10.3.2 deleted
Section 10 Stormwater Utility	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.	10.3.2 and 10.7 deleted
Section 2 Definitions	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 [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.]	"As-built plans" definition replaced with "Record construction documents"; References to "as-built plans" in Sections 1.5.2, 1.6.3.3.2, 3.12, 3.12.1, 3.12.2, 6.5.6.2 and the definition of Notice of Completion have been changed to "record construction documents". *****5/10/10 The term now used is "post construction verification document" and all previous references to as-built or record construction document changed.
Section 2 Definitions	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."	Definition of Final Stabilization is same as that used in NPDES Construction general permit regs; for consistency the definition will remain unchanged.
Section 2 Definitions	Adequate Conveyance	The "design storm event" should be defined and criteria provided.	Adequate conveyance definition reworded significantly; design storm event will be addressed in the technical document
Section 2 Definitions	Impervious Surface	Revise as follows, "...contacting the existing soil and does..."	"existing" removed from definition; new definition for "impervious surface" taken from National Science Foundation document used.
Section 2 Definitions	Watershed Plan	All references to "watershed plan" in the regs, which we will define, is actually "approved watershed plan". Should we define "approved watershed plan" and have approval requirements for a watershed plan?	Watershed Plan has been defined in Section 2
Section 2 Definitions	Impervious Surface	Address compacted gravel and bare earth conditions that are effectively impervious due to years of surface compaction.	To be addressed in Technical Document

Section Number	Subsection:	Comment	Comment Response
Section 2 Definitions	Unnecessary Hardship	delete definition - courts have determined this standard. to use "impossible" makes this hardship impossible to prove.	Much of the variance section 1.5.1 removed; "unnecessary hardship" removed from regulations definitions, the term unnecessary hardship remains in definition for "variance".*****5/13/10 all variances will follow Ch 60 procedure and all reg language modified to reference Ch. 60.
Section 2 Definitions	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.	Much of the variance section 1.5.1 removed; "unnecessary hardship" removed from regulations definitions, the term unnecessary hardship remains in definition for "variance". 11/4/09 - Definition of 'variance' changed; does not include term "unnecessary hardship"*****5/13/10 all variances will follow Ch 60 procedure and all reg language modified to reference Ch. 60.
Section 2 Definitions	Impervious Surface	Delete "existing" prior to soil and define "significant amounts" as more than 5 percent	new definition for "impervious surface" taken from National Science Foundation document used.
Section 2 Definitions	Impervious Surface	address compacted gravel and bare earth conditions that are effectively impervious due to years of surface compaction	To be addressed in Technical Document
Section 2 Definitions	Inactive	"Inactive" is referenced several times throughout the regulations; consider strengthening the definition by adding a time frame.	Time frames for inactivity will not be added to the definition or in the regs due to too much variability. This is something that could be included in the technical document.
Section 2 Definitions	Notice of Completion	Will a copy of a form or checklist for contents of this notice be developed as part of the regulations?	This will be included in Technical Documents. Section 6.5.6 addresses Notice of Completion criteria
Section 2 Definitions	Pre-application	Spell out PLUS? Define?	PLUS spelled out. Defined by other regulations
Section 2 Definitions	Dedication	"Dedication" means transferring ownership of a storm water management system to a delegated agency, [Association] public utility, municipality, or stormwater utility along with all associated easements, escrow funds, and maintenance responsibilities.	Definition has not been changed; original definition remains.

Section Number	Subsection:	Comment	Comment Response
Section 2 Definitions	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.	Section 3 regarding the plan review and approval process has been modified significantly. Agreement on a conceptual approach has been eliminated. Documentation of all agreement items from the project application meeting will be developed (3.2.4)
Section 2 Definitions	Responsible Personnel	Responsible personnel should be written to include "Responsible person"	It is written as "responsible personnel" in the sediment and stormwater law
Section 2 Definitions	As-Built Plans	this should be a set of "surveyed plans" not "engineered plans"	Wording changed in definition for Post Construction Verification Documents
Section 2 Definitions	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)?	Definition of Final Stabilization is same as that used in NPDES Construction general permit regs; for consistency the definition will remain unchanged.
Section 2 Definitions	BAT	delete very best and use "most practical"	The definition used is consistent with the NPDES general permit regulations; no changes made.
Section 2 Definitions	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.	Definition of Final Stabilization is same as that used in NPDES Construction general permit regs; for consistency the definition will remain unchanged.
Section 2 Definit	Final Stabilizatio	Item currently noted as (3)(c) should be noted as Item #4.	Addressed
Section 2 Definitions	Pre-application meeting	there should be a provision for exempting or allowing this meeting to be waived for small sites and/or minor disturbances.	3.2.1 reads "Unless granted prior approval by the Department or delegated agency" so that on a case-by-case basis the project application meeting can be waived.

Section Number	Subsection:	Comment	Comment Response
Section 2 Definitions	Permanent Stabilization	Permanent Stabilization – as worded allows only anchored straw mulch and no other hydraulically applied mulches or erosion control matting.	“Permanent Stabilization” means the establishment of perennial vegetation by application of soil amendments, seed, and mulch in accordance with methods accepted by the Department 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.
Section 2 Definitions	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"	Definition of Final Stabilization is same as that used in NPDES Construction general permit regs; for consistency the definition will remain unchanged.
Section 2 Definitions	Emergency Project	“Emergency Project” means a project that is immediately necessary to protect life or property such as bridge, culvert, pipe [and any Utility] repairs.	Definition for emergency project removed; defined within text of 1.5.2 which is the only place it shows up.*****5/13/10 Emergency project removed from 1.5.2; now reads "emergency variance" in accordance with procedures of Ch. 60, Section 6012
Section 2 Definitions	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...”	The definition used is consistent with the NPDES general permit regulations.
Section 2 Definitions	Tidewater	why not use current definitions in other DNREC regs for consistency i.e.. Subaqueous lands regs.	Definition name changed to Tidal Waters and definition updated
Section 2 Definitions	Stabilization	What is the difference between final stabilization (page 8) and permanent stabilization (page 9)?	Final stabilization is the condition a site needs to get to in order to be closed out and NPDES permit coverage terminated. Final stabilization is a noun. Permanent stabilization is the act of applying the stabilization requirements in accordance with the standards and specifications of the Delaware Erosion Control Handbook. Permanent (and Temporary) stabilization in this application is a verb.
Section 2 Definitions	Standard Plan	Revise to read as follows, “...that may preclude the need for the preparation of...”	Definition adjusted to address this comment

Section Number	Subsection:	Comment	Comment Response
Section 2 Definitions	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.	This section of the regulations (3.1-3.2) has been changed significantly.
Section 2 Definitions		On page 11, there are two periods at the end of the Redevelopment definition.	Corrected
Section 2 Definitions	Runoff Reduction Practices	Note that "CWP to provide definition." With the focus of these new rules on volume control rather than peak control this will be a very important term. We can't properly review an incomplete document.	Runoff reduction practices has been defined in Section 2 and additional guidance will be provided in the Technical Document.
Section 2 Definitions	Runoff Reduction	Runoff Reduction Practices needs defined	Runoff reduction practices has been defined in Section 2 and additional guidance will be provided in the Technical Document.
Section 2 Definitions	Runoff Reduction	Still needs to be reviewed	Runoff reduction practices has been defined in Section 2 and additional guidance will be provided in the Technical Document.
Section 2 Definitions	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).	Revised definition: "Stormwater Impact Study" means documentation of existing site conditions submitted as part of the pre-application process.*****5/13/10 term now used is Stormwater Assessment Study. The SAS submittal requirements will be contained in the Technical Document
Section 2 Definitions	Watershed	Since the term catchment or sub- catchment is often used, suggest adding a definition for it and referencing it to the watershed definition.	Catchment and sub-catchment are the same as watershed and subwatershed. Only "watershed" is used in the regulations, therefore it is the only one that needs to be defined.
Section 2 Definitions	Add Definition for "Watershed	Should you define "watershed plan" and/or "sub-watershed plan" since it is used several times throughout the regs?	Watershed plan will be defined. References to sub-watershed plan have been changed to "watershed plan" in Section 1.6.4.1

Section Number	Subsection:	Comment	Comment Response
Section 2 Definitions	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.	"Watershed Plan" will be added; need a definition that addresses scale, ie a watershed master plan versus a subwatershed plan. DNREC will ask CWP for help is developing a definition.
Section 2 Definitions	Resource Protection Event	Same comment as above	Definition now reads: "annual probability of occurrence of 99 percent"; RPv defined separately.
Section 2 Definitions	Water quality	What is the impact of not including the physical impact of flow volume/cfs in the definition of water quality? What rules do not apply and does this result in a lesser standard of protection? Please explain.	The impact of flow rate and volume is included in the definition of water quantity management.
Section 2 Definitions	State Waters	change "flow through" to "flow over"; through implies a groundwater connection which is not a nexus	The definition of "state waters" is law the Delaware Sediment and Stormwater Law. No change.
Section 2 Definitions	Maintenance	Definiton of maintenance. The definition uses the words "...as the system was designed." What happens if the system was built NOT to design, and was nonetheless approved? Who is responsible for redesign to meet specs?	Definition of maintenance has been modified. The closeout procedure requires post construction verification documents (Section 3.11) prior to Notice of Completion(Section 6.5.6).
Section 2 Definitions	Maintenance	Definitions of routine and non routine maintenance should reflect the same as what we have in our (NCC) codes which have been defined as;☐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".☐Non-routine or major maintenance are; structural repair, major sediment removal and major erosion.☐☐Note; Removal of aquatic invasive vegetation should be part of the routine maintenance at least in NCC. ☐	Definition of maintenance changed to more align with NCC definition.
Section 2 Definitions	Maintenance	Reword second sentence - "routine and non-routine maintenance and repair".	Definition changed significantly; comment addressed.
Section 2 Definitions	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.	The O&M Plan is an important element to ensure that stormwater BMPs are maintained to prevent more costly maintenance over time.

Section Number	Subsection:	Comment	Comment Response
Section 2 Definitions	Stormwater Utility	how is this to be funded-by taxes, impact fees, HOA annual contributions?	Definition of Stormwater Utility is unchanged; Section 10 language has been made more concise to allow for more flexibility for local agencies to develop their own Stormwater Utility that meets their needs.
Section 2 Definitions	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.	An analysis of the economic impacts of the proposed regulation revisions will be conducted.
Section 2 Definitions	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.	Term now used is Stormwater Assessment Study. The SAS submittal requirements will be contained in the Technical Document
Section 2 Definitions	Add Adequate Capacity	Adequate Capacity needs defined	Adequate capacity has been included in the definition for adequate conveyance; a separate definition is not required. "Adequate capacity" changed to "adequate conveyance" in 5.1.9 (5/12/10: now 5.1.4 says "can adequately convey") , 5.3.3.3 (now 5.3.3.2 "adequate capacity and stability"), 5.4.3.3 (now 5.4.3.2 "adequate capacity and stability")
Section 2 Definitions	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.	"State Waters" defined in Law; all references to receiving waters have been changed in the reg language to "state waters". Changes have been made to 1.10.1 (now 1.10). In addition, references to "waters" have been changed to "state waters" in the following sections: 5.5.1
Section 2 Definitions	Conveyance Event	Suggest using control instead of manage as compared to managing the conveyance under "flooding event."	Keeping the term "manage"; no change to document
Section 2 Definitions	Adeqaute Conveyance	Design storm event and free board should be defined in the definitions section.	Adequate conveyance definition reworded significantly; design storm event will be addressed in the technical document

Section Number	Subsection:	Comment	Comment Response
Section 2 Definitions	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 determine that a design does not cause an adverse impact.	Adverse impact definition changed in reg
Section 2 Definitions	BAT	DNREC should publish and maintain a list and standards for such practices. The term "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.	The definition used is consistent with the NPDES general permit regulations. Standards and specifications for BMPs will be included in Technical Document.
Section 2 Definitions	BMP	DNREC should continue to maintain a list and standards for BMP's.	Standards and specifications for BMPs will be included in Technical Document.
Section 2 Definitions	Conveyance Event	In the first sentence, insert "annual" so as to read, "...having an annual probability of..." And delete the second sentence in its entirety – the Cv should be defined elsewhere in the regulations or in a guidance manual.	"annual" probability addressed; separate definition for Cv provided.
Section 2 Definitions	Watershed	should be clarified or to what order stream can the term be applied explained.	Watershed definition revised to remove "total or partial"; stream order not addressed.
Section 2 Definitions	Impaired Waters	Why is there no definition of "impaired waters?" I would think that there would be stricter standards of control for developments neighboring impaired waters. How can the state be asking local jurisdictions to place tighter controls on discharges to the inland bays when the state itself is not taking this opportunity? Please explain.	5.5.2 references impaired waterbodies and the requirement for alternative treatment practices for runoff discharging to these impaired waters.
Section 2 Definitions	Resource Protection Event	Revise to read as follows, "...a storm having a an annual probability of occurrence of 100 99 percent." And delete the second sentence.	Definition now reads: "annual probability of occurrence of 99 percent"; Rpv defined separately.
Section 2 Definitions	Conveyance Event	Delete entire sentence from "The Conveyance Event Volume (Cv)....occurance". This is explained later in regs.	separate definition for Cv provided.

Section Number	Subsection:	Comment	Comment Response
Section 2 Definitions	Extended Detention	Still needs to be reviewed	Extended detention and extended filtration will be further explained in technical documents. Definitions for extended detention and extended filtration removed from Section 2.
Section 2 Definitions	Extended Filtration	Still needs to be reviewed	Extended detention and extended filtration will be further explained in technical documents. Definitions for extended detention and extended filtration removed from Section 2.
Section 2 Definit	Add Extreme Flo	Extreme Flooding Event needs defined	"extreme flooding event" deleted from 7.2.2 so no need to define
Section 2 Definitions	Flooding Event	Similar to the conveyance event above, add the word "annual" and delete the second sentence.	"annual" added to definition before probability; separate definition for Fv provided
Section 2 Definitions	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.	Adequate conveyance definition reworded significantly; design storm event will be addressed in the technical document
Section 2 Definit	Flooding Event	Include "annual" prior to probability of occurrence.	addressed
Section 2 Definitions	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].	Definition modified
Section 2 Definit	Infiltration	means the passage or movement of water into the soil profile	definition modified
Section 2 Definitions	Add Minimal Discharge	Minimal Discharge needs defined	Minimal discharge or de minimus discharge will be defined by a metric in the technical documents
Section 2 Definit	Conveyance Eve	Substitute "a probability" with "an annual probability of occurrence"	"annual" probability addressed

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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)	There is a 3-step review process. The stormwater assessment study is reviewed at the project application meeting. This becomes the basis for the preliminary sediment and stormwater plan which is the first independent review. The two independent review steps are more likely to be successful when the first step gets everyone in agreement from the beginning.
Section 3 Plan Approval Procedures	3.10	O&M Plan should be developed at the same time as the S&S Plan so that cost of future maintenance would be considered in the material selection and design of permanent stormwater management systems.	After much discussion, the O&M plan will be submitted prior to project completion
Section 3 Plan Approval Procedures	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.	Department feels that the three defined steps will reduce or eliminate the "looping" reviews. DNREC is working with DeIDOT to improve coordination of reviews between agencies.
Section 3 Plan Approval Procedures	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 DeIDOT meeting. We can't add another layer in another department that actually has veto power before the local government gets to see a project.	With a more formalized project application meeting step with required submittal documents prior to the meeting, the Department is confident that the project application meetings will work to improve the overall plan approval process. The project application meeting will not be a required step prior to submittal to the local land use project; however the local land use approval agency may choose to adopt it into their process.
Section 3 Plan Approval Procedures	3.7.4.3	Utility projects that currently fall under Standard Plan category may not be less than 1 acre disturbed. Suggest Standard Plan specify that no greater than one acre disturbed at any one time, in a phased approach.	Section 3.7.4 deleted; specific criteria for categories of standard plans will be developed in the Technical Document
Section 3 Plan Approval Procedures	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 DeIDOT must shorten their response times dramatically for this reason.	The wording of Section 3 has changed significantly. The three plan review steps are independent of the local land use process; however the local land use agencies may choose to adopt certain steps into their process.

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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.	A Stormwater Assessment Report will be the result of the project application meeting. The Stormwater Assessment Report will be submitted to the local land use agency for information. This process is not tied into the land use agency process.
Section 3 Plan Approval Procedures	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.	The Department feels that the 3-step process is important for all projects regardless of size. It will be especially important on redevelopment projects. The reviewing agency may choose to waive review steps on a project-by-project basis.
Section 3 Plan Approval Procedures	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.	A project is not FOIAable until is it approved; therefore at the preliminary step it would not be FOIAable.
Section 3 Plan Approval Procedures	3.1.2	very expensive up front cost	The Stormwater Assessment Study items are all available from published sources. A template SAS will be provided in Technical Guidance.
Section 3 Plan Approval Procedures	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.	Language removed from regulations. A Stormwater Assessment Report will be the result of the project application meeting. The Stormwater Assessment Report will be submitted to the local land use agency for information.
Section 3 Plan Approval Procedures	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.	3.2.3 deleted from draft reg
Section 3 Plan Approval	General Comment	Need to think about "roads only" plans as we move forward with regulations	

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan A	3.11.1	"of the permanent stormwater management system" is repetitive	Deleted
Section 3 Plan Approval Procedures	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.	The project application meeting is not required to be held prior to PLUS.
Section 3 Plan Approval Procedures	3.1.3	At the pre-application stage, will the owner be told that s/he will be held to a higher standard for development in impaired waters? What other information will be made to the developer prior to the meeting, e.g. nearby shellfish beds, endangered species, etc. Or, does DNREC not expect the developer to be aware of water quality considerations prior to the meeting? DNREC should talk to EPA Region 3 about perhaps using/modifying EPA's NEPAAssist tool.	TMDLs for each watershed will be addressed in the post development stormwater management requirements for all projects (Section 5.2.3.3)
Section 3 Plan Approval Procedures	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.	The project application meeting is not required to be held prior to submittal to the local land use agency. The Stormwater Assessment Study is developed from published information. The Stormwater Assessment Report will be submitted to the local land use agency for information. This process is not tied into the land use agency process.
Section 3 Plan Approval Procedures	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.	New language in 3.1: All projects requiring approval of a detailed Sediment and Stormwater Management Plan are subject to a three-step approval process. Standard plan applications would not be subject to 3-step review. Stormwater Assessment Report will be developed and defined in the technical document.

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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.	The project application meeting is not required to be held prior to submittal to the local land use agency. The Stormwater Assessment Study is developed from published information. The Stormwater Assessment Report will be submitted to the local land use agency for information. This process is not tied into the land use agency process.
Section 3 Plan Approval Procedures	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.	Deleted
Section 3 Plan Approval Procedures	General Comment	The three-step process outlined in this Section is overly burdensome and unnecessary for small projects and for redevelopment projects.	The Department feels that the 3-step process is important for all projects regardless of size. It will be especially important on redevelopment projects. The reviewing agency may choose to waive review steps on a project-by-project basis.
Section 3 Plan Approval Procedures	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.	New language in 3.1: All projects requiring approval of a detailed Sediment and Stormwater Management Plan are subject to a three-step approval process. Standard plan applications would not be subject to 3-step review. 3.6 Expiration of Plan Approval applies to both detailed and standard plans.
Section 3 Plan Approval Procedures	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.	New language in 3.1: All projects requiring approval of a detailed Sediment and Stormwater Management Plan are subject to a three-step approval process. Standard plan applications would not be subject to 3-step review.
Section 3 Plan Approval Procedures	3.1.1	Small projects should be able to waive this requirement.	New language in 3.1: All projects requiring approval of a detailed Sediment and Stormwater Management Plan are subject to a three-step approval process. Standard plan applications would not be subject to 3-step review.
Section 3 Plan Approval Procedures	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.	New language in 3.1: All projects requiring approval of a detailed Sediment and Stormwater Management Plan are subject to a three-step approval process. Standard plan applications would not be subject to 3-step review.

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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.	3.2.1 says "unless granted prior approval by the Department or delegated agency" a project application meeting (pre app) is required.
Section 3 Plan Approval Procedures	3.1	Pre Applications Meeting: What happens when the designer/engineer and the department/delegated agency do not agree on a course of action?	The purpose of the project application meeting is to begin a dialogue about a project and come to some agreement on the management strategy and the path forward. The project application meeting should not end in disagreement.
Section 3 Plan Approval Procedures	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?	3.2.1 says "unless granted prior approval by the Department or delegated agency" a project application meeting (pre app) is required. Project application meeting would definitely apply to redevelopment since the redevelopment criteria will be different from new development.
Section 3 Plan Approval Procedures	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.	A Stormwater Assessment Report will be the result of the project application meeting. The Stormwater Assessment Report will be submitted to the local land use agency for information. This process is not tied into the land use agency process.
Section 3 Plan Approval Procedures	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.	The project application meeting is not required to be held prior to submittal to the local land use agency. The Stormwater Assessment Study is developed from published information. The Stormwater Assessment Report will be submitted to the local land use agency for information.
Section 3 Plan Approval Procedures	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.	Following legal review, 3.11 Easements deleted from draft Regulations

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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.	Revised regulation language does not reference any municipal process; a project may choose to start the Sediment and Stormwater process prior to zoning hearing, but is not required to do so.
Section 3 Plan Approval	3.1.2	SIS- Why is traffic generation diagram needed at this point?	DeIDOT input is needed to know whether roadway improvements will have an impact upon the site's stormwater management.
Section 3 Plan Approval Procedures	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."	Language removed from the draft regulation. Comment noted to be included in the technical document.
Section 3 Plan Approval Procedures	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.	Language removed from draft reg.
Section 3 Plan Approval Procedures	3.10	design swm systems that are as passive as possible to reduce the long-term maintenance costs to the HOA which will ultimately be responsible. Related to that would be requiring the inclusion of a short and long term budget in the O & M Plan so the HOA's have an idea of what potential expenses they are facing.	Runoff reduction practices are more passive practices to reduce maintenance costs. Budget recommendations may be included in the technical document as guidance.
Section 3 Plan Approval Procedures	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.	Following legal review, 3.11 Easements deleted from draft Regulations

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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.	A Stormwater Assessment Report will be the result of the project application meeting. The Stormwater Assessment Report will be submitted to the local land use agency for information. This process is not tied into the land use agency process.
Section 3 Plan Approval	3.11.4	This width on swales seems excessive.	Following legal review, 3.11 Easements deleted from draft Regulations
Section 3 Plan Approval Procedures	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.	The Stormwater Assessment Report will be submitted to the local land use agency for information. This process is not tied into the land use agency process.
Section 3 Plan Approval Procedures	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?	The project application meeting is not required to be held prior to submittal to the local land use agency.
Section 3 Plan Approval Procedures	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.	The project application meeting is not required to be held prior to submittal to PLUS

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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.	Significant changes, defined as a change in land use or a change that results in a different SAR rating now requires to go back through the project application meeting. Minor changes no longer addressed in reg language.
Section 3 Plan Approval Procedures	3.6 and 3.7	The specification of calendar/working is both used and not used... for consistency it may be best to either always specify or never specify or include unless specified clause thing at the beginning in regard to days to avoid confusion in the future.	Deleted all of 3.6 Variance request review
Section 3 Plan Approval Procedures	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.	3.3.3 deleted from draft reg.
Section 3 Plan Approval Procedures	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.	A Stormwater Assessment Report will be the result of the project application meeting. The Stormwater Assessment Report will be submitted to the local land use agency for information. This process is not tied into the land use agency process.
Section 3 Plan Approval	3.10	Standards for review and approval of the Operation and Maintenance Plan need to be included.	O&M plan elements to be included in technical document
Section 3 Plan Approval Procedures	3.1.3-4	Note that all statements say reduce rates. Reduce from what baseline? If, for example, the activity is to be conducted adjacent to an impaired water, does this rule envision reduction from the current rate of runoff, e.g. if it is a brownfield area, are we looking for reduction from current rate? Or, are we talking about limiting runoff from the site to some (what) extent?	"Reduce" not used in Section 3. "Reduce" in Section 5 now provides criteria for achieving reduction, or METF so that there is "no adverse impact"

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	3.3.5	This plan should be available at the sales office/trailer of the developer, including an estimate of the annual maintenance costs. The estimate of annual maintenance costs should be signed by a state official. The developer should also be required to provide a certification to all buyers that sufficient funds have been put aside to fund the first year of maintenance. Also, the State should require that the developer provide an estimated life of the system, and expected costs of maintenance over an appropriate life. The State should prohibit the turnover of the HOA to the homeowners UNTIL the State has been satisfied, with a full audit of the books, that such funds are available.	3.3.5 has been deleted
Section 3 Plan Approval Procedures	3.4	To provide "teeth," and with the understanding that time is money, the developer should not be able to submit a revised plan for an extended time period (say 3 months). This elongated timeframe should not go into effect the first time the plan is sent back, but should go into effect for any subsequent review cycle. The State should not be wasting its administrative time due to sloppy work by the developer. Incentivize them to do it right.	Comment considered; The Department will not set submittal time delays by regulation.
Section 3 Plan Approval Procedures	3.7	14 days is much too short of a timeframe unless the developer is to pay for additional staff so as to ensure that a quality review is conducted. Rushing the process threatens water quality. If such a rush is expected, stringent minimum standards need to be put in place, such as "no net increase in stormwater flow and associated pollutant loads."	14-day review time removed from regulations
Section 3 Plan Approval Procedures	3.7	Presume that minimum criteria for impaired waters and waters of "outstanding" quality, e.g. where water quality currently exceeds standards, will be more stringent	Minimum BMPs that can be used to comply with TMDLs etc will be developed with Standard Plan criteria
Section 3 Plan Approval Procedures	3.8	Who will designate a qualified design professional to sign the plans? Will these people be private contractors, work for the developer, or work for the state and RANDOMLY assigned to review various projects?	Reference in Section 3.8.1 changed to "licensed professional in the State of Delaware"; reference holds in Technical Document Article 2.02.
Section 3 Plan Approval Procedures	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.	The wording of Section 3 has changed significantly. The three plan review steps are independent of the local land use process; however the local land use agencies may choose to adopt certain steps into their process.

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan A	3.3.2	How can an Owner certify what a future HOA will actual do?	O&M plan addressed in 3.10
Section 3 Plan Approval Procedures	3.1.3	Will the developer be requested to conduct/fund a survey of the waters/natural resources prior to construction, so that any post-construction study can more reliably assess the benefits associated with any stormwater control? If not, why not? Can't such a provision be added into the developer's NPDES permit? Has DNREC done this in the past?	The owner will be required to conduct a Stormwater Assessment Study as the initial step in the plan review process. The Stormwater Assessment Study items are all available from published sources. A template SAS will be provided in Technical Guidance.
Section 3 Plan Approval Procedures	3.10	Under what circumstances is an Operation and Maintenance Plan required? Projects without structural stormwater management facilities should be exempt.	O&M Plan is required for the stormwater management system, including non-structural facilities and conveyance systems.
Section 3 Plan Approval	3.10	Operations and Maintenance Plan. Please provide detail of what it is to include.	O&M plan elements to be included in technical document
Section 3 Plan Approval Procedures	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.	"entire site" changed to "stormwater management system"
Section 3 Plan Approval Procedures	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.	Following legal review, 3.11 Easements deleted from draft Regulations

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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.	3.3.3 deleted from draft reg.
Section 3 Plan Approval	3.11.2	Similar to New Castle County, blanket easements should be permitted for nonresidential projects.	Following legal review, 3.11 Easements deleted from draft Regulations
Section 3 Plan Approval Procedures	3.8	There was no definition of qualified design professional in the definitions. Are they defined elsewhere in the state regulations?	Reference in Section 3.8.1 changed to "licensed professional in the State of Delaware"; reference holds in Technical Document Article 2.02.
Section 3 Plan Approval	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?	SIS Findings report has been developed***3/12/10 now a Stormwater Assessment Report
Section 3 Plan Approval Procedures	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.	Following legal review, 3.11 Easements deleted from draft Regulations
Section 3 Plan Approval	3.11.5 & 3.11.7	Offsite easements should not be required, as they can hold up a project.	Following legal review, 3.11 Easements deleted from draft Regulations
Section 3 Plan Approval	3.11.6	This requirement is now the 4th submittal to the Delegated Agency, again, additional time and cost to both the Agency and the Owner.	Following legal review, 3.11 Easements deleted from draft Regulations

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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.	Following legal review, 3.11 Easements deleted from draft Regulations
Section 3 Plan Approval	Add 3.13	ADD SECTON – To cover the conveyance of ALL or a portion of an Approved Project to another Owner.	All sections state that the owner is responsible. That responsibility transfers with the owner. No new section added.
Section 3 Plan Approval Procedures	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.	The Stormwater Assessment Report will be submitted to the local land use agency for information. This process is not tied into the land use agency process.
Section 3 Plan Approval Procedures	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.	Variance request and appeals process will follow 7 Del. C. Ch. 60 procedure. Section 3.6 Variance Request Review removed from reg language
Section 3 Plan Approval Procedures	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.	No response required
Section 3 Plan Approval Procedures	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.	Department believes that the Stormwater Assessment Study is an important step regardless of project size. The Stormwater Assessment Study items are all available from published sources. A template SAS will be provided in Technical Guidance.

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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.	The Stormwater Assessment Study items are all available from published sources. A template SAS will be provided in Technical Guidance.
Section 3 Plan Approval Procedures	3.10.2	Clarify – How and What does it mean to have the Tax Ditch Organization "included"?	3.10.2 deleted; 7.2.6 added to address the owner's responsibility to enter into a maintenance agreement with the Tax Ditch Organization when a stormwater facility exists in the tax ditch right-of-way.
Section 3 Plan Approval	3.1.3	Stormwater Impact Study (SIS) - Will a checklist of information to be submitted as part of the SIS be developed?	A template SAS will be provided in Technical Guidance.
Section 3 Plan Approval Procedures	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.	3.12.2 (now 3.11.2) revised to have the restrictive language removed. Language is clearer now.
Section 3 Plan Approval Procedures	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?	"as-built plan" changed to "record construction document". Record construction document defined in Section 2 to mean a set of surveyed plans...New 3.11.1 requires the record construction document to be prepared and sealed by a licensed professional.
Section 3 Plan Approval Procedures	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.	3.12.2 (now 3.11.2) revised to have the restrictive language removed.

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	3.12.2	Modify Verbiage – As-Built Plans shall not be approved if they exhibit any [functionality] 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.	3.12.2 (now 3.11.2) revised to have the restrictive language removed.
Section 3 Plan Approval Procedures	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	3.12.2 (now 3.11.2) revised to have the restrictive language removed.
Section 3 Plan Approval Procedures	3.12.2	Request that a range of acceptable tolerances to the stormwater as-built plan be defined.	3.12.2 (now 3.11.2) revised to have the restrictive language removed. Acceptable tolerances defined on a checklist included in Technical Document
Section 3 Plan A	3.3.1	Include "Department or" prior to delegated agency in the first sentence	added
Section 3 Plan Approval	3.12.2	Change "any changes" to "any significant changes". Add "resulting in a reduction of performance"	3.12.2 (now 3.11.2) revised to have the restrictive language removed.
Section 3 Plan Approval Procedures	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.	Significant changes, defined as a change in land use or a change that results in a different SAR rating now requires to go back through the project application meeting. Minor changes no longer addressed in reg language.

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	General Comment	The three-step process outlined in this Section is overly burdensome and unnecessary for small projects and for redevelopment projects.	The Department feels that the 3-step process is important for all projects regardless of size. It will be especially important on redevelopment projects. The reviewing agency may choose to waive review steps on a project-by-project basis.
Section 3 Plan Approval Procedures	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?	3.2.1 says "unless granted prior approval by the Department or delegated agency" a project application meeting (pre app) is required. Project application meeting would definitely apply to redevelopment since the redevelopment criteria will be different from new development.
Section 3 Plan Approval Procedures	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.	Department believes that the Stormwater Assessment Study is an important step regardless of project size. The Stormwater Assessment Study items are all available from published sources. A template SAS will be provided in Technical Guidance.
Section 3 Plan A	3.1.2	Has the Stormwater Impact Study checklist been completed yet?	A template SAS will be provided in Technical Guidance.
Section 3 Plan Approval Procedures	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 [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.] 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.☐	This comment is not addressed in reg language.
Section 3 Plan Approval Procedures	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.	3.3.3 deleted from draft reg.

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval	3.3.5	Does not mention or include erosion and sediment control measures.	"Construction Site Stormwater Management" (included) is terminology used for erosion and sediment controls
Section 3 Plan Approval Procedures	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.	Clearer submittal standards and better gatekeeping by the delegated agency will increase the review efficiency.
Section 3 Plan Approval Procedures	3.4.1 & 3.7.1	All reviewtimeframes should be couched in terms of working days to account for holidays or closures due to a state of emergency.	The Department has chosen to use "calendar day" throughout the regulations with regard to review times for plan as well as construction review.
Section 3 Plan A	3.4.2	The 30 days should be changed to 10 days.	30 days will remain.
Section 3 Plan Approval Procedures	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.	30 days will remain.
Section 3 Plan Approval Procedures	3.8.1	Preliminary Plans should not be signed and sealed as by their very nature they are not complete.	Department believes that all plans submitted by a licensed professional for review should bear the professional's seal. Standard plans will not need to be signed and sealed.
Section 3 Plan Approval Procedures	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 [in writing and request a justifiable time frame for an extension] not to exceed an additional 30 days, when that review will be accomplished.	"in writing" added to new section 3.5.3
Section 3 Plan Approval	3.4.1	Include "Management" in Sediment and Stormwater Plan	"Management" added

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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?	Addressed in revised 3.6.2 by stating that the Dept or Delegated Agency MAY extend plan approval; reviewing agency has the option to deny an extension request and require a new plan if the site conditions or changes to the regulations warrant a new plan.
Section 3 Plan Approval Procedures	3.5.1	Add Verbiage – To allow a plan to be valid for 3 years from the date of an Approval [OR anticipated Construction Starting Date provided by the Owner at the time of the Approval, whichever is longer.]	This language will not be added
Section 3 Plan Approval	3.5.2	The word “will” should be replaced with “may.”	Comment addressed in 3.5.2 (now 3.6.2); 3.5.3 deleted from reg language
Section 3 Plan Approval Procedures	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?	Variance request and appeals process will follow 7 Del. C. Ch. 60 procedure; Section 3.6 Variance Request Review removed from reg language
Section 3 Plan Approval	Add 3.6.5	APPEAL PROCESS for Variance	Variance appeal process will be in accordance with Chapter 60 requirements. See Section 1.5
Section 3 Plan Approval Procedures	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.	Standard Plan criteria will be developed in the technical document. Minor projects will have a category for coverage under a standard plan.
Section 3 Plan Approval	3.4.2	Incomplete applications should be rejected within a week or ten days of submission.	30 days will remain.
Section 3 Plan Approval Procedures	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.”	Does not align with Federal NPDES requirements for sites needing permit coverage. Cannot change this language. *****5/10/10 deleted 3.7.4
Section 3 Plan Approval Procedures	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?	3.8.1 updated to "licensed professional in the State of Delaware"

Section Number	Subsection:	Comment	Comment Response
Section 3 Plan Approval Procedures	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.	Construction activity greater than 1 acre require NPDES permit coverage. Permit coverage requires an NOI and a detailed plan. Standard plan will not work here. Similar issue with ag structures; working on a separate section in these regs to address. Not a fully designed detailed plan, but more detail than a standard plan.
Section 3 Plan Approval Procedures	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?	3.7.4 removed from the regulations. Example standard plan categories added to 3.7.1. All standard plan criteria including checklists and any template plans will be included in the Technical Document.
Section 3 Plan Approval Procedures	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?	3.7.4 removed from the regulations. Example standard plan categories added to 3.7.1. All standard plan criteria including checklists and any template plans will be included in the Technical Document.
Section 3 Plan Approval Procedures	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."	3.7.4 removed from the regulations. Example standard plan categories added to 3.7.1. All standard plan criteria including checklists and any template plans will be included in the Technical Document.
Section 3 Plan Approval Procedures	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.	3.7.4 removed from the regulations. Example standard plan categories added to 3.7.1. All standard plan criteria including checklists and any template plans will be included in the Technical Document.
Section 3 Plan Approval Procedures	3.8	Through Out Document – ALL references to "qualified design professionals" should read, "Appropriately Licensed Professionals in good standing with the State of Delaware."	4/29/09 reponse: A definition for qualified design professional will be developed...A placeholder has been included. 11/4/09 response: reference in Section 3.8.1 changed to "licensed professional in the State of Delaware"; reference holds in Technical Document Article 2.02....4/30/10 definition for "Licensed Professional in the State of Delaware" added.
Section 4 Const Site SWM	General Comment	Will there be performance criteria developed for Sediment and Erosion Control?	Sites disturbing greater than 10 acres will have to comply with EPA's effluent limitation guidelines by monitoring discharges in all rain events up to the 2-year storm.

Section Number	Subsection:	Comment	Comment Response
Section 4 Const Site SWM	4.2.2	Does this section apply to only when stormwater management facilities (such as stormwater/sediment basins) are used for sediment control?	BAT applies for all sites regardless of BMP type
Section 4 Const Site SWM	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.	Section 4.2.2 and Technical document guidance to support this section will reflect EPA effluent guideline limitations of December 09
Section 4 Const	4.5.3	If the definition of final stabilization gets changed, it makes more sense.	Definition of final stabilization is unchanged; EPA definition.
Section 4 Const Site SWM	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.	4.4.2 removed from Regulations. Exclusions from LOD will be referenced in Technical Document
Section 4 Const Site SWM	4.4.2.1	Natural features needs a definition.	4.4.2 removed from Regulations. Exclusions from LOD will be referenced in Technical Document
Section 4 Const Site SWM	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.	Wording will remain in the reg language
Section 4 Const Site SWM	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.	Section 4.2.2 and Technical document guidance to support this section will reflect EPA effluent guideline limitations of December 09

Section Number	Subsection:	Comment	Comment Response
Section 4 Const Site SWM	4.5.1 and 4.5.2	The specification of calendar/working is both used and not used... for consistency it may be best to either always specify or never specify or include unless specified clause thing at the beginning in regard to days to avoid confusion in the future	All references to "days" or "working days" in the regulation have been changed to "calendar days"
Section 4 Const Site SWM	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.	Guidance provided in Technical Document
Section 4 Const Site SWM	4.3.1	If the activity is in the proximity of an impaired or outstanding water, the acreage should fall to some number, perhaps 10 acres. Having the same cutoff for all areas simply does not reflect some are more ecologically fragile than others and/or start off in a lesser condition. Or, if you want to have the same cutoff, you could require a higher financial guarantee, so as to provide for funding of a recovery plan should damage ensue	EPA's Dec09 effluent limitation guidelines set discharge thresholds for sites over 10 acres disturbed
Section 4 Const Site SWM	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	4.5.3 is now 4.5.4 . Section 1.6.3 has been eliminated. All particulars of financial guarantee will be spelled out in technical document and individual policies which will be subject to public notice.
Section 4 Const Site SWM	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.	4.5.3 is now 4.5.4 . Section 1.6.3 has been eliminated. All particulars of financial guarantee will be spelled out in technical document and individual policies which will be subject to public notice.

Section Number	Subsection:	Comment	Comment Response
Section 4 Const Site SWM	4.5.2	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. 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.	The following language has been added to 4.5.2: "The Department or delegated agency shall have the discretion to require soil testing sooner than 60 calendar days if evidence exists that the permanent or temporary stabilization measures were not applied in accordance with "the specification provided in the Delaware Erosion and Sediment Control Handbook.
Section 4 Const Site SWM	4.5.1	Should combine second and last sentence to clarify and read better. "Temporary stabilization is required for those areas which...."	addressed
Section 4 Const Site SWM	4.3	This section establishes the 20 acre disturbance rule, but then in the next section offers automatic relief. The subsections seem to conflict.	4.3.2 offers an alternative to 4.3.1 if more than 20acres must be disturbed at any one time.
Section 4 Const Site SWM		locate silt fences at the upland edge of wetlands and/or required forest or riparian buffers. This is a significant issue because most damage to the natural, existing landscape is done before we get on the site.	This would be an item for the technical document
Section 4 Const Site SWM	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.	4.3.2 offers an alternative to 4.3.1 if more than 20acres must be disturbed at any one time.
Section 4 Const Site SWM	4.1.1	There should be some requirement that the State review the guidances every n (3?) years to assure effectiveness, as measured by the improvement/maintenance/protection of water quality, and that an affirmative finding be made, or the guidances will be revised.	Including a time frame for review of guidance documents is self-regulating. Time frame will not be included. Guidance documents will be updated with technology as necessary.

Section Number	Subsection:	Comment	Comment Response
Section 4 Const Site SWM	4.4.2.2	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? 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.	4.4.2 removed from Regulations. Exclusions from LOD will be referenced in Technical Document
Section 4 Const Site SWM	4.1.1	Will these guidances have the force of law?	When the standard details have been included or referenced on the approved Sediment and Stormwater Plan, those standard details are enforceable.
Section 4 Const Site SWM	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?	Section 4.2.2 and Technical document guidance to support this section will reflect EPA effluent guideline limitations of December 09
Section 4 Const Site SWM	4.5.1	Stabilization should occur in less than a week for activities in impaired waters	all waterways are impaired; standard will remain at 14 days
Section 5 Post C	5.1.10	Soil investigations should be performed by licensed soil scientists.	Will be addressed in Technical Document
Section 5 Post Const SWM	5.2	What if infiltration cannot be accomplished for the Rv? There does not appear to be anything in these regulations about filtration for the Rv.	Section has been updated and Technical documents developed to support criteria
Section 5 Post Const SWM	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.	Section has been updated and Technical documents developed to support criteria
Section 5 Post Const SWM	5.2	Entire Section - Seems like big pieces are missing here. What if site can not reduce entire post-development Rv or be limited to existing paved and turfgrass areas?	Section has been updated and Technical documents developed to support criteria

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	5.3 & 5.4	Both sections are very vague in terms of what will be actually required to control the conveyance and flooding events.	Section has been updated and Technical documents developed to support criteria. Revised regulations and technical document address this comment. Please review revisions and provide further comment.
Section 5 Post Const SWM	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.)	Will be addressed in Technical Guidance Document
Section 5 Post Const SWM	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.	With public review and Department concurrence, delegated agencies may establish alternative requirements, as a policy. This is established in Section 9. On a case-by-case basis, Departmental concurrence would be needed.
Section 5 Post Const SWM	5.1.7	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.	Technical document will define No Adverse Impact criteria
Section 5 Post Const SWM	5.1.7	What conditions would need to be present to require an off-site drainage easement?	Department does not have the authority to require an offsite drainage easement. Section 5.1.7 has been deleted from the regulations.

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	5.1.6	Why does this paragraph specifically include only buildings and related structures and exclude roadways and property damage?	Roadways are not designed per DeIDOT requirements for 100 year storm; technical documents will establish what constitutes "no adverse impact"
Section 5 Post Const SWM	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.	Sections have been updated and Technical documents developed to support criteria
Section 5 Post Const SWM	5.3	When is it necessary to control the Conveyance Event Volume? What are the "runoff reduction practices provided in accordance with Department guidance"?	Section has been updated and Technical documents developed to support criteria. Revised regulations and technical document address this comment. Please review revisions and provide further comment.
Section 5 Post Const SWM	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.	Yes; criteria for no adverse impact will be established in Technical document
Section 5 Post Const SWM	5.1.5	What are the Department-approved design guidelines and policies?	The "standards approved by the Department" as well as "Department policy, procedures and guidelines" will be included in a technical document which will be subject to public review.
Section 5 Post Const SWM	5.1.5	This section refers to the "latest version of the Department-approved design guidelines and policies." Are such guidelines and policies available?	The "standards approved by the Department" as well as "Department policy, procedures and guidelines" will be included in a technical document which will be subject to public review.
Section 5 Post Const SWM	5.1.4	What are the standards to be developed by the Department?	The "standards approved by the Department" as well as "Department policy, procedures and guidelines" will be included in a technical document which will be subject to public review.
Section 5 Post Const SWM	5.1.4	Will the "Standards approved by the Department" be a part of this document?	The "standards approved by the Department" as well as "Department policy, procedures and guidelines" will be included in a technical document which will be subject to public review.

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	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.	"Shall" will remain; "Optimize" means to make as effective or functional as possible, which is not unattainable, while "prioritize" only sets a list of order of usage, which allows less flexibility in site design; "Preserving" changed to "conserving" with respect to natural open spaces and riparian areas.
Section 5 Post C	5.1.1	Guidelines need included for the exercising of discretion.	Statement removed from 5.1.1
Section 5 Post Const SWM	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.	Stormwater runoff volume has been shown to create significant adverse impacts to receiving waters.
Section 5 Post Const SWM	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?	Criteria for no adverse impact will be established in Technical document
Section 5 Post Const SWM	5.4.3.3	Just a reminder that as per 3.11.5, an easement shall be required to the outfall point.	3.11 Easements removed from regulations; Easement recommendations will be provided in the Technical document
Section 5 Post Const SWM	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?	Section has been updated and Technical documents developed to support criteria. Revised regulations and technical document address this comment. Please review revisions and provide further comment.
Section 5 Post Const SWM	5.3.3.5	Please define minimal discharge	The allowance for a minimal discharge is still an item for discussion pending input from the Technical Subcommittee.
Section 5 Post Const SWM	5.3.3.5	Define minimal discharge (it is open to interpretation).	The allowance for a minimal discharge is still an item for discussion pending input from the Technical Subcommittee.
Section 5 Post Const SWM	5.3.3.5	What is the definition of minimal discharge?	The allowance for a minimal discharge is still an item for discussion pending input from the Technical Subcommittee.

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	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.	The standard of performance is based on a "no adverse impact" strategy. There is no strict requirement to manage the 100 year storm at a pre developed condition.
Section 5 Post Const SWM	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"?	The Fv must be managed on all sites; runoff reduction practices are provided in Technical document.
Section 5 Post Const SWM	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?	5.4.2 has been clarified to address this comment.
Section 5 Post C	5.4.3.1	"...and associated credits listed in Department guidance." Where?	Issue is addressed in Technical document
Section 5 Post Const SWM	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.	The allowance for a minimal discharge is still an item for discussion pending input from the Technical Subcommittee.
Section 5 Post Const SWM	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.	Technical document will address methodology for determining downstream impacts.
Section 5 Post Const SWM	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?	Issue is addressed in Technical document

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	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.	Section 5.2.3.3 has been added to include a TMDL requirement in the Rpv criteria.
Section 5 Post Const SWM	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.	Clarified in 2nd draft
Section 5 Post C	5.5.1	Who is going to review and approve this aspect?	DNREC will review watershed plans and Designated Watersheds.
Section 5 Post Const SWM	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.	Current language provides some discretionary authority to the Department should future regulations outside Ch. 40 require alternative criteria. TMDLs will be addressed statewide through these regulations, with or without promulgation of a PCS in all watersheds.
Section 5 Post Const SWM	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.	This language is intended to apply to sites with "hot spots" of pollution, where traditional stormwater management BMPs may not be the most appropriate BMP or optimize stormwater management for the site.

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	5.6.1	<p>“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.</p>	Revisions to the redevelopment criteria and the plan review process have been made throughout Sections 3 and 5.
Section 5 Post Const SWM	5.6.1	When will the guidance and procedure guidelines be established for redevelopment, and infill areas?	Technical document will be developed to address this section prior to promulgation
Section 5 Post Const SWM	5.6.1	When will infill development criteria be developed by the Department?	Technical document will be developed to address this section prior to promulgation
Section 5 Post C	5.4.3.2	What is the definition of extended filtration?	Extended filtration removed from 5.4.3.2 and the definitions.
Section 5 Post Const SWM	5.3	Will safe conveyance be based totally on volume and not peak?	"Safe Conveyance" not used in the regulations. No adverse impact will be defined in Technical document.
Section 5 Post Const SWM	5.2.3.1	<p>“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.</p>	Section has been updated and Technical documents developed to support criteria

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	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.	Revised regulations and technical document address this comment. Please review revisions and provide further comment.
Section 5 Post Const SWM	5.2.3.1	It is difficult to fully comment on this section without the checklist.	Section has been updated and Technical documents developed to support criteria
Section 5 Post Const SWM	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?	Section has been updated and Technical documents developed to support criteria
Section 5 Post Const SWM	5.2.3.1	Need to see this list	Section has been updated and Technical documents developed to support criteria
Section 5 Post Const SWM	5.2.3.1	What does "reducing" the Resource Protection Event Volume entail?	Section has been updated and Technical documents developed to support criteria. Revised regulations and technical document address this comment. Please review revisions and provide further comment.
Section 5 Post Const SWM	5.2.3.1	Checklist?	Section has been updated and Technical documents developed to support criteria. Revised regulations and technical document address this comment. Please review revisions and provide further comment.
Section 5 Post Const SWM	5.2.3.2	Would you please clarify the intent for this paragraph.	This has become Section 5.1.10 as a general criteria item. This is a pass on permanent stormwater management requirements for projects that are rebuilding as a result of loss due to fire, flood, natural disaster, but not proposing changes to the site hydrology.
Section 5 Post Const SWM	5.3.3.5	How will minimal discharge be defined?	The allowance for a minimal discharge is still an item for discussion pending input from the Technical Subcommittee.

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	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.	Section has been updated and Technical documents developed to support criteria. Revised regulations and technical document address this comment. Please review revisions and provide further comment.
Section 5 Post Const SWM	5.2.2	I suggest the following changes, "...having a 100 99 percent annual probability of occurrence..."	Section updated accordingly
Section 5 Post Const SWM	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.	Language of 5.3.2 and 5.4.2 clarified and additional information provided in the Technical Document.
Section 5 Post Const SWM	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.	Section has been updated and Technical documents developed to support criteria
Section 5 Post Const SWM	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?	Yes
Section 5 Post Const SWM	5.3.3.1	Need to see Department guidance	Section has been updated and Technical documents developed to support criteria
Section 5 Post Const SWM	5.3.3.1	Where is the Department guidance that is referenced	Section has been updated and Technical documents developed to support criteria
Section 5 Post Const SWM	5.3.3.2	What is the definition of extended filtration? Has the 'Department Guidance' been finalized?	Extended filtration removed from 5.3.3.2 and the definitions
Section 5 Post Const SWM	5.3.3.3	This provision is currently not applied the same in all districts. Some clarification would be helpful this go round.	This section will be addressed in Technical document

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	5.3.3.3	Just a reminder that as per 3.11.5, an easement shall be required to the outfall point.	3.11 Easements has been removed from the regulations. Easement recommendations will be provided in the Technical Document.
Section 5 Post Const SWM	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.	The requirements of Section 5 have evolved significantly since the first draft. Section 5 language has changed and the Technical Documents have been developed.
Section 5 Post Const SWM	5.7	How is the Fee-In-Lieu calculated?	Mitigation & offset programs will be developed at the local level and must go through public review and comment prior to adoption. Fee in lieu programs will be considered an offset program. Offsets are covered in the proposed regulations in Section 1.6.3.
Section 5 Post Const SWM	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?	5.1.9 is now 5.1.4. Owner will have to gain authorization from the drainage system owner to drain into any existing storm drainage system. DNREC will not mediate.
Section 5 Post Const SWM	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.	Section will remain; already doing this in practice

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	5.7.1	Who is going to control and maintain this operation?	5.7.1 has been deleted from the draft regulation. Mitigation & offset programs will be developed at the local level and must go through public review and comment prior to adoption. Fee in lieu programs will be considered an offset program. Offsets are covered in the proposed regulations in Section 1.6.3.
Section 5 Post Const SWM	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.	Mitigation & offset programs will be developed at the local level and must go through public review and comment prior to adoption. Fee in lieu programs will be considered an offset program. Offsets are covered in the proposed regulations in Section 1.6.3.
Section 5 Post Const SWM	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.	Mitigation & offset programs will be developed at the local level and must go through public review and comment prior to adoption. Fee in lieu programs will be considered an offset program. Offsets are covered in the proposed regulations in Section 1.6.3.
Section 5 Post Const SWM	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.	All sections state that the owner is responsible. That responsibility transfers with the owner. No new section added.
Section 5 Post Const SWM	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.	All sections state that the owner is responsible. That responsibility transfers with the owner. No new section added.
Section 5 Post Const SWM	Add 5.6.3	ADD SECTION - To cover the conveyance of ALL or a portion of an Approved Project to another Owner.	All sections state that the owner is responsible. That responsibility transfers with the owner. No new section added.
Section 5 Post Const SWM	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?)”.... ☐	"owner" language clarified; 5.1.9 is now 5.1.4.

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	5.1.9	<p>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.</p>	Wording of 5.1.9 (now 5.1.8) has been changed to make intent clearer
Section 5 Post Const SWM	5.1.9	<p>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."</p>	Wording of 5.1.9 (now 5.1.8) has been changed to make intent clearer

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	5.1.7	<p>“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 Maryland, but not in Delaware. Drainage law in Maryland is well settled. More than a century ago the Maryland Court adopted the Civil Law Rule, which prescribes that the lower land is subject to a servitude of receiving the runoff from the higher land and may not through any erection or construction prohibit the natural flow thereon. Whether we realize it or not, we are applying this Rule in Maryland when we design a new culvert and verify that the backwater caused by its construction will not increase flood elevations on uphill properties. Drainage law in Maryland is more complicated than the simple expression of this one Rule and I won’t go into all of its complexities here. Does Delaware follow the same common law doctrine? I suggest a bit of research by an attorney. I also suggest we get a much better idea of what “guidance” the Department is considering and what perceived problem it hopes to solve with this language. And finally, I suggest that this Section may need to be completely rewritten to make sure its intent is clear and to ensure that it does not contradict established law in Delaware.</p>	<p>Delaware drainage case law is based on a "reasonable user" doctrine. Section 5.1.7 has been deleted from the regulations</p>

Section Number	Subsection:	Comment	Comment Response
Section 5 Post Const SWM	5.1.8	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.	Long term maintenance of BMPs is compromised if they are on private property
Section 5 Post Const SWM	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.	Mitigation & offset programs will be developed at the local level and must go through public review and comment prior to adoption. Fee in lieu programs will be considered an offset program. Offsets are covered in the proposed regulations in Section 1.6.3.
Section 5 Post Const SWM	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.	The requirements of Section 5 have evolved significantly since the first draft. Section 5 language has changed and the Technical Documents have been developed.
Section 5 Post Const SWM	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).	We are requiring that no adverse impact is addressed not necessarily storage of the 100 year storm volume
Section 5 Post-Const SWM	5.1	The statement "...shall exercise discretion in the application of this standard..." is inappropriate for use in a regulation. The concept of enforcement discretion is a policy and should not appear in regulation.	Statement removed from 5.1.1 to be addressed in 5.6 redevelopment criteria
Section 5 Post-Const SWM	5.3 and 5.4	In section 5.3 and 5.4, the use of non-erosive and nonerosive is alternated.	"non-erosive" used throughout

Section Number	Subsection:	Comment	Comment Response
Section 5 Post-Const SWM	5.6	<p>Public Works was wondering if there has been any discussion given to a time limit for utilizing pre-existing past land use conditions that are not consistent with current land use conditions with regard to proposed development.</p> <p>An example would be where a business and parking area, that may have been neglected over the years, was demolished and removed from the site. Then the owner places topsoil, grades and stabilizes the site to make it more marketable. Say a few years pass and the new owner wants to use the pre-existing condition, not the grassed lot, to develop the site from a stormwater management prospectiv. The new owner will then provide documentation as to what was there a few years back. Is there any type of guidelines or time limits that have been considered in the new regulations should this situation occur?</p>	We will rely on 2007 Land Use Land Cover mapping (in technical document not regulations).
Section 5 Post-Const SWM	5.6	We have had sites add minor improvements that are phased over time, with each "phase" being just under the 5000 sf disturbance threshold. For instance, a commercial site adds a small addition one year,then a couple years later adds onto the parking lot, then a year later adds a storage facility, all draining to the the same point of interest and all being under 5000 sf of disturbed area for each improvement. Public Works attempts to track these changes from previous building permits as best we can, and require stormwater controls on projects once they exceed the 5000 sf threshold including changes from previous project improvements. Has there been any discussion about how to handle these situations and how far back to try to track improvements?	This will be addressed through a combination of the redevelopment (5.6) and Standard Plan criteria (5.7 and technical document).
Section 5 Post-Const SWM		minimize the use of pond-to-pipe in favor of using stormwater as a resource and not a waste product. I believe this is the direction this effort is headed, correct.	The runoff reduction approach in the regulations addresses this comment
Section 5 Post-Const SWM	5.5.2	Why does it say the Department "may require" alternative treatment in impaired waters? Why wouldn't the criteria be more stringent? When wouldn't it be more stringent? Replace "may" with "will." There should be a set of more stringent standards for impaired and outstanding waters.	Current language provides some discretionary authority to the Department should future regulations outside Ch. 40 require alternative criteria.
Section 5 Post-Const SWM	5.2.1	"minimize the volume of stormwater runoff generated..." from what baseline?	Term "minimize" changed to "reduce" to be consistent with "runoff reduction" terminology.

Section Number	Subsection:	Comment	Comment Response
Section 5 Post-Const SWM	5.2.2 and 5.3.2	100% probability of occurrence for 1-year storm is not accurate	Should be 99.99% probability; Section has been updated and Technical documents developed to support criteria
Section 5 Post-Const SWM		150' well separation distance from infiltration bmps taking runoff from impervious parking lot not listed in revised regulations. Sourcewater protection needs this to enforce their requirements	This is the type of information intended to be included in a technical guidance document.
Section 5 Post-Const SWM		What about discharges to DeIDOT ROW when unit peak discharge approach is used? Will DeIDOT accept or will analysis have to follow current methodology?	Further discussion with DeIDOT regarding discharges to the highway ROW system is needed. DeIDOT will be invited to project application meetings so that their expectations are known early in the project.
Section 6 Inspections	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.	New Section 6.3.5. Last sentence has been deleted because legally we cannot suspend or revoke during the probationary period. All performance, past and current during probation will be evaluated.
Section 6 Inspections	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.	This section is now 6.3.7. The term "or revocation" was removed from second sentence. Minimum time removed from this section as well.
Section 6 Inspections	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.	Third-party CCR requirements have not been addressed in the regulations. The delegated agency would have the ability to establish more restrictive CCR requirements in accordance with Section 9.7.
Section 6 Inspections	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?	We include these items to highlight the owner responsibilities under the Ch. 60 requirements.
Section 6 Inspections	6.2.1 & 6.2.2	It is not understood how these sections are different from one another.	6.2.1 states how you become a "responsible person", which is by attending the contractor training course. 6.2.2 states who need to be trained, which is a foreperson or superintendent in charge ...

Section Number	Subsection:	Comment	Comment Response
Section 6 Inspections	6.1.8	<p>“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. The word “revoked” typically indicates a permanent condition, not a temporary one.</p>	6.1.8 is now 6.1.9. The CCR probation, suspension and revocation conditions are being reviewed by legal.
Section 6 Inspections	6.4.3	<p>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.</p>	<p>The owner has agreed to the plan conditions and to implement the plan on the Owner's Certification. In addition, the owner has the NPDES permit coverage to discharge during construction. Therefore, we correspond with the owner regarding the site reviews. Obviously the contractor can receive a copy of review reports, but the owner is ultimately responsible. You will notice there is no section on "Contractor responsibilities" because the owner is responsible for implementation of the plan.</p>
Section 6 Inspections	6.4.2	<p>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.</p>	<p>"Regular" shall be defined by the Delegated agency with concurrence of the Department</p>

Section Number	Subsection:	Comment	Comment Response
Section 6 Inspections	6.1.7.4	The Certified Construction Reviewer should not be responsible for enforcement action referral.	6.1.8.4 states: "Referral of the project through the delegated agency to the Department". Referral will be by the delegated agency. The CCR should go to them first.
Section 6 Inspections	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.	Section is now 6.1.8.4. The Department encourages the delegated agencies to use local options to gain compliance; however, in the absence of local enforcement options, if the project will be referred to DNREC for enforcement, the procedure of 6.1.8.4 should be followed.
Section 6 Inspections	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.	This section is now 6.1.8.3. The language remains. All CCRs function under the direction of and reports are reviewed and signed by a PE registered in Delaware that does have the knowledge and experience to make such a statement.
Section 6 Inspections	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.☐	The law remains with only Delaware Registered PE's being able to oversee CCRs.
Section 6 Inspections	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?	Deadline timeframes will not be covered in the regulations.

Section Number	Subsection:	Comment	Comment Response
Section 6 Inspections		How would regulations address review, approval, and inspection of design-build projects?	Regulations do not address design-build projects specifically. All projects would be required to go through the same plan review process.
Section 6 Inspections	6.1.6	CCRs required on "projects 20 acres or greater" - does this mean parcel size of 20 acres or disturbance of 20 acres?	Valid comment; language of 6.1.6 has been updated to state that all projects "developing" 20 acres requires a CCR. State requirement is 20-acre construction site requires CCR. Added a requirement for a CCR on projects subject to monitoring under the Federal effluent limitation guidelines, which are projects that will disturbed more than 20 (later dropping to 10) acres at any one time.
Section 6 Inspections	6.1.3.1 and 6.1.3.2	Examples or guidelines for weekly self-inspection log should be developed to avoid confusion on the part of owners.	Valid comment; Look to EPA guidance for help in developing these guidelines or examples. This will be addressed in the Technical Document
Section 6 Inspec	6.0	Being consistent with new EPA rules on construction site controls	EPA rules are defined in the NPDES Construction General Permit.
Section 6 Inspections	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 basis by experts (the designer and the reviewer), and should not be left open for reinterpretation by onsite construction personnel. A great deal of time and effort is expended on the SWPPP by both the designer and the reviewer. Once construction activity commences the approved plan should be followed...Period.	Comment noted. SWPPP requirements contained in NPDES Construction General Permit regulations.

Section Number	Subsection:	Comment	Comment Response
Section 6 Inspections	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?	Items 6.1.3.1 through 6.1.3.4 are not intended to be an all-inclusive list. We include these items to highlight the owner responsibilities under the Ch. 60 requirements.
Section 6 Inspections	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.	Valid comment; Look to EPA guidance for help in developing these guidelines or examples. This will be addressed in the Technical Document
Section 6 Inspections	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.	The reasoning for this language is to clarify the responsibility of the owner to have weekly reviews. When a CCR is hired by the owner, the CCR's weekly reports fulfill the weekly requirement for site reviews for the owner.
Section 6 Inspections	6.1.6	Second to last sentence, "or delegated agency" should be added after Department	"Or delegated agency" added to last sentence regarding the modification of reporting frequency; however, "or delegated agency" has not been added to the last sentence. If the delegated agency wishes to require a CCR on every project as the Department does, the delegated agency would need to develop a policy that is more restrictive than the regulations (See Section 9.7)
Section 6 Inspections	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.	Definition of Final Stabilization is same as that used in NPDES Construction general permit regs; for consistency the definition will remain unchanged.
Section 6 Inspections	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	Items 6.1.3.1 through 6.1.3.4 are not intended to be an all-inclusive list. We include these items to highlight the owner responsibilities under the Ch. 60 requirements.

Section Number	Subsection:	Comment	Comment Response
Section 6 Inspections	6.4.4	Should clarify the requirement to submit a revised plan is at the discretion of the Department or delegated agency.	"initiated by the owner" has been removed from 6.4.4
Section 6 Inspections	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.	Section 6.4.4 addresses the Department or delegated agency's ability to require revised plans. Section 6.1.4 reiterates this statement to clarify that the owner is responsible for implementation of plan revisions when the Department or delegated agency deems that revisions are necessary.
Section 6 Inspections	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.	The Delegated Agency has the ability to require CCRs on all projects as well. Any CCR policy would need to be approved by DNREC as a more restrictive requirement (see Section 9.7)
Section 6 Inspections	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.	No response required
Section 6 Inspections	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?	State requirement is 20-acre site requires CCR. Added a requirement for a CCR on projects subject to monitoring under the Federal effluent limitation guidelines, which are projects that will disturbed more than 20 (later dropping to 10) acres at any one time. Only the Department requires CCRs on all projects, not the "Department or delegated agency". The Delegated Agency has the ability to require CCRs on all projects as well. Any CCR policy would need to be approved by DNREC as a more restrictive requirement (see Section 9.7)
Section 6 Inspections	6.1.3 - 6.1.5	Is this an entirely separate requirement from the CCR, and the certification required of the superintendant of the clearing and grading contractor, both of which are agents of the owner. Are you saying that another layer has been added?	These are separate requirements from the reporting of the CCR or blue card holder; however the owner may use the CCR or blue card holder as their agent to complete the self inspections and other Construction General Permit requirements.
Section 6 Inspections	6.5.3	Requiring that the pre-construction meeting be held on-site is burdensome.	The on-site meeting requirement will remain, however, "unless otherwise waived by the Department or delegated agency" is included with the requirement.

Section Number	Subsection:	Comment	Comment Response
Section 6 Inspections	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?	Section has been reworded
Section 6 Inspections		include a procedure to make sure silt fences are removed in a timely manner	This is an item for the closeout procedure in the technical document
Section 6 Inspections	6.5.1	What is the application for the Certification Construction Reviewer?	The CCR application is currently in use for projects having a CCR requirement.
Section 6 Inspections	6.3	Certified Construction Reviewers should be as independent as possible from the developer. They should be assigned to sites randomly by the State.	The Department will not require third-party CCRs. The CCR is serving for the owner and the owner may hire anyone he/she wishes as long as they serve adequately. If the CCR does not do his/her job properly, Department may suspend/revoke the CCR and the owner will have to hire a new CCR.
Section 7 Maintenance	7.3.2	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.	Maintenance review frequency has been deleted from the regulations. Delegated agencies will be responsible for establishing a frequency and procedures for maintenance reviews that suits their agencies' needs.
Section 7 Maintenance	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.	"following extreme flood events" removed from 7.2.2

Section Number	Subsection:	Comment	Comment Response
Section 7 Maint	7.2.3	The word "changes" should be revised to "change(s)"	wording changed
Section 7 Maintenance	7.2.4	While a good idea, how will the Owners be made aware of this requirement?	7.2.4 has been changed to include part of previous 7.2.3. Previous 7.2.4 completely deleted.
Section 7 Maintenance	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..	7.2.4 has been changed to include part of previous 7.2.3. Previous 7.2.4 completely deleted.
Section 7 Maintenance	7.2.5	Does it make sense to move 7.2.5 into section 7.1.2?	7.2.x addresses owner's responsibilities with regard to maintenance. 7.1.2 is generally stating maintenance responsibilities. This may be repetitive but necessary to ensure that the owner's responsibilities are all defined.
Section 7 Maintenance	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.	Section 7.3.1.2 deleted.Delegated agencies will be responsible for establishing a frequency for maintenance reviews that suits their agencies' needs.
Section 7 Maintenance	7.3.1.2	Consider revising the frequency of maintenance inspections in 7.3 .1.2 to annually rather than biennially.	Section 7.3.1.2 deleted.Delegated agencies will be responsible for establishing a frequency for maintenance reviews that suits their agencies' needs.

Section Number	Subsection:	Comment	Comment Response
Section 7 Maintenance	7.3.1.2	<p>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 deleted from the Amnesty list and then as a result are ineligible for NCC financial assistance for major maintenance. NCC must perform annual inspections of these facilities to be consistent with what the Maintenance Corporations are currently doing as part of the Amnesty Program requirements. This needs further discussion. ☐</p>	<p>Section 7.3.1.2 deleted. Delegated agencies will be responsible for establishing a frequency for maintenance reviews that suits their agencies' needs.</p>
Section 7 Maintenance		<p>Private sector could take a role in routine maintenance inspection of stormwater management facilities but this is currently not allowed in New Castle County.</p>	<p>Regs Section 7 does not prohibit private sector maintenance inspection; Owner is required by reg to conduct regular maintenance reviews (7.2.2.) and this could be hired out to a private company. Delegated agencies may contract with private companies to assist with program implementation such as maintenance inspections (9.8)</p>
Section 7 Maintenance		<p>Enforcement of maintenance in residential projects will be directed toward HOA; this will result in no one wanting to serve in HOA leadership and no maintenance will get done</p>	<p>Enforcement of maintenance will be upon the owner. We see no other way to enforce maintenance</p>

Section Number	Subsection:	Comment	Comment Response
Section 7 Maintenance	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?	Ultimately the owner is responsible for regular maintenance reviews. This can be contracted to a maintenance company by the HOA or maintenance corporation.
Section 7 Maintenance	General Comment	Current regulations associated with agency inspections are generating high costs for owners as agencies seek funding for long-term annual inspection programs. These programs likely arose out of poor inspection and maintenance of sediment and stormwater facilities by owners and HOA's. The cure in the form of high long-term annual inspection funding requirements (paid for by facility owners) may be worse than the malady. A management-by-exception approach avoids the need to punish all for the misdeeds of some and, puts the owners and HOA's on notice that failing to do the required inspection and maintenance will have expensive consequences.	Section 7 language has been modified significantly
Section 7 Maintenance	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?	7.1.2.1 through 7.1.2.4 deleted from regulations
Section 7 Maint	7.0	Having a maintenance bond for the original owner of the BMP's	Not requiring maintenance bonds
Section 7 Maintenance	7.0 or 10.0	Allowance for HOA's to buy into a stormwater utility or have mandatory escrow accounts.	New 7.1.2 (formerly 7.1.3) and new 7.2.5 allows owner to dedicate stormwater management system to another entity such as a stormwater utility.
Section 7 Maintenance	7.3.1.2	Why are maintenance inspections only required every two years?	Section 7.3.1.2 deleted. Delegated agencies will be responsible for establishing a frequency for maintenance reviews that suits their agencies' needs.
Section 7 Maintenance	7.3	In addition, I further suggest a 1-day Saturday inspection and maintenance seminar be offered by the Dept each Fall or Winter to assist owners and HOA's in learning about inspections and maintenance. Such seminars to be held annually only as long as attendance justifies and then less often as attendance justifies.	"Duly authorized agent" has been added to the list of Department or delegated agency that may conduct maintenance reviews. The Department will develop training to become educated as a "duly authorized agent" in order to provide this service.

Section Number	Subsection:	Comment	Comment Response
Section 7 Maintenance	7.3	I further suggest that a brief informal, informational inspection be offered by the Dept or delegated agency 90+/- days prior to the formal inspection every 4 years but only if owner is willing to attend. This would give the Owner a 3-month period to prepare for the formal inspection with input from the Dept or delegated agency.	There is no time frame for Dept, delegated agency, or authorized agent reviews of stormwater management facilities.
Section 7 Maintenance	7.3	I suggest Inspections by Dept or delegated agency be required only every 4 years unless and until an owner or HOA demonstrates an inability to self manage the inspection and maintenance of their sediment and stormwater facilities. Inability to self manage inspection and maintenance to be evidenced by a) lack of reasonable record keeping and b) poor conditions found at inspection by Dept or delegated agency.	There is no time frame for Dept, delegated agency, or authorized agent reviews of stormwater management facilities.
Section 7 Maintenance	7.3	I suggest modification to Section 7.3 Maintenance Inspections to encourage compliance, reduce public and private costs, and manage the maintenance inspection process consistent with the concept of management by exception.	Wording of Section 7.3 has been reduced, stating the basic requirements.
Section 7 Maintenance	7.3.1.2	Maintenance inspections every two years is counter to somewhat accepted practices of annual inspections.	Section 7.3.1.2 deleted. Delegated agencies will be responsible for establishing a frequency for maintenance reviews that suits their agencies' needs.
Section 7 Maintenance	7.2.2	Noted earlier, the State should provide HOAs with a list of licensed inspectors.	Any such listing of private maintenance personnel will be maintained in Technical documents or guidance, not in the regulations.
Section 7 Maintenance	7.1.1	Is the Notice of Completion issued before or after turnover? Cannot possibly be before. If after, HOA cannot accept responsibility without knowing that maintenance funds exist in the HOA budget, and some demonstration should be provided to the HOA as what level of capital replenishment is needed to maintain a capital reserve fund sufficient to maintain and restore the system. See earlier comments. I don't understand how this rule can go into effect as DE has no state rule on turnover of communities from developer to HOA. Similarly, Sussex County has no rules. Therefore, this is unworkable.	Section 7.1.1 has been modified to state that maintenance responsibility lies with the owner until it is legally transferred. This section has been sent for legal review.

Section Number	Subsection:	Comment	Comment Response
Section 7 Maintenance	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)?	7.1.1 has language to state that the original owner remains responsible for maintenance until the maintenance responsibility is legally transferred. Agency does not have to accept maintenance responsibility.
Section 7 Maintenance	7.2.3	How will the HOA be made aware of this requirement?	This is a requirement of the owner. If the HOA is the owner at the time of a change to the system, the HOA will be initiating the change.
Section 7 Maintenance	7.4.1	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.	Wording has not been changed. Only the Department can seek enforcement action against anyone negligent in fulfilling the requirements of these regulations. Delegated agency would have to pursue enforcement action under their own authority.
Section 7 Maintenance	7.2.1	The HOA should be presented with a certification by a PE, licensed by the State, that the system is in good working order. The State should also provide the HOA with an estimate of the costs of maintenance and projected life of the system, and provide assurance to the homebuyers that the developer has sufficiently funded the system for the first year of maintenance.	None of this will be included in the regulations.
Section 7 Maintenance	7.1.2.4	As noted above, DE has no law as to when a transfer is to be accomplished, consequently, this has no meaning. Criteria for when a turnover may be accomplished, and its relationship to the stormwater system's completion and state certification, need be associated with the turnover.	7.1.2.4 deleted from regulations
Section 7 Maintenance	7.1.2.1	As noted earlier, if the developer cannot demonstrate that the HOA budget includes funding and cap reserve funding for stormwater control, a portion of the money in the financial bond should be put into the HOA's budget.	7.1.2.1 deleted from regulations
Section 7 Maintenance	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?	Section 7.1.1 has been modified to state that maintenance responsibility lies with the owner until it is legally transferred. This section has been sent for legal review.

Section Number	Subsection:	Comment	Comment Response
Section 7 Maintenance	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?	Section 7.1.1 has been modified to state that maintenance responsibility lies with the owner until it is legally transferred. Section 7.1.2 has been modified to include that the stormwater system shall "run with the land" to track maintenance responsibility. These sections have been sent for legal review.
Section 7 Maintenance	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.) ☒	Section 7.1.1 has been modified to state that maintenance responsibility lies with the owner until it is legally transferred. Section 7.1.2 has been modified to include that the stormwater system shall "run with the land" to track maintenance responsibility. These sections have been sent for legal review.
Section 7 Maintenance	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 reminded that this is one other responsibility that needs to be transferred. In reality the maintenance should "run with the land".	This has been addressed in new language in 7.1.1 and 7.1.2
Section 7 Maintenance	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.	7.1.2.1 deleted from regulations

Section Number	Subsection:	Comment	Comment Response
Section 7 Maintenance	7	The maintenance subcommittee recommended that home buyers be informed of stormwater maintenance needs and responsibilities. Is this still an option/need?	The following was added to 7.1.1: "The stormwater management system shall run with the land and be binding upon the landowner and any successors in interest, including maintenance of these systems to ensure proper function." "Run with the land" would indicate that maintenance responsibility will be included on the deed.
Section 7 Maintenance	7.3.1.2	Will the developer or state be providing a copy of the permit to the HOA?	7.3.1.2 deleted. Delegated agencies will be responsible for establishing a frequency and procedures for maintenance reviews that suits their agencies' needs.
Section 7 Maint	7.1.2.3	Spell out LLC	addressed; section deleted
Section 8 Enforcement	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.	Will be addressed with Compliance Assistance within the Technical Document
Section 8 Enforcement	8.0	This section should include penalties, i.e. fines, revoked plans, stop work, etc.	Will be addressed with Compliance Assistance within the Technical Document
Section 8 Enforcement	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.	Will be addressed with Compliance Assistance within the Technical Document
Section 8 Enforcement	8.0	If we are currently having problems with enforcement why is this section not being clarified and strengthen?	Will be addressed with Compliance Assistance within the Technical Document
Section 8 Enforcement	8.0	No provisions are given to address stopping immediate or eminent discharges.	Will be addressed with Compliance Assistance within the Technical Document
Section 9 Delegation		How does blanket delegation of program elements affect agencies that have education and outreach requirements under NPDES permitting?	Agency may need to address their education and outreach requirements specifically within the MS4 permit. DNREC will continue to offer contractor certification , CCR certification, as well as designer training in the new regulation requirements.

Section Number	Subsection:	Comment	Comment Response
Section 9 Delega	9.7	This comment needs to be either deleted or modified.	9.7 language has been modified significantly
Section 9 Delegation	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>	None of our delegated agencies are currently delegated the education and training element. DNREC plans to continue with education and training as in the past.