



# Delaware Coastal Management Program

## Comprehensive Update And Routine Program Implementation August, 2004

**Program Summary  
Supplement to  
1979 Document**

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## **DELAWARE COASTAL MANAGEMENT PROGRAM SUMMARY**

### **BACKGROUND**

The Coastal Zone Management Act (CZMA) was signed in 1972 (P.L. 92-583). It has since been amended, with the most recent amendment in 1996. The Act and its amendments affirmed a national interest in the effective protection and development of the coastal zone. The CZMA authorized the Federal Grant-in-aid program to be administered by the Secretary of Commerce. They in turn appointed the National Oceanic and Atmospheric Administration (NOAA) as the responsible authority for the federal CZMA.

In response to the CZMA of 1972, Delaware prepared a Final Environmental Impact Statement (FEIS) for the development of a coastal program and submitted it to NOAA. In 1979, the Delaware Coastal Management Program was approved by NOAA under authority of the CZMA (15 CFR Part 923). The FEIS established the Delaware Coastal Management Program (DCMP), as well as its goals and policies and became Delaware's Program Document. The Department of Natural Resources and Environmental Control (DNREC) is the agency responsible for administering the state's Coastal Management Program.

Section 306 of the CZMA provides states with approved coastal management programs the authority to review federal activities (direct actions, licenses or permits, assistance, and Outer Continental Shelf exploration) for consistency with State Coastal Management Policies.

The purpose of this 2004 Policy Document is to update and revise the 1998 Policy Document. Many of Delaware's environmental laws and regulations have been amended and/or new ones established since 1998. As a result, DCMP has updated and/or deleted the 1998 policies accordingly. This Routine Program Change updates and revises the DCMP Policies as well as our Federal Consistency Procedures. The result is a new working document containing policies and procedures for utilization during federal consistency reviews.

### **ROUTINE PROGRAM CHANGE**

Section 306 of the Coastal Zone Management Act, as amended, provides states with a means to update their coastal programs with approval from NOAA. This procedure is called a Routine Program Change (RPC). NOAA issued new guidance in July, 1996 regarding RPC's. The DCMP has revised this Policy Document in accordance with the RPC Guidance and determined this update qualifies as and RPC. In addition to updating our Policies, the DCMP is also updating the 1979 Program Document to reflect changes and progress since its inception. The New Program Document will incorporate this Policy Document Update.

### **DELAWARE'S COASTAL MANAGEMENT AREA**

Delaware has defined its Coastal Management Area as the entire state for the purposes of the federally approved coastal management program.

**DELAWARE COASTAL ZONE ACT AND THE DELAWARE COASTAL MANAGEMENT PROGRAM**

The State of Delaware promulgated the Delaware Coastal Zone Act (7 Delaware Code, Chapter 70) in the early 1970's. This State law allows the DNREC to regulate industry in the Coastal Strip of Delaware. The Coastal Strip is defined in the statute. It is approximately any lands and waters east of State Routes 13, 113, and 1 (north-south corridors), and an area on the north and south of the Chesapeake and Delaware Canal.

The Delaware Coastal Zone Act is incorporated into the DCMP Policy Document. Industrial development activities within the Coastal Zone Strip require a permit from the DNREC. The Delaware Coastal Zone Act is administered by the DNREC Office of the Secretary.

## ***INTRODUCTION TO FEDERAL CONSISTENCY***

The Federal Coastal Zone Management Act of 1972 as amended (CZMA) (16 USC §1451 to §1464) provides that each federal agency conducting or supporting activities, whether within or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone, must do so in a manner which is, to the maximum extent practicable, consistent with Delaware's Coastal Management Program (DCMP).

In addition, federal permits and licenses, outer continental shelf (OCS) plans, and grants-in-aid which may affect Delaware's coastal zone management area must be consistent with the DCMP. The federal consistency provisions are intended to provide a means for improved federal-local coordination regarding important federal actions which could affect the Delaware coastal resources.

Consistency reviews enable the State to:

1. Plan for and manage impacts resulting from a federal project, permit or program.
2. Provide for analysis of the effects of federal actions.
3. Identify federal actions which could adversely affect coastal resources, general land use patterns, or public investment requirements.
4. Provide for an examination of federal actions in the context of the goals, objectives, and policy network contained in the DCMP.

Consistency offers Delaware's state agencies, through the DCMP housed in the Department of Natural Resources and Environmental Control (DNREC), Division of Soil & Water Conservation, an opportunity for a positive voice in federal actions. It ensures that state concerns and policies will be considered by federal agencies in federal development projects, the issuance of federal licenses and permits, the approval of OCS plans and programs, and the award of federal grants, loans, subsidies, insurance, or other forms of federal aid.

### **APPLICABILITY OF CONSISTENCY PROVISIONS**

Sections 307(c) and (d) of the CZMA provide that:

1. Federal activities and development projects affecting any land or water use or natural resource of Delaware's coastal zone management area shall be conducted consistent with the DCMP to the maximum extent practicable.
2. No federal license or permit shall be granted until: a) the DCMP has concurred with the applicant's certification; or until, b) by the DCMP's failure to act, consistency is conclusively presumed; or, c) on appeal to the Secretary of Commerce, the Secretary overrides the state's objection. See section on Secretarial appeals (page 18).

3. No federal agency shall grant a license or permit for any activity described in detail in an OCS plan which affects any land or water use or natural resource in the coastal zone until the DCMP concurs with the certification of consistency made by the person submitting the OCS plan, except upon an override by the Secretary of Commerce. See section on Secretarial appeals.
4. Federal agencies shall not approve proposed assistance projects to state and local governments that affect the coastal management area and are inconsistent with the DCMP, except upon an override by the Secretary of Commerce. See section on Secretarial appeals (page 18).

## **PROCEDURES FOR FEDERAL CONSISTENCY REVIEWS**

Applicants should send their Consistency Certifications and all supporting documentation (including federal application packages, maps, technical drawings, etc.) to:

Sarah W. Cooksey, Administrator  
Delaware Coastal Management Program  
Dept. of Natural Resource & Environmental Control  
Division of Soil & Water Conservation  
89 Kings Highway  
Dover, DE 19901  
Phone: (302) 739-3451

### ***DIRECT FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS***

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Federal agencies proposing activities and development projects must submit a consistency determination to the DCMP where such projects are likely to affect Delaware's coastal resources. Under federal regulations this includes all functions of a federal agency performed by it or on its behalf, including: planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources. See 15 CFR Section §930.31.

A flow chart which summarizes the consistency review process is provided as Appendix A. The following procedures apply to federal activities and development projects:

#### **NOTIFICATION**

Federal agencies must provide the DCMP, at the earliest practicable time, with consistency determinations for all proposed federally conducted or supported activities directly affecting the coastal zone management area. Such consistency determinations must be received at least 90 days before the federal activity or development project reaches a final decision stage likely to restrict the consideration of alternative approaches or measures. In a limited number of cases, federal agencies must also submit a consistency determination for ongoing activities initiated prior to approval of the DCMP. See 15 CFR § 930.38.

The consistency determination from the federal agency must contain:

- a) A brief statement indicating how the proposed action will be undertaken in a manner consistent to the maximum extent practicable with the DCMP. The term 'maximum extent practicable' describes the requirement for federal activities to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the federal agency's operations. See 15 CFR §930.32.
- b) An evaluation of the relevant enforceable policies of the DCMP.

- c) A detailed description of the proposed action, its associated facilities and their combined coastal zone effects.
- d) Relevant data and information, including time schedules, sufficient to support the federal consistency determination.

## **STATE REVIEW**

Pursuant to 15 CFR §930.41, the DCMP shall inform the federal agency of its agreement or disagreement with the federal agency's consistency determination at the earliest practicable time. The response time will not exceed 45 days following receipt of federal notification unless an extension has been granted.

Upon receipt of a federal consistency determination the DCMP will notify those agencies and individuals with the expertise to properly review the federal activity or development project. The DCMP shall be responsible for coordinating the review, compiling comments, and responding to the federal agency.

The State will also provide adequate public notice of the proposed federal action. The public notice process is as follows:

### Public Notice

- a) The DCMP will give at least 20 days public notice prior to response to consistency certification. In the event that a state permit is required for the same activity, the DCMP will coordinate their review with the state permitting agencies.
- b) The notice shall describe the subject matter of the certification review, including a summary of the proposed activity and an announcement of the availability of consistency certification and accompanying public information.
- c) The notice shall request interested parties to comment on the proposed activity.
- d) The notice shall provide the date, time, and place of any hearing to be held by the DCMP and/or State permitting agency.
- e) The notice shall be published in a minimum of two Delaware newspapers of general circulation.
- f) Public notice may be expanded in proportion to the degree of likely public interest involved, the substantial commitment of or impact on coastal resources, the complexity or controversy of the proposal, or for other good reasons.

## **DCMP OBJECTION TO A CONSISTENCY DETERMINATION**

In the event the DCMP disagrees with the federal agency's consistency determination, a notification will be sent to the affected federal agency and to the Director of the federal Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA). The notification shall:

- a) Describe how the proposed activity is inconsistent with specific enforceable policies of the management program;
- b) Identify alternative measures, where feasible, which would make the proposed action consistent; and
- c) Describe the nature and necessity of additional information that may be required for making a consistency determination if the objection is based on insufficient information.

Whenever the DCMP objects to a consistency determination, the DCMP will attempt to resolve its concerns with the federal agency. However, in the event of a serious disagreement between a federal agency and the DCMP, either party may request formal mediation through the Secretary of Commerce as provided for in 15 CFR Part 930, Subpart G, or informal negotiations through OCRM. Both processes are voluntary and non-binding.

## **MODIFICATION OF CONSISTENCY DETERMINATION PROCESS**

The DCMP recognizes the need for flexibility in this process, such as shorter review time, special consistency agreements, and waivers in the interests of national security or overriding national interest. The DCMP, through direct negotiations with federal agencies, may agree to limit the applicability of consistency review based upon the scope, size, location or other characteristics of the proposed federal action.

## ***FEDERAL LICENSES AND PERMITS***

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Activities requiring a federal license or permit are subject to consistency when the activities, whether in or outside the coastal zone, are likely to affect any land or water use or natural resource of Delaware's coastal zone management area. Applicants for federal licenses or permits must certify to the permitting federal agency and the DCMP that the proposed project will be conducted in a manner consistent with the enforceable policies of the DCMP. Proposed activities subject to this section include those requiring federal authorizations, certifications, approvals, or other forms of permission granted by any federal agency to an applicant, except OCS leases and federal agencies permit applications for federal permits which are covered separately.

Pursuant to 15 CFR§930.53(b), the DCMP has prepared a list of those federal licenses and permits which are considered to "affect the coastal zone". No federal license or permit described on this list (see Appendix C) can be granted until after the applicant certifies that the proposed activity complies with and will be conducted in a manner consistent with the DCMP and the DCMP concurs.

The following procedures apply to federal licenses and permits:

### **NOTIFICATION**

Federal agencies are required to inform applicants for listed federal licenses and permits of the applicant's responsibility for notification to the State and submission of required information and a consistency certification. The notice and consistency certification shall comply with 15 CFR §930.57 and §930.58.

Applicants should consult with the DCMP at the earliest practicable time for assistance regarding the DCMP policies applicable to the proposed project.

When satisfied that the proposed activity meets the federal consistency requirements, all applicants for federal licenses or permits subject to consistency shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the State's approved management program. The applicant's consistency certification shall be in letter format and be accompanied by the necessary data and information. The consistency certification shall contain the following statement:

"The proposed activity complies with Delaware's approved coastal management program and will be conducted in a manner consistent with such program."

At the same time an application is submitted to the federal agency for a listed federal license or permit, the applicant shall transmit a copy of the application and consistency certification to the DCMP.

## **NECESSARY DATA AND INFORMATION**

The applicant shall furnish the DCMP with necessary data and information along with the consistency certification. Such information and data shall include:

- a) A detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable coastal zone effects. This includes, but is not limited to, a copy of the federal permit application package, maps, diagrams, technical data, etc.
- b) A brief assessment relating the probable coastal zone effects of the proposed project and its associated facilities on any land or water use or natural resource of the coastal zone to the relevant enforceable policies of the Delaware Coastal Management Program.
- c) A brief set of findings, derived from the above assessment, indicating that the proposed activity, its associated facilities, and their effects are all consistent with the provisions of the DCMP.
- d) Upon the applicant's request, the DCMP shall provide assistance for developing the assessment and findings described in items b and c above.

## **STATE REVIEW**

Pursuant to 15 CFR §930.60, State review of a federal license or permit application is initiated upon receipt of the consistency certification and the necessary data and information as specified in 15 CFR §930.57 and §930.58.

The State will also provide adequate public notice of the proposed federal permit or license. The public notice process is as follows:

### Public Notice

- a) The DCMP will give at least 30 days public notice prior to response to consistency certification. In the event that a state permit is required for the same activity, the DCMP will coordinate with the state permitting agencies.
- b) The notice shall describe the subject matter of the certification review, including a summary of the proposed activity and an announcement of the availability of consistency certification and accompanying public information.
- c) The notice shall request interested parties to comment on the proposed activity.
- d) The notice shall provide the date, time, and place of any hearing to be held by the DCMP and/or State permitting agency.
- e) The notice shall be published in a minimum of two Delaware newspapers of general circulation.

- f) Public notice may be expanded in proportion to the degree of likely public interest involved, the substantial commitment of or impact on coastal resources, the complexity or controversy of the proposal, or for other good reasons.

Review Process

Review of consistency certifications and supportive information will be conducted by the DCMP. If a state permit is required for the same activity, the State permitting agency's review of the permit applications will become part of the DCMP's consistency review.

Consistency certifications and/or state permit applications will be reviewed to determine whether or not:

- a) Sufficient information was submitted to determine consistency.
- b) The proposed activity by itself, or in consideration with existing projects, would cause a violation of a Delaware statute, regulation, or enforceable policy contained in the program, or result in an adverse impact of an unacceptable nature as defined by the management program.
- c) Alternative measures exist, which if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the DCMP.

**CONCURRENCE WITH A CONSISTENCY CERTIFICATION**

At the earliest practicable time following the close of the public comment period, the DCMP shall notify the applicant and the federal and/or state permitting agency whether it concurs or objects to the consistency certification. Concurrence shall be in writing. If the DCMP does not respond within six months from the commencement of review, concurrence shall be conclusively presumed. If a consistency decision has not been issued within 90 days of commencement of review, the DCMP shall notify both the federal permitting agency and applicant of the status and provide justification for further delay.

**FEDERAL ACTION FOLLOWING DELAWARE CONCURRENCE WITH A  
CONSISTENCY CERTIFICATION**

If the DCMP issues a concurrence (or concurrence is conclusively presumed) with the applicants' consistency certification, the federal agency may approve the application for a federal license or permit (state permits may still be required).

**FEDERAL ACTION FOLLOWING DELAWARE OBJECTION TO A CONSISTENCY CERTIFICATION**

At any time during the six month review period, the DCMP may object to the consistency certification. Such objection will be contained in a written notice from the DCMP to the applicant, the federal agency, and the Director of OCRM. The objection shall:

- a) Describe how the proposed action is inconsistent with the enforceable policies of the management program.

- b) Identify alternative measures, where feasible, which would make the proposed action consistent.
- c) Describe the nature and necessity of additional information required for making a consistency determination if the objection is based on insufficient information. See 15 CFR §930.64(d)
- d) Describe the applicant's right to appeal to the Secretary of Commerce.

Upon receipt of a State's objection, the federal agency shall not grant the federal license or permit, except where, upon appeal to the Secretary of Commerce, the Secretary overrides DCMP's objection based upon a finding that the proposed activity is either consistent with the purposes of the CZMA or is in the interest of national security (15 CFR Part 930, Subpart H). The State's objection shall include a statement informing the applicant of a right to appeal to the Secretary of Commerce. See section on Secretarial appeals. Regardless of DCMP's consistency decision or the Secretary's decision in an appeal, the project may not commence until all necessary State permits are obtained.

#### **MODIFICATION OF CONSISTENCY CERTIFICATION PROCESS**

Pursuant with 15 CFR§930.54 the DCMP, with assistance from federal agencies, may monitor other federal license and permit activities which may reasonably be expected to affect Delaware's coastal zone management area, but which are not listed in the DCMP. Delaware intends to monitor unlisted federal license and permit activities through the A-95 Process/State and Regional Clearinghouses, NEPA environmental impact statements, and routine reporting of regional resource agencies.

Should the DCMP determine that an unlisted license or permit activity could be reasonably expected to affect the coastal zone, notification will be sent to the appropriate federal agency, the Director of OCRM, and the applicant of the DCMP's intent to review the activity for consistency pursuant to 15 CFR §930.54.

## ***FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS***

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Pursuant with 15 CFR Part 930, Subpart F, state and local governments submitting applications for federal assistance affecting Delaware's coastal zone management area shall certify that the applications are consistent with the DCMP. Federal assistance means assistance provided under a Federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid. An applicant agency means any unit of state or local government which submits an application for federal assistance.

### **DCMP CONSISTENCY PROVISION RELATIVE TO FEDERAL ASSISTANCE**

Applications by state, county and municipal agencies for federal assistance must be reviewed by the state Federal Aid Review Committee (FARC). Additionally, all applications from governmental entities which receive State funds must be reviewed and approved by the Delaware State Clearinghouse Committee (DSCC), a legislatively mandated review body whose membership includes representatives of the executive and legislative branches of State government. The DSCC may veto applications and prevent their further consideration by a federal agency. Other reviews are also required at the regional level for projects in New Castle County.

To ensure consistency with the DCMP and conform to NOAA regulations, DCMP will review all federal assistance applications and make the final consistency determination in consultation with the FARC and the DSCC.

In the event the DCMP objects to the applicant agency's proposal on grounds of inconsistency with the DCMP, the objection must include the reasons and supporting information for such action. The DCMP will then notify the applicant agency and the federal agency of the State's objection.

The State's objection notification will:

- a) Describe how the proposed project is inconsistent with specific elements of the management program.
- b) Identify alternative measures, if any, which would make the proposed action consistent.
- c) Describe the nature and necessity of additional information required for making a consistency determination if the objection is based on insufficient information.
- d) Describe the applicant's right to appeal to the Secretary of Commerce.

### **MODIFICATION OF CONSISTENCY CERTIFICATION PROCESS**

The DCMP will monitor federal assistance projects and programs through the clearinghouse review process and other means. If the monitoring indicates that significant impacts on the State's coastal resources have occurred or could occur from federal assistance projects, a formal consistency review and determination pursuant to the federal regulations will be requested. In such cases, the

DCMP will notify the applicant agency, involved federal agencies, and the OCRM Director of its intention to make such a determination.

Some federal assistance programs are not subject to OMB Circular A-95 nor to the review process required by the Delaware State Clearinghouse Committee. In these cases the DCMP will monitor program activity through the Federal Register, informal and formal federal agency contact, newsletters, State-local technical assistance projects, and other means. Where it is determined that such programs could have a significant impact, the DCMP will review the federal program and, if appropriate, request that such federal program be subject to the A-95/Clearinghouse review and approval process. A formal consistency certification may subsequently be required.

The DCMP reserves the right to establish a federal assistance program consistency list based on either or both of the preceding evaluations and to implement the federal assistance consistency certification process and authorities provided by 15 CFR Part 930, Subpart F.

## **OCS EXPLORATION, DEVELOPMENT AND PRODUCTION ACTIVITIES**

The federal regulations, 15 CFR Part 930, Subpart E, provides that OCS plans submitted to the U.S. Secretary of the Interior for OCS exploration, development and production, and all associated federal licenses and permits described in detail in such OCS plans, shall be subject to a certification of their consistency with a State's coastal management program.

This requirement applies to:

- a) License and permit activities which are described in detail in the OCS plan, such as, permits to drill, and rights-of-use and easements for the construction and maintenance of structures, platforms, gathering and flow lines.
- b) OCS-related licenses and permits, such as for pipeline corridors, artificial islands or other fixed structures, transport of dredged materials, and discharges or emissions subject to the Clean Water Act of 1987 or the Clean Air Act of 1990.

### **OCS ACTIVITIES SUBJECT TO CONSISTENCY**

A certification of consistency for each activity described in detail in the OCS plan shall be attached to the OCS plan at the time it is submitted to the Secretary of the Interior. No federal official or agency shall grant any license or permit for any activity described in detail in the OCS plan until the State has received such certification and plan together and until the State has concurred or conclusive concurrence is presumed.

OCS plan license and permit actions not described in detail in the OCS plan are subject to the provisions for federal licenses and permits.

### **NOTIFICATION AND REVIEW PROCESS**

Any person submitting to the U.S. Secretary of the Interior any OCS plan must furnish the DCMP with a copy of the OCS plan certification.

When satisfied that the proposed activities described in detail in the OCS plan meet the Federal consistency requirements, the OCS lessee or operator shall declare in the consistency certification that:

"The proposed activities described in detail in this plan comply with Delaware's approved coastal management program and will be conducted in a manner consistent with such program."

Supporting information to accompany the certification shall include the comprehensive offshore, nearshore and onshore data and material required by the Department of the Interior's operating regulations governing exploration, development and production operations on OCS (30 CFR§250.34). Information supplied must include an assessment of the probable coastal zone effects, and a set of findings indicating that the proposed activities, their associated facilities, and their combined effects, are all consistent with the provisions of the management program.

In order to ensure that all levels of government and the general public are aware of and have an opportunity to comment on such plans, the DCMP will provide public notice of the receipt of such plans, the procedures for comments, and the review closing date.

#### **STATE CONCURRENCE WITH CONSISTENCY CERTIFICATION**

At the earliest practicable time the DCMP will notify the person, the Secretary of the Interior, and the Director of OCRM whether it concurs with or objects to the consistency certification. Concurrence by the State agency shall be conclusively presumed in the absence of an objection within six months following commencement of State review.

If the DCMP has not issued a decision within 90 days following the beginning of review, it will notify the applicant, the Secretary of the Interior and the Director of OCRM of the status of the matter and the basis for further delay.

If the State issues a concurrence or if conclusive concurrence is presumed, the OCS lessee or operator will not be required to submit additional certifications and supporting information for State review at the time federal applications are actually filed for the federal permit activities described in detail in the OCS plan. However, the lessee or operator must supply the DCMP with copies of permit applications to allow the State to monitor the approved OCS activities.

#### **STATE OBJECTION TO A CONSISTENCY CERTIFICATION**

In the event the State objects to the OCS plan certification, it will accompany its objection with reasons and supporting information concerning each activity which the State finds to be inconsistent with the management program. The State's objection will include a statement informing the person of a right of appeal to the Secretary of Commerce on the grounds described below. Following receipt of a State agency objection, federal agencies may not issue any of the licenses or permits for activities described in detail in the OCS plan.

## ***APPEALS AND SECRETARIAL REVIEW RELATIVE TO FEDERAL CONSISTENCY***

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The provisions of 15 CFR Part 930, Subpart H, outline procedures by which the Secretary of Commerce may override a state's objection if the Secretary finds that a federal license or permit activity, including those described in detail in an OCS plan, or a federal assistance activity, which is inconsistent with the DCMP, may be federally approved because the activity is consistent with the objectives or purposes of the federal CZMA, or is necessary in the interest of national security. In order to be "consistent with the objectives or purpose of the federal CZMA", an activity already inconsistent with the DCMP, must be found by the Secretary of Commerce to be permissible because it satisfies the following four requirements:

- a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 or 303 of the Act.
- b) When performed separately or when its cumulative effects are considered, it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest.
- c) The activity will not violate any requirement of the Clean Air Act, as amended, or the Clean Water Act, as amended.
- d) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the DCMP.

Pursuant to 15 CFR §930.125, an appellant may file a notice of appeal with the Secretary of Commerce within 30 days of the appellant's receipt of DCMP's objection to a consistency certification for a federal license or permit (including those described in an OCS plan), or a federal assistance program.

The notice of appeal shall be accompanied by a statement in support of the appellant's position, along with supporting data and information. The appellant shall send a copy of the notice of appeal and accompanying documents to the federal and state agencies involved. An application fee must accompany the appeal to the Secretary: \$200 for minor appeals and \$500 for major appeals, unless the Secretary, upon consideration of an applicant's request for fee waiver, determines that the applicant is unable to pay the fee. The Secretary will also collect such other fees as are necessary to recover the full costs of administering and processing the appeals.

<b>FEDERAL AGENCY</b>	<b>FEDERAL LICENSE OR PERMIT AND FEDERAL STATUTORY AUTHORITY</b>
<b>Army Corps of Engineers Department of Defense</b>	Construction of dams or ditches across navigable waters, or obstruction of navigable waters required under Section 9 and 10 of the Rivers and Harbors Act of 1899 (33 USC 401, 403).
	Establishment of harbor lines pursuant to Section 11 of the Rivers and Harbors Act of 1899 (33 USC 4004, 405).
	Occupation of sea wall, bulkhead, jetty, dike, levee, wharf, pier or other work built by the United States pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408).
	Approval of plans for improvements made at private expense under USCOE supervision pursuant to the Rivers and Harbors Act of 1899 (33 USC 565)
	Discharge of fill into the waters of the United States pursuant to the Clean Water Act of 1987, Section 404.
	All actions for which permits are required pursuant to Section 103 of the Marine Sanctuaries Act of 1972 (33 USC 1413).
	Construction of Artificial islands and fixed structures on the Outer Continental Shelf pursuant to Section 4(f) or the Outer Continental Lands (43 USC) not otherwise covered in an OCS plan
	Port Access Routes pursuant to 43 USC 1333(F)
<b>Coast Guard, Department of Transportation</b>	Construction or modification of bridges, causeways or pipelines over navigable water pursuant to 49 USC 1455.
<b>Environmental Protection Agency</b>	NPDES Permits and other permits for federal installations, discharges in contiguous zones and ocean waters, sludge runoff permits and agricultural waste disposal pursuant to Sections 401, 402, 403, 405, and 318 of the Clean Water Act of 1987
	Permits pursuant to the Resource Recovery and Conservation Act of 1976
	Permits pursuant to the Clean Air Act of 1990
<b>Federal Energy Regulatory Commission</b>	Licenses and permits ordering interconnection of electric transmission lines; issuing certificates of public convenience and necessity for interstate natural gas transmission and terminals including approval of LNG sites; approvals for abandonment of natural gas pipelines; and licenses required for non-federal hydroelectric projects and associated transmission lines.
<b>Nuclear Regulatory Commission</b>	Licensing and certification of the construction and operation of nuclear power plants and possession and use of by-products, source and special nuclear material, pursuant to Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1969.
<b>Department of Energy</b>	Regulation of gas pipelines, and licensing of import or export of natural gas pursuant to the Natural Gas Act (15 USC 717) and the Energy Reorganization Act of 1974.
	Siting Construction and operation of non-nuclear power plants.
<b>Department of Interior, Minerals Management Service</b>	Leases, permits to drill wells, and to construct and maintain pipelines, gathering and flow lines and associated structures pursuant to 43 USC 1352 to the extent they are not covered by the OCS plan.
	Permits and rights of use and easements required for pipeline corridors, and associated activities pursuant to the OCS Lands Act (43 USC 1352) and 43 USC 931(c) and 20 USC 185, to the extent these are not covered by an OCS plan.
<b>Federal Aviation Administration</b>	Airport Layout Plans (FAA Order 5050.4A, paragraph 22.(8)(d))

***FEDERAL CONSISTENCY POLICIES***

***DELAWARE COASTAL MANAGEMENT PROGRAM***

***AUGUST 2004***

### **5.A.1 CMP Policies for Wetlands Management**

1. The productive public and private wetlands in the state shall be preserved and protected to prevent their despoliation and destruction consistent with the historic right of private ownership of lands.  
  
[Authority - 7 Delaware Code 6602]
2. Activities in or adjacent to wetlands shall be conducted so as to minimize wetlands destruction or degradation, to preserve the natural and beneficial values of wetlands, and to protect the public interest therein.  
  
[Authority - 7 Delaware Code 6602, 6003(a)(2), 6119, and 4001]
3. Each state agency shall minimize the adverse effects to freshwater wetlands and conserve and enhance the environmental values and functions of freshwater wetlands in carrying out the agency's responsibilities.  
  
[Authority - Executive Order No. 56, May 26, 1988]
4. Each state agency, to the extent permitted by law, shall avoid undertaking or providing financial assistance for construction located in freshwater wetlands which will substantially degrade or destroy for long or permanent duration the use and function of an altered area as a wetland environment, unless the head of the agency, through consultation with the DNREC, files written findings with DNREC that (a) there is no reasonable alternative to such construction, and that the proposed action includes all practicable measures to minimize undesirable impacts to freshwater wetlands which may result from such use, or (b) that the request is consistent with the procedures and provisions of the following paragraph. In making this finding the head of the agency and DNREC may take into account social, economic, environmental and other pertinent factors.  
  
[Authority - Executive Order No. 56, May 26, 1988]
5. The Secretary of the DNREC in conjunction with the Department of Agriculture, the

Delaware Development Office and the Department of Transportation shall establish policy and procedures including a mechanism for consultation and interagency discussions that will ensure the consideration of the public health, safety and welfare, the active management of wetland systems, and the uses of freshwater wetlands including wetland enhancement, recreation, economic, scientific and cultural uses. DNREC may approve standard plans and procedures that shall be followed by a state agency that has similar type of activities that may affect a wetland more than one time and/or affect more than one wetland site.

[Authority - Executive Order No. 56, May 26, 1988]

6. Any requests for new authorizations, appropriations, or grants of state operating or capital funds, or for state loan assistance or guarantees shall indicate, based on best available information, if an action to be proposed will be located in or will adversely affect freshwater wetlands, whether the proposed action is in accord with Executive Order Number 56. The U. S. Fish and Wildlife Service's National Wetlands inventory maps shall be used as a guideline for freshwater wetlands determinations.  
  
[Authority - Executive Order No. 56, May 26, 1988]
7. When State-owned freshwater wetlands are proposed for lease, easement, right-of-way or disposal to non-state public or private parties, the State agency shall (a) attach restrictions appropriate to Executive Order Number 56 to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (b) withhold such properties from disposal.  
  
[Authority - Executive Order No. 56, May 26, 1988]
8. Wetlands to be managed by the Department of Natural Resources and Environmental Control are those meeting the criteria set forth in Section 6603(h) Chapter 66, Title 7, Delaware Code.

[Authority - 7 Delaware Code 6603(h)]

9. "Wetland-type" areas not subject to DNREC regulation, including freshwater wetlands, swamps, bogs, low lying and poorly drained lands not covered by the official wetlands maps, shall be evaluated for their wildlife, groundwater recharge, scenic and other values as part of the preparation of registries of natural areas and the development of critical areas plans and state resource areas, as provided by the Delaware Natural Areas Preservation System Act, the Delaware Land Use Planning Act, and the Delaware Land Protection Act, respectively.

[Authority - Executive Order No. 43, August 15, 1996; 7 Delaware Code, Chapter 73 and Chapter 75; and 29 Delaware Code, Chapter 92]

10. Activities which may adversely affect wetlands shall require state approval pursuant to the policy statements below. The CMP, however, requires no such approval for the following activities: construction of foot bridges, duck blinds, waterfowl nesting structures, boundary markers, or aids to navigation that do not prevent the ebb and flow of the tide; mosquito control activities authorized by the DNREC; and hunting, fishing, haying, trapping, and grazing of domestic animals.

[Authority - 7 Delaware Code 6604 and 6606; DNREC Wetlands Regulations, Section 1.04, revised November 3, 1994]

11. In order to assure that any activity in the wetlands is appropriate, state approval shall be required prior to the initiation of such activities, except no such approval shall be required for the activities identified in policy statement number 10. The following factors shall be considered prior to such approval: the environmental impact of the proposed use; the number and type of supporting facilities required and their impact; the effect of the activity on neighboring land uses; the appropriate state and local comprehensive plans for the general area; the economic impact of the activity in terms of jobs, taxes generated, and land area required; and the aesthetic impact of the proposed activity. Alternative methods of construction shall also be considered prior to permit approval.

[Authority - 7 Delaware Code 6604 and DNREC Wetlands Regulations, revised November 3, 1994]

12. In considering the environmental impacts of a proposed activity in wetlands, the Department of Natural Resources and Environmental Control shall consider the cumulative impact of individual projects.

[Authority - Executive Order No.43, August 15, 1996]

13. No permit will be issued to:

- a. Dredge any channel through the wetlands deeper than the existing depth or the control channel depth specified by the Corps of Engineers at the point of connection to the adjacent navigable waterway to which the dredge channel is directly connected. A lesser depth may be specified by the Secretary of the DNREC in furtherance of the purposes of the Act.
- b. Dredge any channel through the wetlands that has only one outlet to navigable water through which the normal daily tide ebbs and flows unless the channel is equipped, by aerators or other means, to maintain the Water Quality Standards for Streams that are issued by the DNREC.
- c. Dredge channels through wetlands with sides more nearly vertical than a slope that rises one foot vertically for each three feet of horizontal distance except where conditions of soil composition prevent slope stabilization, so that bulkheading must be used.
- d. Utilize wetlands for any activity unless it:
  - (1) Requires water access for the central purpose of the activity; and
  - (2) Has no alternative on adjoining non-wetland property of the owner.
- e. Building bulkheads on wetlands higher in elevation than the surface of the natural land. Navigational aids that do not prevent the ebb and flow of the tide may be higher.

[Authority - DNREC Wetlands Regulations, Section 2, revised November 3, 1994]

## **5.A.2 CMP Polices for Beach Management**

1. The public and private beaches of the State shall be preserved, protected, and enhanced to mitigate beach erosion, and to prevent their destruction and despoliation.

[Authority - 7 Delaware Code 6801, 6803, and 6810]

2. Publicly owned beaches and shorelines shall be managed and maintained to assure adequate and continued public access to these areas within the carrying capacity of the resource.

[Authority - 7 Delaware Code 4701(c)]

3. Beaches are the areas from the Delaware/Maryland line at Fenwick Island to the Old Marina Canal north of Pickering Beach, which extends from the Mean High Water line of the Atlantic Ocean and Delaware Bay seaward 2,500 feet, and landward 1,000 feet.

[Authority - 7 Delaware Code 6802(1)]

4. No person shall, without first having obtained a permit or letter of approval from the Department, undertake any activity:
  - a. To construct, modify, repair or reconstruct any structures or facility on any beach seaward of the building line.
  - b. To alter, dig, mine, move, remove or deposit any substantial amount of beach or other materials, or cause the significant removal of vegetation, on any beach seaward of the building line which may affect the enhancement, preservation or protection of beaches.

[Authority - 7 Delaware Code 6805(a)]

5. Construction activities landward of the building line on any beach, including construction of any structure or the alteration, digging, mining, moving, removal or deposition of any substantial amount of beach or other materials, shall be permitted only under a letter of approval from the Department of Natural Resources and Environmental Control.

[Authority - 7 Delaware Code 6805(c)]

6. The Department shall grant or deny a permit or letter of approval required by Policies 4 and 5 in accordance with duly promulgated regulations. If any structure proposed to be built in whole or in part seaward of the building line could reasonably be reduced in size or otherwise altered in order to eliminate or diminish the amount of encroachment over the building line, the Department shall require such reduction or alteration as a condition of granting the permit or letter of approval.

[Authority - 7 Delaware Code 6805(d)]

7. By definition, the Building Line means a line generally paralleling the coast, set forth on maps prepared by the Division of Soil and Water Conservation with reference to the National Geodetic Vertical Datum (NGVD) and the Delaware State Plane Coordinate System, and based upon information provided by topographic surveys. The Building Line is located as follows:

- a. Along beaches extending from the Delaware/Maryland line to the tip of Cape Henlopen - 100 feet landward of the adjusted seawardmost 10-foot elevation contour above NGVD; and
- b. Along beaches extending from the tip of Cape Henlopen to the southernmost limit of Primehook Beach - 100 feet landward of the adjusted seawardmost 7-foot elevation contour above NGVD;
- c. Along beaches extending from the southernmost limit of Primehook Beach to the Old Marina Canal north of Pickering Beach - 75 feet landward of the adjusted seawardmost 7-foot elevation contour above NGVD; or at the landward limits of the beach, as defined in the Regulations Governing Beach Protection and the Use of Beaches dated December 27, 1983, whichever is most seaward.

[Authority - State of Delaware Regulations Governing Beach Protection and the Use of Beaches, Part 1 - Definitions, revised December 27, 1983]

8. If a structure located seaward of the Building Line is completely destroyed, no person shall

undertake any restoration or reconstruction of the destroyed structure before the Division issues the person a permit or letter of approval pursuant to the Regulations Governing Beach Protection and the Use of Beaches.

[Authority - State of Delaware Regulations Governing Beach Protection and the Use of Beaches, Section 2.07, revised December 27, 1983]

9. All structures, devices and facilities existing now or in the future which are devoted to the enhancement, preservation and protection of beaches shall be under sole jurisdiction, management and control of the Department of Natural Resources and Environmental Control.

[Authority - 7 Delaware Code 6803(b)]

10. No person shall commence or conduct, without a permit therefore from the Division of Soil & Water Conservation, construction of any structure or facility on any beach seaward of the Building Line, the primary function of which is beach erosion control or shore protection including, but not limited to, groins, jetties, seawalls, revetments, dikes, bulkheads, and beach nourishment; except that ordinary dune maintenance, as determined by the Division, including the proper installation of sand fence and the planting and fertilization of stabilizing vegetation, shall not require a permit.

[Authority - State of Delaware Regulations Governing Beach Protection and the Use of Beaches, Section 4.03, revised December 27, 1983]

11. No person shall commence or conduct without a permit therefore from the Division of Soil and Water Conservation, construction seaward of the Building Line, of any pipeline, dock, pier, wharf, ramp or other harbor work.

[Authority - State of Delaware Regulations Governing Beach Protection and the Use of Beaches, Section 4.04, revised December 27, 1983]

12. If a structure is to be either constructed or reconstructed following the complete destruction of the original structure, and such a structure does not have to be located seaward of the Building Line in order to achieve its intended

purpose, then such a structure shall be required to be located entirely landward of the Building Line. However, if the Division of Soil and Water Conservation determines that there is inadequate space available entirely landward of the Building Line for the construction or reconstruction of a completely destroyed structure, said constructed or reconstructed structure shall be physically located as far landward as possible on the parcel of real property in question, taking into consideration all Federal, State and local laws, rules, regulations, and zoning and building ordinances.

[Authority - State of Delaware Regulations Governing Beach Protection and the Use of Beaches, Section 2.08, revised December 27, 1983]

13. The following activities are prohibited:
  - a. The operation of any motorized vehicle or machine on, over or across the primary dune on any State-owned beach except at those locations specified by the Department for such use; and
  - b. Pedestrian traffic on, over or across the primary dune on any State-owned beach except at those locations specified by the Department for such use; and
  - c. The alteration, moving or removal of any facility, improvement or structure installed or maintained by the DNREC for enhancement, preservation or protection of any beach; and
  - d. The damaging, destruction or removal of any trees, shrubbery, beachgrass or other vegetation growing on any State-owned or maintained beach seaward of the Building Line.

[Authority - DNREC Regulations Governing Beach Protection and the Use of Beaches, Section 3.03, revised effective December 27, 1983]

14. Actions deemed necessary by DNREC to prevent and repair damages from erosion of public beaches shall be taken within the limits of funds made available for such purposes.

[Authority - 7 Delaware Code 6803(b) and 6808]

- and until the beaches are opened to public use.
- [Authority - Executive Order No. 43, August 15, 1996]
15. Action to reduce shoreline recession on private beaches may be taken by DNREC, but only under the following conditions:
- a. Where dangerous conditions exist on any privately owned beach which constitute an emergency; or
  - b. In those instances where owners of private beaches allow free public use of such beaches in return for the assistance; or
  - c. Whenever two thirds or more of the property owners in the project area along the private beach have petitioned the Department to undertake the work.
- [Authority - 7 Delaware Code 6801, 6804, 6806, and 6810]
16. To the maximum extent possible the following system of priorities shall be utilized for the expenditure of limited beach preservation funds:
- a. First priority shall be given to those beaches which suffer substantial and chronic erosion due to the presence of public navigation works;
  - b. Second priority shall be given to those intensely used, publicly owned beaches undergoing critical erosion. This category will be subdivided further according to the degree of public use, ease of access, rate of erosion, value of the area to the economy, and possible beneficial effects protection efforts may have on downdrift Delaware beaches. Protection of private beachfront structures will not be an overriding consideration;
  - c. Third priority shall be given to all remaining publicly owned recreational beaches;
  - d. Fourth priority shall be given to intensely used, publicly accessible private beaches;
  - e. Fifth priority shall be given to sparsely used, publicly accessible beaches; and
  - f. The last priority shall be given to privately owned, restricted beaches. In fact, all beach protection funds and State disaster-related reconstruction aid shall be restricted unless
17. All bonds issued for beach preservation projects shall not be issued for a period longer than the expected useful life of the work being financed.
- [Authority - Executive Order No. 43, August 15, 1996]
18. Non-structural erosion control methods are preferred over structures and are, therefore, encouraged by the CMP.
- [Authority - Executive Order No. 43, August 15, 1996]
19. The supply and demand for access to Delaware's public beaches and other shorelines shall be studied periodically through the Statewide Comprehensive Outdoor Recreation Planning Process (SCORP). When the need for additional access facilities to these public beaches and shorelines, beyond those already in place, the state will undertake efforts to provide such access as long as it can be done in a manner consistent with the purposes for which these lands were set aside.
- [Authority - 7 Delaware Code 4701(c); Executive Order No. 43, August 15, 1996]

### **5.A.3 CMP Policies for Coastal Waters Management**

1. The development and utilization of the land and water resources of the state shall be regulated to ensure that water resources are employed for beneficial uses and not wasted, to protect beneficial uses of water resources, and to assure adequate water resources for the future.
- [Authority - 7 Delaware Code 6001 (a)(2) and (3)]
2. The water resources of the state shall be protected from pollution which may threaten the safety and health of the general public.

[Authority - 7 Delaware Code 6001 (a)(5) and 6001 (c)(2)]

3. The coastal water resources of the state shall be protected and conserved to assure continued availability for public recreational purposes and for the conservation of aquatic life and wildlife.

[Authority - 7 Delaware Code 6001 (a)(4)]

4. It is the policy of the DNREC to maintain within its jurisdiction surface waters of the State of satisfactory quality consistent with public health and public recreation purposes, the propagation and protection of fish and aquatic life, and other beneficial uses of the water.

[Authority - DNREC Regulations, Surface Water Quality Standards, Section 1.1, amended February 26, 1993]

5. The designated uses applicable to the various stream basins represent the categories of beneficial use of waters of the state which must be maintained and protected through application of appropriate criteria. Such uses shall include public water supply; industrial water supply; primary contact recreation involving any water-based form of recreation, the practice of which has a high probability for total body immersion or ingestion of water such as swimming and water skiing; secondary contact recreation involving a water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of water such as wading, boating and fishing; maintenance, protection and propagation of fish, shellfish, aquatic life and wildlife preservation; agricultural water supply; and waters of exceptional recreational or ecological significance (ERES waters).

[Authority - State of Delaware, Surface Water Quality Standards, Section 10, amended February 26, 1993]

6. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Degradation of water quality in such a manner that results in reduced number, quality, or river or stream mileage of existing uses shall be prohibited. Degradation shall be defined for the purposes of this section as a statistically significant reduction, accounting for natural

variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.1, revised February 26, 1993]

7. Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that water quality shall be maintained and protected. In the case of E.R.E.S. waters, existing quality shall be maintained or enhanced. Limited degradation may be allowed if the DNREC finds, after full satisfaction of public participation provisions of 7 Delaware Code Sections 6004 and 6006 and the intergovernmental coordination provisions of the State's continuing planning process as required in 40 CFR Part 130, that allowing lower water quality is necessary to accommodate important social or economic development, or would result in a substantial net environmental or public health benefit, in the area in which the waters are located. In allowing such degradation or lower water quality, the DNREC shall assure water quality adequate to protect existing uses fully. Further, the DNREC shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.2, amended February 26, 1993]

8. Where high quality waters constitute an outstanding national resource, such as waters of national parks and wildlife refuges, existing quality shall be maintained and protected.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.3, amended February 26, 1993]

9. In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Water Quality Act of 1987.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.4, amended February 26, 1993]

10. Degradation of water quality in such a manner that results in reduced number, quality, river or stream mileage, of designated uses or violation of water quality standards shall be prohibited. Reduced quality shall be defined for the purposes of this section as a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.5, amended February 26, 1993]

11. Temporary sources of pollution, including but not limited to stream or ditch installation, improvement, maintenance, or stabilization projects, dredge operations, and waste site remediation projects, may be permitted even if degradation may be expected to occur. Permission may be granted provided that the applicant can demonstrate to the satisfaction of the DNREC that after a minimal period of time the number, quality, and river or stream mileage of designated uses, and the degree of attainment of water quality standards, will return or be restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.6, amended February 26, 1993]

12. All surface waters of the State shall meet the following minimum criteria:
  - a. Waters shall be free from substances that are attributable to wastes of industrial, municipal, agricultural or other human-induced origin. Examples include but are not limited to the following:
    - (1) Floating debris, oil, grease, scum, foam, or other materials on the water surface that may create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water.

- (2) Setttable solids, sediments, sludge deposits, or suspended particles that may coat or cover submerged surfaces and create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water.
- (3) Any pollutants, including those of a thermal, toxic, corrosive, bacteriological, radiological, or other nature that may interfere with attainment and maintenance of designated uses of the water, may impart undesirable odors, tastes, or colors to the water or to aquatic life found therein, may endanger public health, or may result in dominance of nuisance species.

[Authority - State of Delaware Surface Water Quality Standards, Section 4.1, amended February 26, 1993]

13. Regulatory mixing zones shall not impinge upon areas of special importance, including but not limited to drinking water supply intakes, nursery areas for aquatic life or waterfowl, approved or conditional shellfish areas or heavily utilized primary contact recreation areas. Zones shall not be located in such a manner as to interfere with passage of fishes or other organisms. Shore-hugging plumes should be avoided to the maximum extent practicable. In areas where multiple discharges are located in proximity, overlapping discharge plumes may occur. In such instances, the size limitations derived under Section 6.4 of the Surface Water Quality Standards may be reduced to preclude acute toxicity in the overlap areas, or to ensure an adequate zone of passage for fish.

[Authority - State of Delaware Surface Water Quality Standards, Section 6.2, amended February 26, 1993]

14. Streams with a designated use of public water supply shall provide waters of acceptable quality for use for drinking, culinary or food processing purposes after application of approved treatment equivalent to coagulation, filtration, and disinfection (with additional treatment as necessary to remove naturally occurring impurities). The untreated waters are subject to the following limitations:

a. Waters shall be free from substances (except natural impurities) that, alone or in combination with other substances, result in:

- (1) Unacceptable levels of taste or odor in the treated water;
- (2) Significant disruption of the treatment processes at the treatment facility; or
- (3) Concentrations of toxic substances in the treated water that may be harmful to human health.

[Authority - State of Delaware Surface Water Quality Standards, Section 11.2 (a), amended February 26, 1993]

15. Designated exceptional recreational or ecological significance (ERES) waters shall be accorded a level of protection and monitoring in excess of that provided most other waters of the State. These waters are recognized as special natural assets of the State, and must be protected and enhanced for the benefit of present and future generations of Delawareans.

[Authority - State of Delaware Surface Water Quality Standards, Section 11.5(a)(i), amended February 26, 1993]

16. ERES waters shall be restored, to the maximum extent practicable, to their natural condition. To this end, the DNREC shall, through adoption of a pollution control strategy for each ERES stream basin, take appropriate action to cause the systematic control, reduction, or removal of existing pollution sources, and the diversion of new pollution sources, away from ERES waters.

[Authority - State of Delaware Surface Water Quality Standards, Section 11.5(a)(ii), amended February 26, 1993]

17. The discharge of oil from a vessel, truck, pipeline, storage, tank or tank car which causes or poses a threat of making a film on, emulsion in or sludge beneath the waters of the state or its shoreline shall be prohibited.

[Authority - 7 Delaware Code, 6203, 6202(7)(5) and (9)]

18. At a minimum, any discharge of liquid waste - sewage, industrial waste or other waste to State waters shall be subject to effluent limitations, discharge requirements and any alternate effluent control strategy that reflect a practicable level of pollutant removal technology. For the purposes of this section, a practicable level of pollutant removal technology is defined as the application of "best" treatment technology, control measures and practices available to reduce or remove pollutants taking into account the cost of applying such technology, control measures or practices in relation to the effluent reduction benefits to be achieved, the age of equipment and facilities involved, the process(es) employed, non-water quality impacts (e.g. energy requirements) and other factors deemed appropriate. For the parameters, BOD<sub>5</sub> (5-day biochemical oxygen demand) and suspended solids, the degree of removal reflecting an application of a practicable level of pollutant removal technology shall be at least 85% of the BOD<sub>5</sub> and suspended solids contained in the influent to the treatment works or prior to application of the removal technology, control measures or practices. For discharges of sewage to State waters, a practicable level of pollutant removal technology shall be secondary treatment and disinfection.

- a. No person shall cause or permit any discharge of liquid waste to the Delaware River, the Delaware Bay, or Atlantic Ocean except liquid waste which has received at least secondary treatment and disinfection.
- b. No person shall cause or permit discharge of liquid waste to a lake or a pond or any tributary thereof, except liquid waste which has received at least secondary treatment, filtration, nutrient removal and disinfection.
- c. No person shall cause or permit any discharge of liquid waste to the Little Assawoman Bay, Indian River Bay, or to Rehoboth Bay, including any tributaries to those waterbodies, except liquid waste which has received at least secondary treatment, filtration, and disinfection.
- d. No person shall cause or permit any discharge of liquid waste to a stream, tidal or non-tidal, except liquid waste which has received at least secondary treatment, filtration, and disinfection. This subsection

shall not govern discharge into the Delaware River, the Delaware Bay or the Atlantic Ocean, which shall be governed by subparagraph (a) hereof. For existing facilities, filtration may not be required if the existing facility has demonstrated the ability to continuously meet secondary treatment levels.

[Authority - DNREC Regulations Governing the Control of Water Pollution, Section 7 and 8, revised June 30, 1993]

19. In the event that Delaware Surface Water Quality Standards are not achieved through application of the technology based requirements, additional effluent limitations and treatment requirements shall be imposed to assure compliance with the Surface Water Quality Standards. Such additional effluent limitations and treatment requirements must control all pollutants or pollutant parameters which the DNREC determines are or may be discharged at a level which will cause, have the reasonable potential to cause or significantly contribute to an excursion of any numerical or narrative water quality criterion contained within Delaware's Surface Water Quality Standards. The need for additional effluent limitations and treatment requirements shall be based upon the results of chemical and/or biological tests in conjunction with studies or analyses designed to assess the potential of the discharge to cause or contribute to in-stream excursions of Delaware's Surface Water Quality Standards.

[Authority - DNREC Regulations Governing the Control of Water Pollution, Section 8.01, revised June 30, 1993]

20. Where conflicts develop between stated surface water uses, stream criteria, or discharge criteria, designated uses for each segment shall be paramount in determining the required stream criteria, which, in turn, shall be the basis of specific discharge limits or other necessary controls.

[Authority - State of Delaware Surface Water Quality Standards, Section 1.2, amended February 26, 1993].

21. No person shall, without first having obtained a permit from the Delaware Department of Natural Resources, undertake any activity:

- a. In a way which may cause or contribute to the discharge of an air contaminant; or
- b. In a way which may cause or contribute to the discharge of a pollutant into any surface or ground water; or
- c. In a way which may cause or contribute to withdrawal of ground water or surface water or both; or
- d. In a way which may cause or contribute to the collection, transportation, storage, processing or disposal of solid wastes, regardless of the geographic origin or source of such solid wastes; or
- e. To construct, maintain or operate a pipeline system including any appurtenances such as a storage tank or pump station; or
- f. To construct any water facility; or
- g. To plan or construct any highway corridor which may cause or contribute to the discharge of an air contaminant or discharge of pollutants into any surface or ground water.

[Authority - 7 Delaware Code 6003 (a)]

22. No person shall, without first having obtained a permit from the Delaware Department of Natural Resources and Environmental Control, construct, install, replace, modify or use any equipment or device or other article:
- a. Which may cause or contribute to the discharge of an air contaminant; or
  - b. Which may cause or contribute to the discharge of a pollutant into any surface or ground water; or
  - c. Which is intended to prevent or control the emission of air contaminants into the atmosphere or pollutants into surface or ground waters; or
  - d. Which is intended to withdraw ground water or surface water for treatment and supply; or
  - e. For disposal of solid waste.

[Authority - 7 Delaware Code 6003 (b)]

23. Regulatory variances for the activities identified in the preceding policy statement may be granted pursuant to 7 Delaware Code, Section 6011 if all of the following conditions exist in the opinion of the Secretary of the Delaware Department of Natural Resources and Environmental Control: (1) good faith efforts have been made to comply with these policies; (2) the cost of compliance is disproportionately high with respect to the benefits which would be bestowed by compliance, or the necessary technology is unavailable; (3) available alternative operating procedures or interim control measures are being or will be used to reduce adverse impacts; and (4) the activities are necessary to the national security or to the lives, health, or welfare of the occupants of Delaware.

[Authority - 7 Delaware Code 6011(b)]

24. No permit for the activities identified above shall be granted unless the activities are consistent with county and municipal zoning regulations.

[Authority - 7 Delaware Code 6003(c) (1)]

25. No person or entity shall commence construction or operation of any of the following without first having obtained a permit therefor: (1) any septic tank system or any aerobic home treatment plant system; (2) any liquid waste treatment system; (3) any facility used for the storage of 40,000 or more gallons of any hazardous material, petroleum product or liquid waste in bulk form; (4) any facility used for the transfer of 20,000 gallons per day or more of any hazardous material, petroleum product, or liquid waste to or from any carrier; and (5) any sewer or pipeline which conveys liquid waste.

[Authority - DNREC Regulations, Regulations Governing the Control of Water Pollution, Sections 2.05, 2.06 and 4.01, revised June 30, 1993]

26. No person shall cause or permit to be discarded, thrown, or dumped into any waters or any drainage ditch in the State any garbage, refuse, dead animal, poultry, trash, carton, bottle, container, box, lumber, timber, paper, or light material or other solid waste.

[Authority - State of Delaware Regulations Governing the Control of Water Pollution, Section 12.01, revised June 30, 1993]

27. No person or entity shall construct, repair, install or replace any part of a septic tank system except by or under the supervision of a licensed septic tank installer.

[Authority - 7 Delaware Code 6023(b)]

28. No person or entity shall operate any liquid waste treatment system without a licensed liquid waste treatment plant operator.

[Authority - 7 Delaware Code 6023(c)]

29. No person shall engage in the drilling, boring, coring, driving, digging, construction, installation, removal, or repair of a water well or water test well, except as, or under the supervision of a licensed water well contractor.

[Authority - 7 Delaware Code 6023(a)]

30. The Secretary of the DNREC may require that the person who has caused the contamination of a person's drinking water supply by contaminates other than bacteria, viruses, nitrate or pesticides, shall provide at no cost to each person who has had his drinking water supply contaminated an interim water supply that is of a quality and quantity to meet said person's needs as shall be determined by the Secretary on a case-by-case basis. In addition, the Secretary shall determine the dates on which the interim water supply shall commence and be terminated.

[Authority - 7 Delaware Code, Section 6037]

31. No permits or licenses shall be issued for the activities identified in the four preceding policy statements unless the Secretary of the Department of Natural Resources and Environmental Control finds that the applicant is prepared and willing to conduct such activities in a manner which is consistent with the CMP policies.

[Authority - 7 Delaware Code 6023(f), Executive Order No. 43, August 15, 1996]

32. No permits shall be issued for the discharge of any radiological, chemical or biological warfare agents or high-level radioactive wastes directly

or indirectly into the surface waters or groundwaters of the state.

[Authority - DNREC Regulations Governing the Control of Water Pollution, Section 3.04(a), revised June 30, 1993]

33. No person shall cast, put, place, discharge in or permit or suffer to be cast, put, placed, discharged in or to escape into any running stream of water within the limits of this State, from which stream the inhabitants of any borough, town or city within this State are supplied wholly or in part with water for and as drink or beverage, any dye-stuffs, drugs, chemicals or other substance or matter of any kind whatsoever whereby the water so supplied as and for a drink or beverage is made and becomes noxious to the health or disagreeable to the senses of smell or taste.

[Authority - 16 Delaware Code 1301]

34. Water delivered to every consumer by any public water supplier shall be so protected by natural means, by proper constructions or by treatment so as to consistently equal or exceed the requirements established in the State of Delaware Regulations Governing Drinking Water Standards.

[Authority - State of Delaware Regulations Governing Public Drinking Water Systems, Section 22.304, Amended March 31, 1991]

35. After July 1, 1991, unless a particular activity is exempted by these regulations, a person may not disturb land without an approved sediment and stormwater management plan from the appropriate plan approval agency.

[Authority - Delaware Sediment and Stormwater Regulations, Section 8(1), revised March 11, 1993]

36. The following activities are exempt from both sediment control and stormwater management requirements:

- a. Agricultural land management practices, unless the local Conservation District or the DNREC determines that the land requires a new or updated soil and water conservation plan, and the owner or operator of the land has refused either to apply to a Conservation

District for the development of such a plan, or to implement a plan developed by a Conservation District;

- b. Developments or construction that disturbs less than 5,000 square feet.
- c. Land development activities which are regulated under specific State or federal laws which provide for managing sediment control and stormwater runoff, such as specific permits required under the National Pollutant Discharge Elimination System (NPDES) when discharges are a combination of stormwater and industrial or domestic wastewater.
- d. Projects which are emergency in nature that are necessary to protect life or property such as bridges, culvert, or pipe repairs and above ground or underground electric and gas utilities or public utility restoration.

[Authority - Delaware Sediment and Stormwater Regulations, Section 3(1)(A)(B)(C) and (D), revised March 11, 1993]

37. A project may be eligible for a waiver of stormwater management for both quantitative and qualitative control if the applicant can demonstrate that: (1) the proposed project will return the disturbed area to a pre-development runoff condition and the pre-development land use is unchanged at the conclusion of the project; or (2) the proposed project consists of a linear disturbance of less than six (6) feet in width; or (3) the project is for an individual residential detached unit or agricultural structure, and the total disturbed area of the site is less than one acre; or (4) the proposed project is for agricultural structures in locations included in current soil and water conservation plans that have been approved by the appropriate Conservation District.

[Authority - Delaware Sediment and Stormwater Regulations, Section 3(2)(A)(1)(2)(3) and (4), revised March 11, 1993]

38. All erosion and sediment control plans shall comply with the Delaware Erosion and Sediment Control Handbook dated 1989 and approved supplements.

[Authority - Delaware Sediment and Stormwater Regulations, Section 10(2)(B), revised March 11, 1993]

39. Water quantity control is an integral component of overall stormwater management. Control of peak discharges will, to some extent, prevent increases in flooding. The following design criteria for peak flow control are established for water quantity control purposes, unless a waiver is granted based on a case-by-case basis:
- a. Projects in New Castle County that are located north of the Chesapeake and Delaware Canal shall not exceed the post-development peak discharge for the 2, 10, and 100 year frequency storm events at the pre-development peak discharge rates for the 2, 10, and 100 year frequency storm events.
  - b. Projects in New Castle County that are located south of the Chesapeake and Delaware Canal, Kent County, and Sussex County shall not exceed the post-development peak discharge for the 2 and 10 year frequency storm events at the pre-development peak discharge rates for the 2 and 10 year frequency storm events.
  - c. Watersheds, other than Designated Watersheds or Subwatersheds that have well documented water quantity problems may have more stringent or modified design criteria that are responsive to the specific needs of that watershed. Modified criteria for that watershed must receive Departmental approval, and all projects reviewed and approved by the appropriate plan approval agency shall meet or exceed the modified criteria. Proposed modification of criteria for a watershed shall be subject to public review and comment prior to implementation.

[Authority - State of Delaware Sediment and Stormwater Regulations, Section 10(3)(D), revised March 11, 1993]

40. Water quality control is also an integral component of stormwater management. Control of water quality on-site will prevent further degradation of downstream water quality. The following design criteria are established for

water quality protection unless a waiver or variance is granted on a case-by-case basis.

- a. In general, the preferred option for water quality protection shall be ponds. Ponds having a permanent pool of water must be considered before a pond having no permanent pool. Infiltration practices shall be considered only after ponds have been eliminated for engineering or hardship reasons as approved by the appropriate plan approval agency.
- b. Water quality ponds having a permanent pool shall be designed to release the first 1/2 inch of runoff from the site over a 24 hour period. The storage volume of the normal pool shall be designed to accommodate, at least, 1/2 inch of runoff from the entire site.
- c. Water quality ponds, not having a normal pool shall be designed to release the first inch of runoff from the site over a 24 hour period.
- d. Infiltration practices, when used, shall be designed to accept, at least, the first inch of runoff from all streets, roadways, and parking lots.
- e. Other practices may be acceptable to the appropriate plan approval agency if they achieve an equivalent removal efficiency of 80% for suspended solids.

[Authority - Delaware Sediment and Stormwater Regulations, Section 10(3)(E), revised March 11, 1993]

## **CMP Policies Specific to Marinas**

1. Marina owners/operators for marinas that are located in whole or in part on tidal waters of the State, and that provide dockage for vessels with a portable toilet(s) or Type III marine sanitation device(s) (MSD), shall provide convenient access, as determined by the DNREC, to an approved, fully operable and well maintained pumpout facility(ies) and/or dump station(s) for the removal of sewage from said vessels to a DNREC approved sewage disposal system.

- a. Owners/operators may agree to pool resources for a single pumpout dump station with Departmental approval based on criteria of number and class of vessels, marina locations, cost per pumpout use, and ultimate method of sewage treatment and disposal (i.e. septic system or waste water treatment facility).
- b. The owner/operator of any boat docking facility that is located in whole or in part on tidal waters of the State, and that provides dockage for a live-aboard vessel(s) with a Type III marine sanitation device(s), shall install and maintain at all times, in a fully operable condition, an approved dedicated pumpout facility at each live-aboard vessel slip for the purpose of removing sewage from the live-aboard vessel on a continuous or automatic, intermittent basis to a DNREC approved sewage disposal system.
- c. Any discharge, by any means, of untreated or inadequately treated vessel sewage into or upon the waters of any marina, boat docking facility or tidal water of the State of Delaware is prohibited.
- d. All vessels while on waters of the State of Delaware shall comply with 33 USC Section 1322, as amended February 4, 1987.

[Authority - 7 Delaware Code, Section 6035 (a) and (b)(1, 2, 3, & 4), Adopted June 23, 1992].

- 2. No person shall construct, install, modify, rehabilitate, or replace a marina unless such person has a valid permit issued by the DNREC pursuant to the State of Delaware Marina Regulations.  
  
[Authority - State of Delaware Marina Regulations, Section I (B)(5)(a), revised February 22, 1993]
- 3. It is the policy of DNREC to prevent degradation of the surface and groundwaters of the State which might result from any pollutant source, so that all existing water designated uses are maintained and protected. Marinas shall be permitted only if they do not cause a violation of established Delaware water quality regulations either within the marina, or in adjacent ambient waters which mix or are contacted by waters from the marina. To achieve this goal:

- a. These regulations set forth rebuttable presumptions that:
  - (1) Land-based alternatives for non-water dependent activities are available.
  - (2) Alternatives that do not involve the use of state waters for storage of boats have less adverse impact on the aquatic environment, and
  - (3) Alternatives that do not involve the use of state waters for storage of boats are available.
- b. Marinas shall be designed to maximize flushing so as to prevent the possible accumulation of contaminants that could result in a violation of the Delaware Surface Water Quality Standards, and to meet the policy objectives as set forth above.

[Authority - State of Delaware Marina Regulations, Section II (D)(2)(a), II(C)(1)(a)(b) & (c), and II(E)(1)(a), revised February 22, 1993]

- 4. It is the policy of the State to preserve and protect public and private wetlands and to prevent their despoliation and destruction consistent with the historic right of private ownership of lands. Therefore, the Department shall strictly regulate the location of marinas in wetlands. Marinas shall be limited to those sites where short and long-term disturbances to wetlands and their functions shall be less than one acre, and even then, only to the extent necessary for the water dependent needs of the project.

Before disturbance of wetlands shall be permitted, the applicant shall demonstrate that all practicable alternatives to avoiding wetland impacts have been thoroughly examined and the results of such examinations shall be provided to the DNREC. In all cases, the applicant shall demonstrate that the purchase of additional property to avoid the wetland impacts is impracticable.

[Authority - State of Delaware Marina Regulations, Section II(D)(3)(a), revised February 22, 1993]

5. The requirements for protecting shellfish resources shall be consistent with the State of Delaware Marina Regulations.

[Authority - State of Delaware Marina Regulations, Section II (D)(4)(a)(b)(c)(d) & (e), revised February 22, 1993]

6. Marinas shall not be permitted in areas that will result in the destruction of submerged aquatic vegetation beds without corresponding compensation measures as approved by the DNREC.

[Authority - State of Delaware Marina Regulations, Section II (D)(10)(c)(2), revised February 22, 1993]

7. Dredging shall be limited to the minimum dimensions necessary for the project and shall avoid sensitive areas such as wetlands, shellfish resources, and submerged aquatic vegetation. Delaware Surface Water Quality Standards must not be violated because of dredging operations excluding whatever temporary and minimal turbidity is unavoidable when using sound dredging practices.

Marinas shall only be located in areas which, in the determination of the Department, offer safe and convenient access to waters of navigable depth. Such locations tend to present maximum opportunities for flushing, with less danger of sedimentation than very shallow sites. Safe and convenient access will be determined on a case-by-case basis. Factors such as existing water depths, distance to existing channels and their depths, and tidal and wave action will be considered.

[Authority - State of Delaware Marina Regulations, Section II (E)(2)(b) and II (E)(4)(a), revised February 22, 1993]

8. Benthic resources are protected because of their importance in the food chain and their value as commercial and recreational food sources.

The status of a benthic community must be assessed by the applicant using frequency, diversity, and abundance measures approved by the DNREC. As a part of this determination, the rapid bioassessment techniques of Luckenbach, Diaz and Schaffner (1989) will be used by the Department to characterize benthic communities.

The DNREC may modify this methodology as experience is gained in applying these techniques in Delaware waters.

The DNREC may require monitoring of the benthos as a permit condition.

[Authority - State of Delaware Marina Regulations, Section II (D)(6)(a)(b) & (c), revised February 22, 1993]

9. Construction of marinas shall not be permitted at sites that are recognized by the DNREC as critical habitats. "Critical Habitat" includes areas classified by the DNREC and serving an essential role in the maintenance of sensitive species. Areas may include unique aquatic or terrestrial ecosystems that support rare endangered or threatened plants and animals. Rare, endangered or threatened species are defined by both state and/or federal listings.

[Authority - State of Delaware Marina Regulations, Section II (D)(7), revised February 22, 1993 and DNREC Regulations Governing the Use of Subaqueous Lands dated September 2, 1992, Definitions (#10)]

#### **5.A.4 CMP Policies for Subaqueous Lands and Coastal Strip Management**

1. The natural environment of the coastal strip shall be protected for recreation, tourism, fishing, crabbing, and gathering other marine life useful in food production.

[Authority - 7 Delaware Code 7001 and 6201]

2. The need for protection of the natural environment in the coastal strip shall be balanced with the need for new industry in the State's coastal areas.

[Authority - 7 Delaware Code 7001]

3. The location, extent and type of industrial development in the coastal strip that is most likely to pollute Delaware's bays and coastal areas shall be controlled.

[Authority - 7 Delaware Code 7001; Kreshtool v. Delmarva Power & Light Co., Delaware Super., 310 A. 2d 649(1973)]

4. The development and use of offshore oil, gas, and other mineral resources of the state shall be managed to make the maximum contribution to the public benefit and so as to balance their utilization, conservation, and protection.

[Authority - DNREC Regulations, September, 1971, Oil, Gas and Mineral Exploration Regulations, p.i.]

5. New heavy industrial uses shall be prohibited in the coastal strip. Such uses are ones characteristically involving more than 20 acres, and characteristically employing smokestacks, tanks, distillation or reaction columns, chemical processing equipment or waste-treatment lagoons. Heavy industrial uses shall not only be defined by their physical characteristics, however, but also by their potential to pollute in the event of human error or equipment failure. Examples of heavy industry are oil refineries, basic steel manufacturing plants, basic cellulosic pulp-paper mills, and chemical plants such as petrochemical complexes. For purposes of this policy, public sewage treatment or recycling plants shall not be deemed heavy industrial uses.

[Authority - 7 Delaware Code 7002(e) and 7003; Kreshtool v. Delmarva Power & Light Co., Delaware Super., 310 A. 2d 649(1973)]

6. New manufacturing uses or the expansion of existing manufacturing uses shall be allowed in the coastal strip by permit only, although in no case shall new manufacturing uses be allowed in wetlands or where inconsistent with local zoning regulations. Manufacturing uses are ones which mechanically or chemically transform substances into new products, and characteristically employ power-driven machines and materials handling equipment. Manufacturing uses typically include establishments engaged in assembling components of manufactured products, provided the new products are not fixed improvements.

[Authority - 7 Delaware Code 7002(d) and (e) and 7004(a)]

7. The following factors shall be considered in passing on requests for permission to construct

or operate a manufacturing use in the coastal strip:

- a. Environmental impact, including but not limited to, probable air and water pollution likely to be generated by the proposed use under normal operating conditions, as well as during mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact of site preparation on drainage of the area in question, especially as it relates to flood control; impact of site preparation and facility operations on land erosion; effect of site preparation and facility operations on the quality and quantity of surface, and subsurface water resources, such as the use of water for processing, cooling, effluent removal, and other purposes; in addition, but not limited to, the likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.
- b. Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to state and local government.
- c. Aesthetic effect, such as impact on scenic beauty of the surrounding area.
- d. Number and type of supporting facilities required and the impact of such facilities on all factors listed in this subsection.
- e. Effect on neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas, and effect on adjacent residential and agricultural areas.
- f. County and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction.

[Authority - 7 Delaware Code 7004(b)]

8. New offshore gas, liquid, or solid bulk product transfer facilities shall be prohibited in the coastal strip. Such facilities are docks or port facilities, whether artificial islands or attached to

shore by any means, for the transfer of bulk quantities of any substance from vessel to onshore facility or vice versa. However, a docking facility or pier for a single industrial or manufacturing facility and docking facilities located in the City of Wilmington for the Port of Wilmington, shall not be prohibited.

[Authority - 7 Delaware Code 7002(f) and 7003; Inf. Attorney General Opinion No. 65, October 22, 1974]

9. Offshore pipelines which transfer bulk quantities of gas, oil, or other liquids to terminals within the coastal strip shall be prohibited. Such pipelines generally shall be allowed if they transit the coastal strip and environmental safeguards are observed. However, if such pipelines represent a significant danger of pollution to the coastal strip or generate pressure for construction of industrial plants in the coastal strip, they shall be prohibited.

[Authority - 7 Delaware Code 7001, 7002 and 7003; Inf. Attorney General Opinion No. 77-33, July 6, 1977]

10. The Secretary of the DNREC, upon application by any person, may permit geological, geophysical and seismic surveys, including the taking of cores and other samples, or the tide and submerged lands of this State. Such permits shall be nonexclusive and shall not give any preferential rights to any oil, gas and sulfur or other mineral lease. After consultation with those agencies of the State having an interest in the possible effects of the leasing, the Secretary shall include such rules and regulations in the permit as it deems necessary to protect the fish, game, wildlife and natural resources of the State. The Secretary may prohibit such surveys on any area if it is determined that a lease, if applied for, should not be granted as to such areas. The Secretary shall include in a permit conditions and payment proper to safeguard the interests of the State.

[Authority - 7 Delaware Code 6103 & 6104]

11. No operations or activities shall be commenced on the drilling, deepening or plugging back of any offshore oil or gas wells located on underwater lands of Delaware without the permission of the state, and unless in conformance with the rules for such operations

and activities adopted by the Delaware Department of Natural Resources and Environmental Control.

[Authority - DNREC Regulations, September 1971, Oil, Gas and Mineral Exploration Regulations, Numbers I-V]

12. Permission to develop the State's submerged lands shall not be granted without the prior approval of the U.S. Department of Defense, and shall be subject to any restriction or limitation imposed by the Department of Defense.

[Authority - 7 Delaware Code 6104]

13. Easements for mineral exploration and exploitation underlying that part of the surface of the Atlantic shore owned by the state be permitted at such times and places as necessary to permit the extraction and transportation of oil, gas, sulfur or other minerals from state, federal or private lands, but permanent interference with the surface of the Atlantic shore shall be prohibited.

[Authority - 7 Delaware Code 6102(d), 6118 and 6119(a)]

14. Before offering tide and submerged lands for leasing for possible mineral development, or whenever any person files a written application with the Secretary of DNREC requesting that lands be offered for leasing, accompanying the same with the required fee, the Secretary shall hold a public hearing as provided in 7 Delaware Code 6107. After the public hearing, the Secretary shall determine whether an invitation for bidding to lease the area under consideration would be in the public interest. In such determination the Secretary shall consider whether a lease or leases of the area under consideration would:

- a. Be detrimental to the health, safety, or welfare of persons residing in, owning real property or working in the neighborhood of such areas;
- b. Interfere with the residential or recreation areas to an extent that would render such areas unfit for recreational or residential uses or unfit for park purposes;

- c. Destroy, impair or interfere with the aesthetic and scenic values of the Delaware coast, or other affected area;
- d. Create any air, water and other pollution;
- e. Substantially endanger marine life or wildlife;
- f. Substantially interfere with commerce or navigation; and
- g. Protect state lands from drainage of oil, gas or other minerals or objectionable substances.

[Authority - 7 Delaware Code 6107]

15. Avoidable pollution or avoidable contamination of the ocean and of the waters covering submerged lands, avoidable pollution or avoidable contamination of the beaches or land underlying the ocean or waters covering submerged lands, or any substantial impairment of and interference with the enjoyment and use thereof, including but not limited to bathing, boating, fishing, fish and wildlife production, and navigation, shall be prohibited and the lessee shall exercise a high degree of care to provide that no oil, tar, residuary product of oil or any refuse of any kind from any well or works shall be permitted to be deposited on or pass into the waters of the ocean, any bay or inlet thereof, or any other waters covering submerged lands; provided, however, that this policy does not apply to the deposit on, or passing into, such water or waters not containing any hydrocarbons or vegetable or animal matter.

[Authority - 7 Delaware Code 6119(a)]

16. For the purposes of this section, "avoidable pollution" or "avoidable contamination" means pollution or contamination arising from:
- a. The acts of omissions of the lessee or its officers, employees or agents; or
  - b. Events that could have been prevented by the lessee or its officers, employees or agents through the exercise of a high degree of care.

[Authority - 7 Delaware Code 6119(b)]

17. Subaqueous lands within the boundaries of Delaware constitute an important resource of the State and require protection against uses or changes which may impair the public interest in the use of tidal or nontidal waters.

[Authority - 7 Delaware Code 7201]

18. No person shall deposit material upon or remove or extract materials from, or construct, modify, repair or reconstruct, or occupy any structure or facility upon submerged lands or tidelands without first having obtained a permit, lease or letter of approval from the DNREC. Such permit, lease or letter of approval, if granted, may include reasonable conditions required in the judgment of the DNREC to protect the interest of the public. If it is determined that granting the permit, lease or approval will result in loss to the public of a substantial resource, the permittee may be required to take measures which will offset or mitigate the loss.

[Authority - 7 Delaware Code 7205]

19. The extent of jurisdictional authority over public or private subaqueous lands includes any activity in a navigable stream or waterbody, which have a hydrologic connection to natural waterbodies. "Activity" includes, but is not limited to, any human induced action, such as dredging, draining, filling, grading, bulkheading, mining, drilling, extraction of materials or excavation, or construction of any kind, including, but not limited to, construction of a boat ramp or slip, breakwater, residences, bridge, bulkhead, culvert, dam, derrick, deck, groin, jetty, lagoon, gabion, rip-rap, launching facility, marina, mooring facility, pier, seawall, walkway, or wharf.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 1.02(A)(1), amended September 2, 1992]

20. The following types of activities in, on, over, or under private subaqueous lands require a permit or letter of authorization from the DNREC:
- a. Construction of a convenience structure or boat docking facility.
  - b. Construction of a shoreline erosion control structure or measure.

- c. Dredging, filling, excavating or extracting of materials.
- d. Excavation, creation, or alteration of any channel, lagoon, turning basin, pond, embayment, or other navigable waterway on private subaqueous lands which will make connection with public subaqueous lands.
- e. Dredging of existing channels, ditches, dockages, lagoons and other navigable waterways to maintain or restore the approved depth and width.
- f. Excavation of land which makes connection to public subaqueous lands.
- g. The laying of any pipeline, electric transmission line, telephone line, or any other utility structure in, on, over, or under the beds of private subaqueous lands.
- h. Installation of temporary or permanent mooring buoys or private marker buoys.
- i. Establishment of an anchorage for the use of a mooring for more than two (2) boats or for appurtenant onshore services.
- j. Anchoring or mooring a floating platform over private subaqueous lands and for a period of twenty-four (24) consecutive hours or more.
- k. Anchoring or mooring any vessel or platform over public subaqueous lands for revenue generating purposes.
- l. Repair and replacement of existing serviceable structures over private subaqueous lands, except no permit or letter is required for repairs or structural replacements which are above the mean low tide and which do not increase any dimensions or change the use of the structure.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 1.03(C), amended September 2, 1992]

21. The following types of activities on public subaqueous lands require a lease, permit, or letter of authorization from the DNREC:

- a. Construction or use of any structure on, in, under, or over public subaqueous lands, including but not limited to, any convenience structures, shoreline erosion control structure or measure, or boat docking facility.
- b. Dredging, filling, excavating or extracting of materials.
- c. Continuous anchoring or mooring of a commercial vessel used in a commercial activity on or over public subaqueous lands for thirty (30) or more calendar days during any consecutive three (3) months.
- d. The laying of any pipeline, electric transmission line, or telephone line in, on, over, or under the beds of public subaqueous lands.
- e. Installation of temporary or permanent mooring buoys or private marker buoys.
- f. Establishment of an anchorage for mooring more than two (2) boats or which serves as a permanent place for resident vessels.
- g. Anchoring or mooring a floating platform over public subaqueous lands and for a period of twenty-four (24) consecutive hours or more.
- h. Maintenance dredging of existing or new channels, ditches, dockages, lagoon and other waterways to maintain or restore the approach depth and width.
- i. Anchoring or mooring any vessel or platform over public subaqueous lands for revenue generating purposes.
- j. Repair and replacement of existing serviceable structures over private subaqueous lands, except no permit or letter is required for repairs or structural replacements which are above the mean low tide and which do not increase any dimensions or change the use of the structure.
- k. New dredging activities of channels, ditches, dockage, or other waterways.

[Authority - State of Delaware Regulations  
Governing the Use of Subaqueous Lands,  
Section 1.04(B), amended September 2, 1992]

22. The DNREC shall consider the public interest in any proposed activity which might affect the use of subaqueous lands. These considerations include, but are not limited to, the following:
- a. The value to the State or the public in retaining any interest in subaqueous lands which the applicant seeks to acquire, including the potential economic value of the interest.
  - b. The value to the State or the public in conveying any interest in subaqueous lands which the applicant seeks to acquire.
  - c. The potential effect on the public with respect to commerce, navigation, recreation, aesthetic enjoyment, natural resources and other uses of the subaqueous lands.
  - d. The extent to which any disruption of the public use of such lands is temporary or permanent.
  - e. The extent to which the applicant's primary objectives and purposes can be realized without the use of such lands (avoidance).
  - f. The extent to which the applicant's primary purpose and objectives can be realized by alternatives, i.e. minimize the scope or extent of an activity or project and its adverse impact.
  - g. Given the inability for avoidance or alternatives, the extent to which the applicant can employ mitigation measures to offset any losses incurred by the public.
  - h. The extent to which the public at large would benefit from the activity or project and the extent to which it would suffer detriment.
  - i. The extent to which the primary purpose of a project is water-dependent.

[Authority - State of Delaware Regulations  
Governing the Use of Subaqueous Lands,  
Section 3.01(A), amended September 2, 1992]

23. The DNREC shall consider the impact on the environment, including but not limited to, the following:
- a. Any impairment of water quality, either temporary or permanent, which may reasonably be expected to cause violation of the State Surface Water Quality Standards. This impairment may include violation of criteria or degradation of existing uses;
  - b. Any effect on shellfishing, finfishing, or other recreational activities and existing or designated water uses;
  - c. Any harm to aquatic or tidal vegetation, benthic organisms or other flora and fauna, and their habitats;
  - d. Any loss of natural aquatic habitat;
  - e. Any impairment of air quality either temporarily or permanently, including noise, odors, and hazardous chemicals;
  - f. The extent to which the proposed project may adversely impact natural surface and groundwater hydrology and sediment transport functions.

[Authority - State of Delaware Regulations  
Governing the Use of Subaqueous Lands,  
Section 3.01(B), amended September 2, 1992]

24. The DNREC shall also consider the following to determine whether to approve the application:
- a. The degree to which the project represent an encroachment on or otherwise interferes with public lands, waterways or surrounding private interests.
  - b. The degree to which the project incorporates sound engineering principles and appropriate materials of construction.
  - c. The degree to which the proposed project fits in with the surrounding structures, facilities, and uses of the subaqueous lands and uplands.
  - d. Whether the proposed activity complies with the State of Delaware's Surface Water Quality Standards both during construction

and during subsequent operation or maintenance.

- e. The degree to which the proposed project may adversely affect shellfish beds or finfish activity in the area.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 3.01(C), dated September 2, 1992]

25. The following concerns for protecting water quality shall be specifically considered by the DNREC in evaluating applications for dredging projects:

- a. All dredging is to be conducted in a manner consistent with sound conservation and water pollution control practices. Spoil and fill areas are to be properly diked to contain the dredged material and prevent its entrance into any surface water. Specific requirements for spoils retention may be specified by the DNREC in the approval, permit or license.
- b. All material excavated shall be transported, deposited, confined, and graded to drain within the disposal areas approved by the DNREC. Any material that is deposited elsewhere than in approved areas shall be removed by the applicant and deposited where directed at the applicant's expense, and any required mitigation shall also be at the applicant's expense.
- c. Materials excavated by hydraulic dredge shall be transported by pipeline directly to the approved disposal area. All pipelines shall be kept in good condition at all times and any leaks or breaks shall be immediately repaired.
- d. Materials excavated and not deposited directly into an approved disposal area shall be placed in scows or other vessels and transported to either an approved enclosed basin, dumped, and then rehandled by hydraulic dredge to an approved disposal area, or to a mooring where scows or other vessels shall be unloaded by pumping directly to an approved disposal area.
- e. When scows or other are unloading without dumping, they shall have their contents

pumped directly into an approved disposal area by a means sufficient to preclude any loss of material into the body of water.

- f. In approved disposal areas, the applicant may construct any temporary structures or use any means necessary to control the dredge effluent, except borrowing from the outer slopes of existing embankments and/or hydraulic placing of perimeter embankments. For bermed disposal sites, a minimum freeboard of two (2) feet, measured vertically from the retained materials and water to the top of the adjacent confining embankment, shall be maintained at all times.
- g. The applicant shall not obstruct drainage or tidal flushing on existent wetlands or upland areas adjacent thereto. The applicant shall leave free, clear, and unobstructed outfalls of sewers, drainage ditches, and other similar structures affected by the disposal operations. The dredged materials shall be distributed within the disposal area in a reasonably uniform manner to permit full drainage without ponding during and after fill operations.
- h. The dredging operation must be suspended if water quality conditions deteriorate in the vicinity of dredging or spoil disposal site. Minimum water quality standards may be included as an element of the permit and shall be monitored by the applicant. Violation of these conditions shall be cause for immediate suspension of activity and notification of the DNREC. Dredging shall not be resumed until water quality conditions have improved and the DNREC has authorized the resumption.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 3.05(C), amended September 2, 1992]

26. The following types of dredging projects are prohibited:

- a. Dredging of biologically productive areas, such as nursery areas, shellfish beds, and submerged aquatic vegetation, if such dredging will have a significant or lasting impact on the biological productivity of the area.

- b. Dredging of new dead-end lagoons, new basins and new channels, which have a length to width ratio greater than 3:1 and for which the applicant cannot prove, by clear and convincing evidence, that such dredging would not violate State Surface Water Quality Standards. This subsection shall not apply to marina projects governed by the Marina Regulations.
- c. Dredging channels, lagoons or canals deeper than the existing controlling depth of the connecting or controlling waterway, unless otherwise approved under Subsection 3.03B(8) of the State of Delaware Regulations Governing the Use of Subaqueous Lands.
- d. Dredging channels, cleaning marinas or other subaqueous areas by using propeller wash from boats.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 3.05(D), amended September 2, 1992]

### **5.A.5 CMP Policies for Borrow Pits**

- 1. The Secretary of the DNREC shall develop, implement and enforce, and may amend, modify and repeal, after notice and public hearing, a program to protect the waters of the State of Delaware from adverse environmental impacts relating to the operation of borrow pits. In addition to any other authority which the Secretary may exercise for the purpose under 7 Delaware Code, Chapter 60\_ or other chapters of the Delaware Code, the Secretary may:
  - a. Require borrow pit owners/operators to obtain operating permits from the DNREC.
  - b. Require reclamation of abandoned pits by owners/operators;
  - c. Require borrow pit owners/operators to secure the borrow pit premises from illegal dumping, disposal of wastes or vandalism; and

- d. Adopt, amend, modify or repeal rules or regulations to effectuate Section 6038 of 7 Delaware Code.

[Authority - 7 Delaware Code, Section 6038]

### **5.B.1 CMP Policies for "Public Lands" Management**

- 1. DNREC shall supervise, control and care for Delaware's "public lands".
- 2. The State shall pursue all necessary and appropriate remedies to address encroachments upon state "public lands" and to protect their integrity from further claim.
- 3. All private development on "public lands", except that authorized by DNREC for public use, shall be prohibited.
- 4. The "public lands" shall remain appropriately marked with permanent monuments and the location and coordinates of each monument shall be tied to the state plane coordinate system and recorded with the recorder of deeds for Sussex County. Detailed drawings, survey work sheets and field notes, perimeter descriptions, and other pertinent property records shall be likewise recorded.
- 5. DNREC shall manage these lands for public recreation purposes and for the conservation and preservation of their natural resources and beauty. A management priority shall be the maintenance of public access to the beach and ocean where such access can be accommodated without serious damage to the primary resources. The Department may lease certain portions for highway and utility purposes as it deems advisable and for the public good. Management of these lands shall be consistent with the State Comprehensive Outdoor Recreation Plan (SCORP) and in accordance with sound master planning activities.

[Authorities 1-5 - The authority for management of these resource areas is vested primarily in DNREC pursuant to Title 7, Chapters 45 and 47 of the Delaware Code]

## **5.B.2 Natural Areas Management**

### **CMP Policies for Natural Areas Management**

1. The State, acting through DNREC, shall acquire and hold in trust for the benefit of the people an adequate system of nature preserves for the following uses and purposes:
    - a. For scientific research in such fields as ecology, taxonomy, genetics, forestry, pharmacology agriculture, soil science, geology, conservation, archaeology, and other subjects;
    - b. or the teaching of biology, natural history, ecology, geology, conservation, and other subjects;
    - c. As habitats for plant and animal species and communities and other natural objects;
    - d. As reservoirs of natural materials;
    - e. As places of natural interest and beauty;
    - f. As living illustrations of our natural heritage wherein one may observe and experience natural biotic and environmental systems of the earth and their processes;
    - g. To promote understanding and appreciation of the scientific, educational, aesthetic, recreational and cultural values of such areas by the people of the State of Delaware.
    - h. For the preservation and protection of natural areas against modification or encroachment resulting from occupation, development, or other use which would destroy their natural or aesthetic conditions.
- [Authority - 7 Delaware Code 7303, 7302(6) and 7306]
2. DNREC shall develop criteria and policies for selecting natural areas for acquisition and preservation. At a minimum, such criteria and policies shall consider the uses and purposes listed in policy statement number one, as well as

areas of unusual natural significance. Until such criteria and policies are developed, DNREC shall, in its selection of natural areas for acquisition and preservation, consider policy statement number one and the unusual natural significance of areas which may be selected.

[Authority - 7 Delaware Code 7307(a) and 7305(a)(3 and 4); DNREC Regulations Governing Natural Areas and Nature Preserves, July, 1981]

3. DNREC shall establish and maintain a registry of natural areas of unusual significance to ensure that such areas are considered for possible dedication. DNREC is also encouraged to establish and maintain registries of other natural areas for the same purpose, and to develop criteria for the selection of natural areas for registration.
- [Authority - 7 Delaware Code 7303, 7307 (2 and 6) and 7305(e)(2)]
4. DNREC shall make whatever surveys it deems necessary to accomplish the purposes of the natural areas program.
- [Authority - 7 Delaware Code 7307(6)]
5. DNREC may acquire, for and on behalf of the State of Delaware, natural areas by gift, devise, purchase, exchange, or any other method of acquiring real property or any estate, interest, or right therein provided that any interest owned by the State or by any subdivision thereof may be acquired only by voluntary act of the agency having jurisdiction thereof. The department may acquire the fee simple interest in natural areas or any one or more lesser estates, interests, and rights therein, including a leasehold estate, and easement either granting the state specified rights of use or denying the grantor specified rights of use or both, a license, a covenant, and other contractual rights.
- [Authority - 7 Delaware Code 7306(a)]
6. DNREC shall publish and disseminate information pertaining to natural areas within the State as it deems necessary to effectuate the purposes of these policies.
- [Authority - 7 Delaware Code 7307(7)]

7. DNREC may, as it deems necessary to effectuate the purposes of these policies, encourage and recommend to private, public and government entities that they dedicate natural areas to DNREC for preservation purposes.

[Authority - 7 Delaware Code 7307(5)]

8. All units, departments, agencies, and instrumentalities of the state, including counties, municipalities, schools, colleges and universities, are empowered and urged to transfer suitable areas or portions of areas within their jurisdiction to DNREC for preservation purposes.

[Authority - 7 Delaware Code 7311]

9. DNREC may accept transfers of real property for preservation purposes with the express understanding that the grantors may, under specified conditions, rescind such transfers.

[Authority - 7 Delaware Code 7306(d)]

10. DNREC shall adopt additional policies for the acquisition of natural areas as it deems necessary to effectuate the purposes of these CMP policies.

[Authority - 7 Delaware Code 7307(1)]

11. Natural areas acquired pursuant to these policies shall be established as nature preserves. Property shall not be acquired for the establishment of nature preserves unless the terms of acquisition restrict the use of the acquired area in a manner which adequately provides for its preservation and protection against modification or encroachment.

[Authority - 7 Delaware Code 7306(a and c)]

12. DNREC shall enforce the terms of acquisition of property acquired for nature preserves.

[Authority - 7 Delaware Code 7310, 7305(e)(4), 7307(4 and 8) and 7308]

13. Nature preserves shall not be taken for any use inconsistent with preservation except for another public use after:

- a. A public hearing.

- b. A finding by DNREC that an imperative and unavoidable public necessity for such other public use exists.
- c. Approval of the governor after consultation with the Delaware Natural Areas Advisory Council.
- d. A legislative act, not less than six months from the date of the governor's approval authorizing such taking.

This policy shall not apply, however, to natural areas dedicated as nature preserves if the terms of such dedication provide otherwise.

[Authority - 7 Delaware Code 7308 and 7309]

14. DNREC shall formulate additional policies and rules for the use, management, and protection of nature preserves as it deems necessary to effectuate the purposes of the CMP policies. At a minimum, such policies and rules shall provide that the extent and type of visitation and use to be permitted shall be consistent with the objectives of policy statement number one.

[Authority - 7 Delaware Code 7307(1), 7308, 7305(e)(4), and 7303]

15. DNREC is empowered and urged to foster and aid in the establishment, restoration, and preservation of natural areas within the state elsewhere than in nature preserves, including areas on the registries established pursuant to policy number three.

[Authority - 7 Delaware Code 7307(8)]

## **CMP Policies for Inland Bays' Watershed Management**

1. The Delaware Inland Bays Estuary was selected for inclusion in the National Estuary Program in 1988. The draft Comprehensive Conservation and Management Plan (CCMP) for the Estuary has been completed and recommends a five-tiered approach to resolving the problems. These efforts include:

- a. A Public Education and Outreach Program, which explains the benefits of the estuary, and the methods of preservation.

- b. An Agricultural Source Action Plan, which proposes management of agricultural wastes and fertilizers.
  - c. A Habitat Protection Action Plan, which proposes various methods to control the loss of significant habitat and the preservation of existing aquatic and terrestrial ranges.
  - d. An Industrial, Municipal and Septic System Action Plan, which proposes a pollution control strategy and a long-term capital expenditure program for wastewater treatment.
  - e. A Land Use Action Plan, which evaluates current land-use practices and proposed mitigation measures.
2. The Center for the Inland Bays shall oversee and facilitate the implementation of a long-term approach for the wise use and enhancement of the Inland Bays' Watershed in accordance with the Inland Bay's Comprehensive Conservation and Management Plan (CCMP).

[Authority - 7 Delaware Code, Section 7602]

### **CMP Policies for the Delaware Estuary Program**

1. The Goals of the Delaware Estuary Program are as follows:
  - a. Provide for the restoration of living resources of the Delaware Estuary and protect their habitats and ecological relationship for future generations;
  - b. Reduce and control point and nonpoint sources of pollution, particularly toxic pollution and nutrient enrichment, to attain the water quality conditions necessary to support abundant and diverse living resources in the Delaware Estuary;
  - c. Manage water allocations within the Estuary to protect public water supplies and maintain ecological conditions in the Estuary for living resources;
  - d. Manage the economic growth of the Estuary in accordance with the goal of restoring and

protecting the living resources of the Estuary; and

- e. Promote greater public understanding of the Delaware Estuary and greater participation in decisions and programs affecting the Estuary.

[Comprehensive Conservation and Management Plan for the Delaware Estuary, September 1996]

### **5.B.3 CMP Policies for Flood Hazard Areas Management**

1. The primary responsibility for floodplain management in Delaware shall rest with the local units of government in the state.

[Authority - Delaware Const., art. II, Sect. 25; 9 Delaware Code Ch. 26, 30, 44, 49, 63, 68 and 69; 22 Delaware Code Ch. 3]

2. Local units of government in the state are authorized--pursuant to local zoning powers, subdivision regulations, building codes, and any other applicable power vested in such units of government--to manage flood hazard areas in a manner which is consistent with the Federal Flood Insurance Program.

[Authority - Delaware Const., art. II, Sect. 25; 9 Delaware Code Ch. 26, 30, 44, 49, 63, 68 and 69; 22 Delaware Code Ch. 3]

3. The designated lead state agency for the CMP implementation shall encourage local units of government in the state to participate in the Federal Flood Insurance Program.

[Authority - Executive Order No. 43, August 15, 1996]

4. The Delaware Department of Natural Resources and Environmental Control shall monitor and annually review local floodplain management programs adopted pursuant to the Federal Flood Insurance Program to determine if they are being administered properly and are achieving flood damage reduction objectives. The State shall also periodically review the federal floodplain standards as they apply to Delaware to determine if they are adequate to mitigate damage in the State's floodplains and to determine whether federal agencies are complying with the spirit and intent of presidential executive order number

11988. In the event that any of the above determinations indicate the need for remedial action, the aforementioned agency shall take whatever measures it deems appropriate to correct the situation.

[Authority - Executive Order No. 43, August 15, 1996]

5. All state agencies shall participate in and comply with the requirements of the Federal Flood Insurance Program.

[Authority - Executive Order No. 48, February 27, 1978 and 43, August 15, 1996]

6. State agencies shall to the maximum extent possible minimize the threat posed by flood hazards for the following activities: (1) the construction of state buildings, structures, roads or other facilities; (2) the administration of grant or loan programs involving such construction by other governmental entities or private parties; (3) the transfer of lands or other properties; and (4) programs which affect or influence land development.

[Authority - Executive Order Number 29, September 6, 1977, Executive Order Number 48, February 27, 1978 and Executive Order Number 43, August 15, 1996]

7. All state agencies, in cooperation with the Delaware Department of Natural Resources and Environmental Control, shall conduct a survey of their holdings and identify those structures and sites which are flood prone. An inventory shall be maintained by such agencies and updated as of June 30 of each year, indicating: such structures, sites, and uses thereof; the replacement or current economic value of the structures, their contents, and sites; and records of flood-related damage incurred by the structures, contents or sites.

[Authority - Executive Order No. 48, February 27, 1978 and 43, August 15, 1996]

8. The designated lead state agency responsible for CMP implementation shall monitor federal actions which may affect state or local flood hazard areas management, and take whatever action it deems appropriate to encourage or require such actions which are inconsistent with

such management to be modified in a manner that will make them consistent.

[Authority - Executive Order No. 43, August 15, 1996]

### **5.B.4 CMP Policy for Port of Wilmington Management**

1. The long-term economic viability and competitiveness of the Port of Wilmington should be encouraged and supported.
2. The people who benefit from the Port of Wilmington should contribute to its support and help maintain the financial health of the port.
3. Expansion of the Port of Wilmington along the Delaware River is encouraged to meet future national and regional transshipment needs and to reduce the dredging and spoils disposal activities associated with port operations along the Christina River. Port expansion, however, should not proceed if such expansion means air and water quality standards cannot be kept.
4. The port should be promoted for general cargo transfer and, to the extent feasible, as a location for the support of outer continental shelf development.

### **5.C.1 Woodlands and Agricultural Lands Management**

#### **CMP Policies for Woodlands**

1. Federal, state, and local government, as well as private individuals and entities, should support and encourage the prevention of unwarranted destruction or damage to woodlands. Public and private interests must recognize that woodlands have economic, recreational, wildlife, water supply and scenic values. State actions shall avoid the unnecessary damage or destruction of woodlands.
2. The General Assembly finds and declares that the pine and yellow-poplar forest resource of the State provides significant recreational, aesthetic, wildlife and environmental benefits as well as

wood fiber essential to commerce and industry for the citizens of the State. The General Assembly has also determined that the pine and hardwood forest resources are being harvested at a greater rate than they are being replanted or reproduced and unless measures are instituted to ensure that the forest resources are sustained, this natural resource will be depleted to the detriment of the citizens of the State. It is, therefore, the declared public policy of this State to preserve and protect the pine and yellow-poplar forest resources of the State.

[Authority - 3 Delaware Code 1051]

3. No person shall commence a cutting operation unless seed trees have been reserved pursuant to the natural regeneration method set forth herein or pursuant to an alternate management plan approved by the State Forester or his designee. This policy shall not apply to cutting operations of timber from land being cleared for reservoirs, military installations, agriculture, residential, ditch and utility right-of-ways, industrial sites, railroads or to cutting operations undertaken pursuant to a contract executed prior to January 1, 1989.

[Authority - 3 Delaware Code 1053 (a and b)]

4. No person shall cut or permit to be cut any pine or yellow-poplar tree or seedling required to be reserved for reseeded or planted under a reforestation plan or perform any act or permit any act to be performed which prevents reseeded or reforestation of any area in which a cutting operation has been conducted.

[Authority - 3 Delaware Code 1056]

## **CMP Policies for Silviculture**

1. The Forestry Administration shall provide for the protection of the waters of the State from pollution by sediment deposits resulting from silvicultural activities as provided in §1072 of Title 3. Through the adoption of subchapter VI, the State recognizes that water quality protection techniques for silvicultural practices are an integral component of properly managed forests. Further, the State recognizes the positive benefits that properly managed forest systems have on the

environment, water quality and quality of life in Delaware.

[Authority - 3 Delaware Code 1071]

2. Special orders can be issued if the Forestry Administrator, or Forestry Administrator's designee, finds that any owner or operator is conducting any silvicultural activity in a manner which is causing or is likely to cause alteration of physical, chemical or biological properties of any state water, resulting from sediment deposition presenting an imminent and substantial danger to (a) the public health, safety, or welfare, or the health of animals, fish or aquatic life; (b) a public water supply; or (c) recreational, commercial, industrial, agricultural or other reasonable uses.

[Authority - 3 Delaware Code 1073]

3. All open water bodies, perennial streams, intermittent streams with a well-defined channel, and streams that have been hydrologically modified by dredging or straightening shall have a Streamside Management Zone (SMZ), unless the property or a portion of the property is covered by an approved Delaware Seed Tree Law application (Delaware Code, Title 7, Chapter 29, Subchapter V) and is located on slopes of less than five (5) percent. The minimum width for a SMZ is 50 feet from each side of qualifying streams. Within a SMZ, at least sixty (60) square feet of basal area per acre of trees well distributed throughout the area shall be retained, or at least sixty (60) percent of the overstory.

[Authority - Delaware's Forestry Practices Erosion and Sediment Law: Rules and Regulations, section 4(6), effective July 1, 1996]

## **CMP Agricultural Land Policies**

1. Agricultural practices should be conducted in a manner which reduces pesticides and sediment loads to estuaries, bays, and other waterbodies.
2. All public and private entities whose actions may substantially affect agricultural lands in Delaware, or the agricultural productivity of such lands, should consider the need to preserve and protect such lands prior to taking such actions, and should preserve and protect agricultural

lands whenever practicable. State agencies shall protect and preserve agricultural lands to the maximum extent practical.

3. The development of scattered rural residential settlements should be discouraged as long as there are reasonable alternative locations for such development, such as in or immediately adjacent to existing communities or areas where underutilized sewer systems, water systems, police and fire facilities, and other community facilities and services are available.
4. The use of farmlands for non-agricultural purposes should be discouraged by the Farmers Home Administration and all other public financing programs. Instead, development should be directed to the numerous smaller communities which have adequate in-place public services and facilities, as well as adequate land area to accommodate new development.

## **CMP Policies for Tax Ditches**

1. Tax Ditch planning will be done on a watershed basis. A watershed area comprises all the land and water within the confines of a drainage divide and must follow hydrologic boundaries for engineering purposes. A watershed area may comprise the land and water of two or more minor drainageways that are separate tributaries to a stream, artificial waterway, lake, or tidal area. The watershed area considered for design must include all direct tributary drainageways and lands that contribute to flows in the planned channels.

[Authority - Principle and Guidelines for Planning, Constructing, and Maintaining Drainage Ditches in the State of Delaware, section A, June 1995]

2. Channels proposed for cleanout should be limited to those which have reduced hydraulic capacity due to sediment, woody vegetation, and debris. Channels which do meet functional standards may be included in the tax ditch plan for future maintenance. Land use changes may have eliminated the need for reconstructing some channel segments.

[Authority - Principle and Guidelines for Planning, Constructing, and Maintaining

Drainage Ditches in the State of Delaware, section B, June 1995]

3. Environmental studies associated with tax ditch projects will concentrate primarily on impacts to wetlands, forestry and disruption of fish and wildlife resources. Most channel cleanout projects are small in scope and have limited impacts. Avoidance and minimization will be the primary methods of limiting negative impacts on fish and wildlife resources. Practices such as channel relocation, one sided construction, selective spoil placement and minimal clearing can be used both to protect existing sensitive areas and restore previously disturbed sensitive areas. Wildlife and water quality enhancement practices, such as plugging channels which drain wooded wetlands and creating berms along channels to prohibit wetland water from draining into the channel, will be included as part of the tax ditch plan when site conditions allow in order to mitigate temporary wildlife losses and to restore previously lost functions to these water dependent resources.

[Authority - Principle and Guidelines for Planning, Constructing, and Maintaining Drainage Ditches in the State of Delaware, section C, June 1995]

## **5.C.2 CMP Historic and Cultural Areas Policies**

1. All public and private entities whose actions may interfere with the enjoyment or other use of historic and cultural areas in Delaware should consider the need to preserve and protect these areas prior to taking such actions, and should preserve and protect such areas whenever practicable.
2. In order to protect and preserve archaeological and scientific information, matters and objects which are to be found on privately owned lands in this State, it is a declaration and statement of legislative intent that excavations on privately owned lands should be discouraged, except in accordance with and pursuant to the spirit and policy of Title 7 of the Delaware Code, Chapter 53.

[Authority - 7 Delaware Code 5305]

3. No person shall excavate, collect, deface, injure or destroy any archaeological resource or artifact, or otherwise disturb or alter an archaeological resource or artifact or its surrounding location in context, in or on lands owned or controlled by this State, except with the permission of the Governor of this State or the person duly authorized by the Governor to extend and grant such permission. Archaeological resources and artifacts shall be defined to include any remains of past human life or activity that are at least 50 years old.

[Authority - 7 Delaware Code 5301]

4. The Governor may grant permits for archaeological survey and excavation of archaeological resources or artifacts on lands owned or controlled by this State to any person or institution which in his judgment is properly qualified to conduct such an excavation for the gathering of objects of historical or archaeological value or interest. The Governor may prescribe reasonable rules and regulations for carrying out such survey and excavations. The Governor may designate a person or persons to extend and grant the permission to survey and excavate as hereby provided for. No archaeological survey or excavation shall be carried out except for the benefit of reputable museums, universities, colleges, or other recognized scientific institutions, with the view to increase knowledge of such objects.

[Authority - 7 Delaware Code 5302]

5. State and local units of government shall, to the maximum extent possible, coordinate their activities which may adversely affect historic and cultural areas with the Delaware Division of Historical and Cultural Affairs.
6. All federal agencies and departments shall to the maximum extent possible: (1) coordinate their activities which may adversely affect historic and cultural areas in Delaware with the Delaware Division of Historical and Cultural Affairs; and, (2) otherwise cooperate with the Division in accordance with the federal agency's legally mandated responsibilities.
7. When unmarked burials or human skeletal remains are known or suspected in a construction area or being encountered as a result of construction or agricultural activities, said

activity shall cease immediately upon discovery and the Medical Examiner or the Director of the Division of Historical and Cultural Affairs notified of the discovery.

[Authority - 7 Delaware Code 5405(b)]

### **5.C.3 CMP Policies for Living Resources**

1. No activity shall have an adverse environmental effect on living resources and shall include consideration of the effect of site preparation and the proposed activity on the following wetland values:
  - a. Value of tidal ebb and flow
    - (1) Production Value: carving organic matter to adjacent estuaries and coastal waters which serve as breeding areas for certain animal species (especially fish and shellfish).
    - (2) Value as a natural protective system of absorption of storm wave energy, flood waters, and heavy rainfall, thereby decreasing flood and erosion damage.
    - (3) The prevention of silting in certain harbors and inlets thereby reducing dredging.
    - (4) Removal and recycling of inorganic nutrients.
    - (5) Effect on the estuarine waters.
  - b. Habitat Value
    - (1) Habitat for resident species of wildlife including furbearers, invertebrates, finfish.
    - (2) Habitat for migratory wildlife species including waterfowl, wading birds, shorebirds, passerines, finfish, shrimp.
    - (3) Rearing area, nesting area, breeding grounds for various species.
    - (4) Habitat for rare or endangered plants.

- (5) Presence of plants or animals known to be rare generally, or unique to the particular location.
- (6) Presence of plants or animals near the limits of their territorial range.
- (7) Presence of unique geologic or wetland features.

[Authority - DNREC Wetlands Regulations, Section 7.02 (A and B), revised November 3, 1994]

### **CMP Policies for Fish and Wildlife**

1. The DNREC shall protect, manage and conserve all forms of protected wildlife of this State, and enforce by proper actions and proceedings the law relating thereto.

[Authority - 7 Delaware Code 102(a)]

2. The DNREC shall have control and direction of the shellfish industry and of the protection of shellfish resources throughout this State. The DNREC may adopt, promulgate, amend and repeal regulations consistent with the law, which shall be enforced by the DNREC or any peace officers for the following purposes:

- a. To preserve and improve the shellfish industry of this State;
- b. To prevent and control the spread of shellfish-borne diseases by providing for the sanitary harvesting, handling, transportation, processing, production and sale of shellfish;
- c. To provide for the preservation and improvement of the shellfish resources of this State, when deemed necessary.

[Authority - 7 Delaware Code 1902 (a)(1),(2) and (5)]

3. Adequate funds should be provided for fish and wildlife management programs.
4. Mosquito and other pest controls shall use techniques of marsh management which reduce the application of chemicals and which substitute biological controls.

5. Federal actions which may interfere with or otherwise adversely affect fish and wildlife in Delaware shall be implemented only after careful consultation with DNREC and exploration of alternatives less damaging to such fish and wildlife.

### **CMP Policies for Nongame and Endangered Species**

1. "Nongame" is that fauna, including rare and endangered species, which are not commonly trapped, killed, captured or consumed, either for sport or profit.

[Authority - 7 Delaware Code 202(a)]

2. It is in the best interest of the State to preserve and enhance the diversity and abundance of nongame fish and wildlife, and to protect the habitat and natural areas harboring rare and vanishing species of fish, wildlife, plants and areas of unusual scientific significance or having unusual importance to the survival of Delaware's native fish, wildlife and plants in their natural environment.

[Authority - 7 Delaware Code 201(1)]

3. Rare and endangered species are a public trust in need of active, protective management, and that it is in the broad public interest to preserve and enhance such species.

[Authority - 7 Delaware Code 201(2)]

### **5.C.4 CMP Mineral Resource Policy**

1. The extraction and production of minerals should be encouraged, but in a manner which maintains environmental quality.

### **5.C.5 CMP State Owned Coastal Recreation and Conservation Lands Policies**

1. State owned recreation and conservation lands shall be managed, preserved, and protected, for

the long-range public recreation and conservation use and enjoyment thereof.

2. The General Assembly finds that:
  - a. The provision of lands for public recreation and conservation of natural resources promotes biological diversity, public health, prosperity and general welfare and is a proper responsibility of government.
  - b. Lands now provided for such purposes will not be adequate to meet the needs of an expanding population in years to come.
  - c. The expansion of population, while increasing the need for such lands, will continually diminish the supply and tend to increase the cost of public acquisition of lands available and appropriate for such purposes.
  - d. Rapid growth and spread of urban development is encroaching upon, or eliminating, many open areas and spaces of varied size and character. These areas and spaces, if preserved and maintained in their present open state, constitute important physical, biological, social, aesthetic or economic assets.
  - e. The State must act now to protect and to help local governments to protect substantial quantities of such lands as are now available and appropriate so that they may be preserved and developed for the purposes enumerated herein.
  - f. It is the public policy of the State and its political subdivisions that the preservation of open spaces shall be accomplished through the acquisition of interests or rights in real property, or donation of said lands, and that said acquisition constitutes a public purpose for which public funds have been expended or advanced and should be continued.

[Authority - 7 Delaware Code 7502]

### **5.C.6 CMP Public Trust Doctrine Policies**

1. The public have a right of navigation and fishery on all streams where the tide ebbs and flows, even though the riparian proprietor's lines cover the place; but they have no right to land fish on private property, above the high water marks.

[Authority - *Bickel v. Polk*, Delaware Supr. 5 Harr. 325 (1851)]

2. The DCMP will consider the Public Trust Doctrine during consistency reviews involving properties between the high and low water marks.

### **5.D.2 CMP Development Policies**

1. Community Patterns:
  - a. New community development actions should discourage "sprawl".
  - b. New community development generally should occur within or near existing population concentrations where utility networks and community facilities and services are already in place or can economically be expanded.
  - c. Established urban centers, small and large, should be revitalized and recognized for the values of their in place structures, facilities and institutions.
2. Commercial Land:
  - a. Commercial strip development that impedes traffic flow throughout the highway network, reduces the operating capacity of roadways, and decentralizes commercial activity should be significantly curtailed.
  - b. Major commercial development should be encouraged in existing central business districts.
  - c. Highway oriented uses should be clustered and not strung out along major highways.
3. Industry and Industrial Land Use:

- a. Use of existing unused industrial sites and buildings should be encouraged wherever they can be adapted to today's industrial needs.
  - b. Delaware should encourage the introduction of new industries that optimize the State's resources and the special skills and needs of Delaware residents.
  - c. Delaware should encourage development of industrial areas that are located so that services can be provided economically, mass transportation can serve the needs of the workers, and the industries will draw on and support existing rail lines, ports, and air terminals.
  - d. Delaware should assume regulatory control over any future sites or rights-of-way for marine terminals, bulk transfer facilities, or utilities including pipelines.
  - e. Delaware and its local governments should establish standards and criteria for industrial location including optimum size, utility availability, accessibility, and the overall impact on local communities, such standards to be met prior to rezoning for industry. The State shall not promote a site for industrial purposes when utilization for that purpose is contrary to the land use plan in the area.
4. Institutional Land Use--Public and tax exempt private institutions, services, and facilities should be located to serve urban concentration and should comply with land use, drainage, and other regulatory plans.

### **CMP Energy Facilities Policies**

1. For the policies contained in Section 5.D.3, the "coastal zone" is defined as all that area of the State, whether land, water or subaqueous land between the territorial limits of Delaware in the Delaware River, Delaware Bay and Atlantic Ocean, and a line formed by certain Delaware highways and roads as defined in Section 7002 of the Delaware Coastal Zone Act, Title 7 Delaware Code, Chapter 70.

[Authority - 7 Delaware Code 7002]

2. Heavy industry uses of any kind not in operation on June 28, 1971, are prohibited in the coastal zone and no permits may be issued therefore. In addition, offshore gas, liquid or solid bulk product transfer facilities which are not in operation on June 28, 1971, are prohibited in the coastal zone, and no permit may be issued therefor.

[Authority - 7 Delaware Code 7003]

### **CMP Policies for Petroleum Refineries**

1. The CMP absolutely prohibits the construction of new petroleum refineries in wetlands or in the coastal strip lying between a series of inland roads and the Delaware River and Bay -- a stretch of land which varies from a few hundred yards wide in northern Delaware to a maximum of 12 miles in the south.

[Authority - 7 Delaware Code 7001 and 7003]

2. New petroleum refineries are not prohibited inland provided state and local environmental, land use and site development standards are met.

### **CMP Policies for Deepwater Ports**

1. Deepwater ports on the Delaware side of the Delaware River and Bay are prohibited by the Coastal Management Program. Such ports are also prohibited within Delaware's three mile jurisdiction along the Atlantic Ocean.

[Authority - 7 Delaware Code 7001 and 7003]

2. Notwithstanding the Coastal Management Program objections to a Delaware Bay deepwater port, the program supports the concept of a port offshore the Atlantic Coast, provided it meets certain environmental standards including a location far enough off shore to minimize oil spill threats to the coast and to obviate dredging requirements; stringent construction and operation safeguards; a demonstrated reduction of tanker traffic and lightering in the bay; and assurances that state financial interests are protected.

## **CMP Policies for OCS Oil and Gas Facilities**

1. The CMP generally supports OCS development facilities due to the compelling national interest and lack of viable alternatives.
2. The Coastal Management Program permits offshore oil and gas exploration and development in Delaware waters, on a case-by-case basis, provided adherence to strict environmental safeguards is assured.  
  
[Authority - 7 Delaware Code, Chapter 60, Chapter 61, Chapter 69, and Chapter 70]
3. Offshore and onshore pipelines are permitted by the CMP, provided that state and local environmental control and land use standards are met and that state-designated wetlands are avoided wherever practical. However, the terminus of offshore pipelines from both OCS operations and deepwater ports is prohibited in the coastal strip.  
  
[Authority - 7 Delaware Code 7001, 7002(f) and 7003]
4. New storage tanks connected to OCS facilities are permitted outside the coastal strip provided state and local environmental and land use standards are met.

## **CMP Policies for Gas Plants**

1. The environmental impact of gas plants is such that the CMP prohibits them in wetlands and the coastal strip. Inland locations are acceptable on a case-by-case basis provided all state and local environmental and land use standards are met.  
  
[Authority - 7 Delaware Code 7001, 7002(e) and 7003]

## **CMP Policies for Liquefied Natural Gas (LNG) Facilities**

1. The CMP finds that there is no site in Delaware suitable for the location of any LNG import-export facility.

## **CMP Policies for Power Plants**

1. The CMP permits power plants inland and in the coastal strip provided that state and local standards are met.  
  
[Authority - 7 Delaware Code 7002(e), 7004 and appeal to CZA Case No. 4]
2. The Coastal Management Program recognizes the national interest in the use of coal fueled power plants and encourages the siting of such plants over others when air quality standards can be met.  
  
[Authority - 7 Delaware Code, Chapter 60, Section 6003]
3. The Coastal Management Program also permits nuclear power generation facilities but recommends alternative fuels when feasible because of safety concerns and the unresolved problems of nuclear waste transfer, storage and disposal.  
  
[Authority - 16 Delaware Code, 7414 and A. G. opinion dated April 3, 1974]

## **5.D.4 CMP Public Investment Policies**

1. New state general obligation bond authorizations shall not exceed seventy-five percent (75%) of the previous fiscal year's repayment of principal.
2. The federal revenue sharing fund should be used to accelerate the retirement of the unfunded liability of the state pension plan.
3. Partly as a result of competition for scarce capital, additional large land acquisitions by state agencies are discouraged. Funding priority will be given to acquisition of inholdings, natural areas, public access sites or other tracts of particular value. Acquisition by donation, exchange or other non-cash methods is encouraged.
4. Completion and implementation of water quality management programs statewide (pursuant to

Section 208 of Water Pollution Control Act) are encouraged in order to solve point and non-point source pollution problems.

5. Expenditures for construction of sewage treatment and transmission facilities should be based on careful analysis of alternatives, consideration of the impacts on growth patterns with particular consideration given to the risks of over-extension and over-design, and an understanding of the law of diminishing returns related to the net improvement of water quality from additional capital expenditures.
6. The DCMP will encourage the use of the Delaware Water Pollution Control Revolving Fund (SRF) for projects which are consistent with DCMP policies. The SRF is authorized by Title VI of the Federal Clean Water Act as amended by the Water Quality Act of 1987 and Section 8003, Chapter 80, Title 29, Delaware Code.
7. Development of recycling and recovery systems is encouraged, by the development of the State's reclamation facility, by establishment of a recycling program for state agencies to reduce the volume of solid waste going into landfills, and by encouragement of research into and use of solid waste as fuel or raw material for new products.
8. Highest priority should be given to maintenance and safety improvements to the existing highway system, and in particular the correction of seriously deteriorated and substandard conditions.
9. Private development should bear the costs of highway improvements while existing and programmed roads will not be able to carry the additional traffic generated by the proposed development. In this regard, large traffic generators (shopping centers, industries, institutions, residential complexes) should be discouraged in areas where serious traffic or safety problems prevail.
10. State employment should be reduced where the volume of work no longer demands the previous number of employees and in order to reduce the need for new office and other state buildings.
11. Reuse of existing primary and secondary schools is encouraged. New school construction should

be discouraged and renovation and reuse of existing buildings for educational and other purposes should be encouraged.

12. The concept of an enrollment ceiling is encouraged in evaluating needs for new higher education facilities. Curtailment of certain programs and greater cooperation between the separate institutions in curriculum development should be undertaken in order to reduce duplicate facility requirements.
13. The construction of public housing (under the state housing development fund) is encouraged: 1) when it is located in existing settled areas; 2) where it can be serviced by existing facilities; and 3) where it will provide ready access to stores, transportation, health care, and other services. Projects which do not meet these criteria should not be supported by state money; and
14. Consolidation of agencies and levels of government, redistribution of duties and responsibilities among agencies and other approaches which will reduce the duplication and overlap among governments are encouraged to reduce the cost of government at all levels.

### **5.D.5 CMP Policies for Recreation and Tourism**

1. Government promotion of recreation and tourism, particularly in coastal areas, should be based on a study of their costs and benefits to Delaware residents. Recreation and tourist development that results in unnecessary or excessive expenditure of tax dollars for the benefit of a few individuals or groups should be discouraged.
2. Year-round recreational and tourism programs and facilities are encouraged in order to reduce the reliance on summer-time recreation.
3. Recreation and tourism planning and development programs, such as the State Comprehensive Outdoor Recreation Planning Program (SCORP), are to be encouraged.

### **5.D.6 CMP Policies for National Defense and Aerospace Facilities**

1. National defense and national security facilities are among the higher priorities in the management of the coastal zone.
2. Military and aerospace agencies or firms shall comply with those regulatory and environmental standards imposed under federal law, and they are encouraged to cooperate with state and local governments in protecting and enhancing the environment.
3. "Air installation compatible use zones" should be considered in land use planning programs in order to protect citizens from noise and possible accident hazards associated with such facilities.

### **5.D.7 CMP Policies for Transportation Facilities**

1. When essential to the national interest, the construction maintenance and improvement of transportation systems shall predominate over less essential interests.
2. Construction of transportation facilities shall be consistent with CMP resource protection policies.
3. Transportation planning programs shall provide for alternatives to continued reliance on private motor vehicles with their associated highway requirements.
4. The State shall undertake an accelerated program of highway maintenance, upgrading, and safety improvements.
5. The maintenance of an adequate and efficient railroad network serving Delaware is encouraged.
6. The construction of airports and the development of air passenger and freight services is encouraged, provided such facilities adequately consider air and water quality, noise standards, and safety in order to minimize impacts on present and future development.

7. The expansion and promotion of the Port of Wilmington is encouraged.
8. Deepwater ports used to transfer bulk products in Delaware Bay are prohibited because of the environmental risks associated with their development and operation.
9. New or expanded ports which involve extensive and continual dredging and spoil disposal in order to keep them useable are discouraged unless it can clearly be demonstrated that such facilities can be developed in an environmentally sound manner and without imposing continuing maintenance costs on any level of government or the general public.
10. Alternatives to the continuation of the present lightering activity in the bay are encouraged. Strict enforcement of oil spill liability regulations are also encouraged to ensure that all transshipment activities are properly conducted.

### **5.D.8 CMP Policies for Air Quality Management**

1. In view of the rapid growth of population, agriculture, industry and other economic activities, the air resources of the State must be protected, conserved and controlled to assure their reasonable and beneficial use in the interest of the people of the State. The State, in the exercise of its sovereign power, acting through the Department should control the development and use of the air resources of the State so as to effectuate full utilization, conservation and protection of the air resources of the State.

[Authority - 7 Delaware Code Chapter 60]

2. The provisions of item (1) above are carried out, mainly, through the adoption and implementation of the State of Delaware "Regulations Governing the Control of Air Pollution." The following, generally, identifies regulations of the State of Delaware "Regulations Governing the Control of Air Pollution" that apply to stationary sources. Consult these regulations and contact Air Quality Management Section personnel for additional and specific information.
  - a. Generally, sources which will emit to the atmosphere equal to or greater than 0.2

pound of air contaminant(s), in the aggregate, in any one day are subject one or more air permitting requirements.

[Authority - Regulation No. 2, 25 and/or 30 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

- b. Sources which will emit to the atmosphere particulate matter from fuel burning or industrial process equipment, construction and materials handling, or grain handling operations may be subject one or more emission limitations.

[Authority - Regulation No. 4, 5, 6, and/or 18 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

- c. Sources which will incinerate either noninfectious or infectious waste may be subject one or more emission limitations.

[Authority - Regulation No.7 and 29 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

- c. Sources which will emit to the atmosphere sulfur dioxide/compound emissions from fuel burning equipment or industrial operations may be subject one or more emission limitations.

[Authority - Regulation No.8, 9 and 10 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

- d. Sources which will emit to the atmosphere carbon monoxide emissions from industrial process operations may be subject one or more emission limitations.

[Authority - Regulation 11 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

- e. Sources which will emit to the atmosphere nitrogen oxides may be subject one or more emission limitations.

[Authority - Regulation 12 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

- f. Sources which will conduct open burning may be subject one or more emission limitations.

[Authority - Regulation 13 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

- g. Sources which will emit to the atmosphere visible emissions (opacity) may be subject one or more emission limitations.

[Authority - Regulation 14 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

- h. Sources which will emit to the atmosphere odorous air contaminants may be subject one or more emission limitations.

[Authority - Regulation 19 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

- i. Certain new, modified, and reconstructed sources may be subject to State adopted Federal requirements; particularly New Source Performance Standards (NSPS) found at 40 CFR Part 60, National Emission Standards for Hazardous Air Pollutant (NESHAP) standards found at 40 CFR Part 61, and Maximum Achievable Control Technology (MACT) standards found at 40 CFR Part 63.

[Authority - Regulation 20, 21, and 38 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

- j. Sources which will burn waste oil may be subject one or more emission limitations.

[Authority - Regulation 22 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective

September 11, 1998]

- k. Sources which will emit to the atmosphere volatile organic compounds may be subject one or more emission limitations.

[Authority - Regulation 24 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

- 3. Where it is established that the Delaware air regulations are inadequate to attain or maintain any applicable air quality standard, the Department shall exercise its authority to require additional control measures. Further, the lack of a regulation governing an air contaminant or combination of air contaminants will not prevent the Department from taking any and all actions necessary to maintain a reasonable quality of air throughout the State.

[Authority - Regulation No. 1 and 3 of the State of Delaware "Regulations Governing the Control of Air Pollution", effective September 11, 1998]

### **5.D.9 CMP Policies for Water Supply Management**

- 1. According to statute the Secretary (of the DNREC) shall approve the allocation and use of waters in the State on the basis of equitable apportionment (7 Delaware Code. Section 6010(F)). These regulations provide for the allocation and re-allocation of the waters of the State in such a manner as to provide an adequate quantity and quality of water for the needs of the people of Delaware in the present and future.

[Authority - State of Delaware Regulations Governing the Allocation of Water, Section 1.01, effective March 1, 1987 and 7 Delaware Code Section 6010(F)]

- 2. Withdraws from ground waters shall be limited to those rates which will not cause:
  - a. long-term progressive lowering of water levels, except in compliance with management water levels established by the DNREC;

- b. significant interference with the withdrawals of other permit holders unless compensation for such injury is provided satisfactory to the DNREC;
- c. violation of water quality criteria for existing or potential water supplies;
- d. significant permanent damage to aquifer storage and recharge capacity; or
- e. substantial impact on the flow of perennial streams below those rates specified for surface waters in the preceding section.

[Authority - State of Delaware Regulations Governing the Allocation of Water, Section 3.04, effective March 1, 1987]

- 3. Withdraws from surface waters shall be limited to those rates which:
  - a. do not interfere with other permitted withdrawals unless compensation for such injury is provided satisfactory to the DNREC;
  - b. allow dilution and flushing of waste discharge and maintain adopted water quality standards;
  - c. protect valuable fish and wildlife;
  - d. maintain adequate flow over spillways of downstream impoundments;
  - e. prevent intrusion of saline waters where such intrusion threatens ground or surface water supplies; and
  - f. provide other ecological, recreational, aesthetic, and private benefits which are dependent upon surface water flows.

[Authority - State of Delaware Regulations Governing the Allocation of Water, Section 3.03, effective March 1, 1987]

- 4. The Department of Natural Resources and Environmental Control in cooperation with county and local governments and private water suppliers is encouraged to develop a comprehensive water supply management program including the reallocation of water resources, the protection of aquifer recharge

areas, and, where necessary, the abrogation of allocations to marginal users provided compensation is provided.

## **CMP Policies for Construction and Use of Wells**

1. A well, defined as "any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, testing, acquisition, use, for extracting water from, or the artificial recharge of subsurface fluids, and where the depth is greater than the diameter or width; not to include geotechnical test; soil, telephone, and construction piling borings; fence posts, test pits, or horizontal closed loop heatpump circulation systems constructed within twenty (20) feet of the ground surface"; including any well installed for the purpose of obtaining geologic or hydrologic information shall receive the prior approval of the DNREC in the form of a well permit.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 1.02 (D) and Section 2.61, revised April 1, 1997]

2. The DNREC, in considering applications and granting permits shall take into account the geology, hydrology and hydraulics of the area of interest, population density and water use, character of surface and subsurface, water quality, depletion rate of the water resources, sources of contamination, and other facts as may be relevant to the protection of the water resources and water supply.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 3.10(B), revised April 1, 1997]

3. The DNREC may place special conditions on the well permit such as, but not limited to, a requirement for double casing, special grouting requirements, special use restrictions, depth restrictions, notification of installation date, and special material requirements to protect the water resources, water supply, and the public health, safety and welfare.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 3.10 (C), revised April 1, 1997]

4. Where an approved public water supply system is legally and reasonably available to the area to be served, the DNREC shall deny an application for a well permit for a potable water well.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 3.10 (D), revised April 1, 1997]

5. When proposed wells, with the exception of monitor, observation and recovery wells, are to be located within the jurisdiction or service area of a municipality serving public water the applicant shall submit a written statement of approval from said municipality with the well permit application.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 3.10 (E), revised April 1, 1997]

6. The DNREC may require as a permit condition that certain tests be done such as, but not limited to, the performance of a geophysical log on the well, the determination of water quality parameters, and the taking of formation samples.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 3.10 (F), revised April 1, 1997]

## **CMP Policies for Underground Injection Control**

1. Any underground injection, except as authorized by permit issued under the Underground Injection Control (UIC) program or otherwise authorized herein, is prohibited. The construction of any well required to have a permit is prohibited until the permit is issued.

[Authority - State of Delaware Regulations Governing Underground Injection Control, Section 122.23(a), effective August 15, 1983]

2. The construction, use, operation or modification of any Class II, III, or IV well as defined in the Regulations Governing Underground Injection

Control is hereby expressly prohibited and no permit may be issued for any such activity.

[Authority - State of Delaware Regulations Governing Underground Injection Control, Section 122.23(b), effective August 15, 1983]

3. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct and other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

[Authority - State of Delaware Regulations Governing Underground Injection Control, Section 122.24(a), effective August 15, 1983]

### **5.D.11 Waste Disposal Management**

#### **CMP Policies for On-Site Wastewater Treatment and Disposal Systems**

1. The DNREC finds that a substantial portion of the State's population lives where centralized water supply or wastewater treatment services are limited. It is the intent of the DNREC to aid and assist the public in the installation of on-site sewage disposal systems, where possible, by utilizing the best information, techniques and soil evaluations for the most suitable system that site and soil conditions permit.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, revised January 31, 1995, forward]

2. The Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems shall apply to all aspects of:
  - a. The planning, design, construction, operation, maintenance, rehabilitation,

replacement, and modification of individual and community on-site wastewater treatment and disposal systems within the boundaries of the State of Delaware; and

- b. The planning, design, construction, operation and maintenance of on-site wastewater holding tanks within the boundaries of the State of Delaware; and
- c. The licensing of site evaluators, percolation testers, on-site system designers, on-site system contractors, and liquid waste haulers within the boundaries of the State of Delaware.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 1.02000, revised January 31, 1995]

3. Each and every owner of real property is jointly and severally responsible for:
  - a. Disposing of sewage on that property in conformance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems; and
  - b. Connecting all plumbing fixtures on that property, from which sewage is or may be discharged, to a central sewerage system or on-site sewage disposal system approved by the DNREC; and
  - c. Maintaining, repairing, and/or replacing the system as necessary to assure proper operation of the system.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.01000, revised January 31, 1995]

4. No person shall construct, install, modify, rehabilitate, or replace an on-site system or construct or place any dwelling, building, mobile home, modular home or other structure capable of discharging wastewater on-site unless such person has a valid permit issued by the DNREC pursuant to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.02000, revised January 31, 1995]

5. No permit may be issued by the DNREC under the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems unless the county or municipality having land use jurisdiction has first approved the activity through zoning procedures provided by law.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.03000, revised January 31, 1995]

6. At the sole discretion of the DNREC, if the proposed operation of a system would cause pollution of public waters or create a public health hazard, system installation or use shall not be authorized.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.08000, revised January 31, 1995]

7. All wastewater shall be treated and disposed of in a manner approved by the DNREC.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.09000, revised January 31, 1995]

8. No person shall dispose of sewage or septage at any location not authorized by the DNREC under applicable laws and regulations for such disposal.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.10000, revised January 31, 1995]

9. Discharge of untreated or partially treated wastewater or septic tank effluent directly or indirectly onto the ground surface or into surface waters of the State, unless authorized by a permit issued by the DNREC, constitutes a public health hazard and is prohibited.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.11000, revised January 31, 1995]

10. No cooling water, air conditioning water, ground water, oil, or roof drainage shall be discharged into any system.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.12000, revised January 31, 1995]

11. Each system shall have adequate capacity to properly treat and dispose of the maximum projected daily wastewater flow. The quantity of wastewater shall be determined from the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems or other information the DNREC determines to be valid that may show different flows.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.14000, revised January 31, 1995]

12. A permit to install a new system can be issued only if each site has received an approved site evaluation and is free of encumbrances (e.g., easements, deed restrictions, etc.), which could prevent the installation or operation of the system from being in conformance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.15000, revised January 31, 1995]

## **CMP Policies for Land Treatment of Wastes**

1. Land treatment of wastewaters, sludges and other residual wastes is a proven and cost effective alternative to traditional technology over a wide range of circumstances where the necessary land is available at reasonable cost. For effluents and sludges, it is particularly attractive at locations

where the design flow of receiving waters is low, waste treatment requirements are high and suitable to landfills is low. The full advantages of land treatment will not be realized, however, unless there is a concerted effort to focus the designs on essential features. Ground water quality and public health must be protected, but treatment hardware and operational criteria should be based on firm evidence of need. Lined earthen lagoons should be used whenever possible and concrete, steel, and firm-set structures limited except where fully justifiable. All persons involved in the planning, review, and supervisory processes should take steps to assure that these objectives are realized.

[Authority - State of Delaware Guidance and Regulations Governing the Land Treatment of Wastes, Part I, Section 100, revised June 5, 1994]

2. The construction and operation of waste collection, treatment, and disposal systems and facilities discussed in the State of Delaware Guidance and Regulations Governing the Land Treatment of Wastes are regulated by the DNREC. The Delaware Environmental Protection Act requires that a valid permit shall be obtained for collection, treatment, and disposal of waste. The Regulations specify minimum requirements needed to protect the public health and environmental quality. The technical guidelines provide guidance on system planning and design.

[Authority - State of Delaware Guidance and Regulations Governing the Land Treatment of Wastes, Part I, Section 500, revised June 5, 1994]

3. Conditions necessary for the protection of the environment and the public health may differ from facility to facility because of varying environmental conditions and wastewater compositions. The DNREC may establish, on a case-by-case basis, specific permit conditions. Specific conditions shall be established in consideration of characteristics specific to a facility and inherent hazards of those characteristics. Such characteristics include, but are not limited to:
  - a. Chemical, biological, physical, and volumetric characteristics of the wastewater;

- b. Geological, topographic, and climatic nature of the facility site;
- c. Size of the site and its proximity to population centers and to the ground and surface water;
- d. Legal considerations relative to land use and water rights;
- e. Techniques used in wastewater distribution and the disposition of that vegetation exposed to wastewater;
- f. Abilities of the soils and vegetative cover to treat the wastewater without undue hazard to the environment or to the public health; and
- g. The need for monitoring and record keeping to determine if the facility is being operated in conformance with its design and if its design is adequate to protect the environment and the public health.

[Authority - State of Delaware Guidance and Regulations Governing the Land Treatment of Wastes, Part II, Section 200, Subsection 203(3)(a), revised June 5, 1994]

4. The purpose of DNREC's Guidance and Regulations Governing the Land Treatment of Wastes is to protect and improve environmental quality in Delaware by providing further treatment and recycling of wastes. The objectives are:
  - a. To regulate and manage land treatment of wastewater and sludge.
  - b. To assure long-term land productivity, such that no land is irreversibly removed from significant potential agricultural land use.
  - c. To protect groundwater quality and assure that drinking water quality standards are met.
  - d. To safeguard public health within reasonable standards.
  - e. To improve the regulatory climate for land application of wastes, public understanding, and implementation of current and evolving technology by municipalities and industries.

[Authority - State of Delaware Guidance and Regulations Governing the Land Treatment of Wastes, revised June 5, 1994, Section 300]

5. Specific objectives in using land treatment technology are:
  - a. To establish criteria for the application of wastes to the plant-soil system at such rates or over such limited time span that no land is irreversibly removed from some other potential societal usage (agriculture, development, forestation, etc.).
  - b. To establish a methodology for the intimate mixing or dispersion of wastes into the upper zone of the plant-soil system with the objective of microbial stabilization, immobilization, selective dispersion, or crop recovery leading to an environmentally acceptable assimilation of the waste.
  - c. To promote effective regulation, public understanding, and implementation of current and evolving technologies by governmental units and industries in the State of Delaware.
  - d. To establish reasonable measures of protection for the environment and public health, safety, and welfare by providing for the proper design, operation, and management of land treatment systems; and the proper treatment, transport, handling, and beneficial use of wastes.
  - e. To require the use of plant-soil and waste management practices and technology that will function according to the performance criteria without causing the State's groundwater resources to violate duly promulgated drinking water standards on an average annual basis.
  - f. To dispose of non-hazardous sludges in landfills is an inefficient use of resources. Pretreatment programs and sludge management programs should be directed to provide adequate treatment for land application.

[Authority - State of Delaware Guidance and Regulations Governing the Land Treatment of Wastes, revised June 5, 1994, Section 300]

## **CMP Policies for Disposal of Solid Wastes**

1. The General Assembly of the State of Delaware finds that historically millions of tons of solid wastes have been disposed of in the ocean and waters of the State, that these wastes are not land disposed in recognition of the threat posed by the presence of contaminants, by the lack of knowledge or appreciation of the harm such wastes can cause to the marine environment, or that it is cheaper to dispose of such wastes in the ocean or other waters of the State. Therefore, it is the intent of the General Assembly to prohibit the disposal of solid wastes in the ocean and other waters of the State of Delaware.

[Authority - 7 Delaware Code, Section 6071]

2. It is the intent of the DNREC to require that solid waste handling and disposal be conducted in a manner and under conditions which will eliminate the dangerous and deleterious effects of improper solid waste handling and disposal upon the environment and upon human health, safety, and welfare.

[Authority - State of Delaware Regulations Governing Solid Waste, Section 1, revised December 21, 1994]

3. Sanitary and industrial landfill facilities shall be located only in areas where the potential for degradation of the quality of air, land and water is minimal.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 5(A)(1) and 6(A)(1), revised December 21, 1994]

4. All sanitary and industrial landfill facilities shall be constructed to at least minimum design requirements as contained in the DNREC Regulations Governing Solid Waste.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 5(A)(2) and 6(A)(2), revised December 21, 1994]

5. No cell of a new sanitary landfill shall be located:
  - a. Within the 100 year flood plain.

- b. Within 200 feet of any state or federal wetland.
- c. Within 200 feet of any perennial stream.
- d. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.
- e. Within 10,000 feet of any airport runway currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.
- f. So as to be in conflict with any locally adopted land use plan or zoning requirement.
- g. Within the wellhead protection area of a public water supply well or well field.
- h. Within 200 feet of a fault that has had displacement during Holocene time (unless it can be demonstrated that a lesser setback distance would prevent damage to the structural integrity of the landfill unit and be protective of human health and the environment.)
- i. Within a seismic impact zone (unless it can be demonstrated that all containment structures, including liners, leachate collection systems and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 5(A)(4), revised December 21, 1994]

- 6. No new industrial landfill shall be located in an area such that solid waste would at any time be deposited:
  - a. Within the 100 year flood plain.
  - b. Within 200 feet of any state or federal wetland.
  - c. Within 200 feet of any perennial stream.

- d. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the DNREC.
- e. So as to be in conflict with any locally adopted land use plan or zoning requirement.
- f. Within the wellhead protection area of a public water supply well or well field.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 6(A)(3), revised December 21, 1994]

- 7. An impermeable liner shall be provided at all sanitary and industrial landfills to restrict the migration of leachate from the landfill and to prevent contamination of the underlying ground water, in accordance with a DNREC approved quality assurance plan.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 5(C)(1) and 6(C)(1), revised December 21, 1994]

- 8. All sanitary and industrial landfills shall be designed and constructed to include a leachate collection system, a leachate treatment and disposal system, and a leachate monitoring system, in accordance with a DNREC approved quality assurance plan.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 5(D)(1) and 6(D)(1), revised December 21, 1994]

- 9. No new dry waste disposal facility shall be located in an area such that solid waste would at any time be deposited:
  - a. Within five (5) feet of the seasonal high water table.
  - b. Within the 100 year flood plain.
  - c. Within 200 feet of any state or federal wetland.
  - d. Within 200 feet of any perennial stream.
  - e. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless

specifically exempted from this requirement by the Department.

- f. So as to be in conflict with any locally adopted land use plan or zoning requirement.
- g. Within the wellhead protection area of a public water supply well or well field.
- h. In an area that is particularly susceptible to environmental degradation.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 8(A), revised December 21, 1994]

- 10. Resource recovery facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 9(B)(1), revised December 21, 1994]

- 11. No new resource recovery facility shall be located in an area such that solid waste would be at any time be handled:
  - a. Within the 100 year flood plain.
  - b. Within any state or federal wetland.
  - c. Within 1,000 feet of any state or federal wildlife refuge, wildlife area, or park.
  - d. So as to be in conflict with any locally adopted land use plan or zoning requirement.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 9(B)(2), revised December 21, 1994]

- 12. In addition, any facility that processes municipal solid waste shall not be located within 10,000 feet of any airport currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 9(B)(2), revised December 21, 1994]

- 13. Transfer stations shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 10(B)(1), revised December 21, 1994]

- 14. Transfer stations shall be located adjacent to access roads capable of withstanding anticipated load limits.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 10(B)(2), revised December 21, 1994]

- 15. No new transfer station shall be located in an area such that solid waste would at any time be handled:

- a. Within the 100 year flood plain.
- b. Within any state or federal wetland.
- c. So as to be in conflict with any locally adopted land use plan or zoning requirement.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 10(B)(3), revised December 21, 1994]

- 16. All transfer stations shall be designed and constructed to include a leachate collection and disposal system that will prevent leachate (including wastewater generated during normal operation such as wash-out and cleaning of equipment, trucks, and floors) from contaminating the soil, surface water, or ground water.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 10(D)(1), revised December 21, 1994]

## **CMP Policies for Hazardous Waste Management**

- 1. The Delaware General Assembly finds that:
  - a. Continuing technological progress, increases in the amounts of manufacture and the

abatement of air and water pollution have resulted in ever-increasing quantities of hazardous wastes.

- b. The public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound manner and where there are no commercial hazardous waste management facilities available;
- c. The knowledge and technology necessary to alleviate adverse health, environmental and aesthetic impacts resulting from current hazardous waste management and disposal practices are believed to be generally available at costs within the financial capability of those who generate such wastes, but that such knowledge and technology are not widely used;
- d. The problem of managing hazardous wastes has become a matter of statewide concern.

[Authority - 7 Delaware Code 6301]

2. Therefore, it is hereby declared the policy of this State:

- a. To protect the public health and safety, the health of organisms and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes;
- b. To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes; and
- c. To assure the safe and adequate management of hazardous wastes within this State.

[Authority - 7 Delaware Code 6301]

3. "Hazardous Wastes" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating, irreversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored,

transported or disposed of, or otherwise managed.

[Authority - 7 Delaware Code 6302(7)]

4. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land, water or into the air so that such hazardous waste or any constituent thereof may enter the environment to be emitted into the air, or discharged into any water including groundwaters, or any other management of hazardous waste in which the handler voluntarily relinquishes control of the waste in a manner inconsistent with the requirements of this chapter and the regulations promulgated thereunder.

[Authority - 7 Delaware Code, Section 6302(4)]

5. No person shall generate, store, transport, treat or dispose of hazardous wastes in this State without reporting such activity to the DNREC as required by 7 Delaware Code, Chapter 63 and regulations promulgated hereunder.

[Authority - 7 Delaware Code, Section 6304(a)]

6. No person shall generate, store, treat, transport or dispose of hazardous wastes within this State except in compliance with 7 Delaware Code, Chapter 63 and regulations hereunder.

[Authority - 7 Delaware Code, Section 6304(b)]

7. Land emplacement units, defined as any facility involving the placement of hazardous waste into or onto the land and which is designed and operated to contain waste in a manner that prevents the migration of pollutants from the site such as landfills; land farms/land treatment; land burial following solidification or encapsulation; above ground perpetual storage; waste piles; surface impoundments; and on ground, in-ground, and underground tanks shall be prohibited in the following:

- a. The 100-year flood hazard area.
- b. Wetlands.
- c. Freshwater wetlands.
- d. Carbonate bedrock areas.

- e. Carbonate bedrock drainage areas.
- f. Public water supply watersheds upstream from the points of withdrawal.
- g. Subcropping aquifer and aquifer recharge areas.
- h. Significant environmental lands.
- i. Areas where the transmissivity of the unconfined aquifer is greater than 10,000 ft<sup>2</sup>/day.
- j. Areas where groundwater under natural conditions could come into contact with the waste.
- k. Wellhead protection areas.
- l. Areas within 500 feet of a fault that has experienced movement within the last 35,000 years (capable fault).

[Authority - Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities, Section 1 and Section 3.1, revised October 22, 1996]

8. Non-land emplacement storage, treatment, and disposal units shall be prohibited in the following:
- a. The 100-year flood hazard area.
  - b. Wetlands.
  - c. Freshwater wetlands.
  - d. Carbonate bedrock areas.
  - e. Carbonate bedrock drainage areas.
  - f. Public water supply watersheds upstream from reservoirs.
  - g. Significant environmental lands.
  - h. Areas within 500 feet of a fault that has experienced movement within the last 35,000 years (capable fault).
  - i. Wellhead protection areas.

[Authority - Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities, Section 4.1.1, revised October 22, 1996]

9. The following units shall be exempt from the Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities:
- a. On-site reclamation units where the principle activity at the facility is not the management of wastes.
  - b. Industrial boilers and furnaces that burn hazardous waste fuels for energy recovery.
  - c. Units authorized in accordance with Section 122.60 and 122.61 of the Delaware Regulations Governing Hazardous Waste concerning facilities that have permits by rule and/or approval to operate under an emergency administrative order.

[Authority - Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities, Section 6.1(i, ii, and iii), revised October 22, 1996]

## **CMP Policies for the Cleanup of Hazardous Substances**

1. The General Assembly of the State of Delaware recognizes that large quantities of hazardous substances are and have been generated, transported, treated, and stored within the State.

The General Assembly also recognizes that some hazardous substances have been stored or disposed of at facilities in the State in a manner insufficient to protect public health or welfare or the environment.

The General Assembly finds that the release of a hazardous substance constitutes an imminent threat to public health or welfare or the environment of the State.

The General Assembly intends by the passage of this chapter to exercise the powers of the State to require prompt containment and removal of such hazardous substances, to eliminate or minimize the risk to public health or welfare or the environment, and to provide a fund for the

cleanup of the facilities affected by the release of hazardous substances.

[Authority – 7 Delaware Code 9102 (a)]

2. The General Assembly finds that private parties should be provided with encouragement to exercise their responsibility to clean up the facilities for which they are responsible, but that if they refuse to do so, then the State should conduct the cleanup and recover the costs thereof from the private parties.

[Authority – 7 Delaware Code 9102 (b)]

3. The General Assembly recognizes the need to remedy contaminated facilities and to promote opportunities and provide incentives to encourage the remedy of such facilities to yield economic revitalization and redevelopment within the state.

[Authority – 7 Delaware Code 9102 (c)]

4. The General Assembly finds that in order to effectuate the purposes of this chapter to remedy contamination resulting from past acts and to address more equitably the issue of who should bear the cost of remediation, 7 Delaware Code § 9105-Standards of Liability – shall apply to all responsible parties without regard to the date of enactment of this chapter or any amendment thereto.

[Authority – 7 Delaware Code 9102 (d)]

5. Hazardous substance means: a. Any hazardous waste as defined in Chapter 63 of Title 7; b. Any hazardous substance as defined in CERCLA; or c. Any substance determined by the Secretary through regulation to present a risk to public health or welfare or the environment if released into the environment.

[Authority – 7 Delaware Code 9103 (1)]

6. Where a release or imminent threat of release of hazardous substances requires a response action, potentially responsible parties that have been noticed in accordance with Subsection 6.3 of these Regulations, shall conduct such response action as expeditiously as possible. Any approval by the Department of a response action shall occur through one of the settlement

agreements described in Subsection 13.3 of these Regulations.

No person shall perform an interim response activity except as provided for in Section 8.2(3) or remedial action independently from and without concurrent oversight of the Department at facilities where there is a release or imminent threat of release of hazardous substances.

All procedures related to the Voluntary Cleanup Program shall be carried out in accordance with the applicable provisions of the Delaware Voluntary Cleanup Program Guidance, and these Regulations, as amended by the Department.

[Authority – State of Delaware Regulations Governing Hazardous Substance Cleanup, Section 13.1(1) -(3), revised September 1996]

## **CMP Policies for Underground Storage Tank Systems**

1. Pursuant to 7 Delaware C., Chapter 74, the General Assembly of the State of Delaware has found “that it is necessary to provide for more stringent control of the installation, operation, retrofitting and abandonment of underground storage tanks to prevent leaks, and where leaks should occur, detect them at the earliest possible stage and thus minimize further degradation of groundwater.”

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Section 1.01, revised March 12, 1995]

2. The requirements of the Regulations Governing Underground Storage Tank Systems shall apply to all owners and operators of an Underground Storage Tank (UST) system unless specifically exempted. An “Underground Storage Tank” is defined as a containment vessel, including underground pipes connected thereto, which is used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is 10 per centum or more beneath the surface of the ground. Such terms does not include any:
  - a. Septic tank.

- b. Pipeline facility (including gathering lines) regulated under:
  - i. The Natural Gas Pipeline Safety Act of 1968 (49 USC 1671 et seq.); or
  - ii. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC 2001 et seq.); or
  - iii. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph b(i) or (ii) of this definition.
- c. Surface impoundment, pit, pond, lagoon.
- d. Storm water wastewater collection system.
- e. Flow-through process tank.
- f. Liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
- g. Storage tank situated in an underground area (such as basement, cellar, mineworking drift, shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Sect. 1.02, revised March 12, 1995 and 7 Delaware C. 7402(20)]

- 3. "Regulated Substance" means
  - a. Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (42 USC Section 9601(14)); but not including any substance regulated as a hazardous waste under Delaware's Regulations Governing Hazardous Wastes and/or RCRA Subtitle C.
  - b. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of

hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, residual fuel oils, lubricants, petroleum solvents, and used oils.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Section 2 - Definitions, revised March 12, 1995]

- 4. The following underground storage tank systems shall be exempted from the requirements of the Regulations Governing Underground Storage Tank Systems with the exception of Part A, Section 4.11; Part A, Section 8.06 and 8.07; and Sections 3.04 and 4 of either Parts B or D.
  - a. Agricultural/Farm and residential UST systems of 1,100 gallons or less used for storing motor fuels for non commercial purposes.
  - b. UST systems containing heating oils of 1,100 gallons or less used for consumptive purposes on the premises where stored.
  - c. The following UST systems:
    - i. Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;
    - ii. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act,
    - iii. Equipment and machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks,
    - iv. Any UST system whose capacity is 100 gallons or less,
    - v. Any UST system that contains a de minimis concentration of regulated substances, and
    - vi. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Section 1.02 (A, B and C), revised March 12, 1995]

5. No person may install an Underground Storage Tank system deferred or exempted under Section 1.02 of the Regulations Governing Underground Storage Tank Systems for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):
  - a. Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
  - b. Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and
  - c. Is constructed or lined with material that is compatible with the stored substance.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Section 1.03(A, B, and C), revised March 12, 1995]

6. Any person that owns or operates an underground storage tank system must register each underground storage tank system with the Department of Natural Resources and Environmental Control.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Section 4.01, revised March 12, 1995]

7. Prior to the installation of any underground storage tank system a site survey must be initiated by the facility owner and operator. The pre-installation site survey must be conducted to determine the locations of nearby buildings, underground utilities and sewer lines. Private/public drinking water wells, rivers, streams, lakes, canals, and other environmentally sensitive locations shall be recorded and incorporated into the design of the underground storage tank system facility.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part B, Section 1.03(A), revised March 12, 1995]

8. Owners and operators of new UST systems must provide a method, or combination of methods of release detection that:
  - a. Can detect a release from any portion of the tank and the connected underground piping that routinely contain product; and
  - b. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
  - c. Meets the performance standards for release detection in this section, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after January 1, 1991 except those permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for precision tank testing, automatic tank gauging, line leak detectors, and line tightness testing methods specified in this section with a probability of detection of at least 0.95 and a probability of false alarm no greater than 0.05.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part B, Section 1.07(A, B, and C) revised March 12, 1995]

9. Not later than January 1, 1991, no person must use, or maintain any in-service existing UST system without complying with one of the following requirements contained in the Regulations Governing Underground Storage Tank Systems:
  - a. New UST system performance standards contained in Part B, Section 1; or
  - b. The upgrading/retrofitting requirements for both existing tanks, integral piping and release detection under Part B, Section 2.02 with the exception of the cathodic protection requirements under Section 2.02 (A)(2) and (B); or

- c. Removal, abandonment requirements under Part B, Section 3 including applicable requirements for hydrogeologic investigation and/or corrective action under Part B, Section 4.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part B, Section 2.01(A)(1, 2 and 3), revised March 12, 1995]

- 10. The Department reserves the right to require secondary containment or equivalent protection for underground storage tank system installations where aquifers underlying the UST facility are determined to need such protection, or where groundwater below the UST facility is within a well head protection area, or where groundwater is susceptible to contamination in order to protect the safety, health, welfare and/or environment of the State.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part B, Section 1.02(A), revised March 12, 1995]

### **CMP Policies for UST Systems Used for the Storage of Petroleum Substances**

- 1. All new Underground Storage Tanks (UST) systems installed for the storage of petroleum must be designed, constructed and installed in accordance with manufacturer's specifications, and accepted engineering practices and procedures; and in a manner which will prevent releases of regulated substances to the ground waters, surface waters or soils of the State due to corrosion, structural failure, spills and overfills for the operational life of the tank. The material used in the construction and/or lining of the tank must be compatible with the substance to be stored. All new UST systems must meet the following requirements:
  - a. Acceptable designs for UST system construction include cathodically protected steel, fiberglass-reinforced plastic, steel-fiberglass-reinforced-plastic composite, cathodically protected double-walled steel or double-walled fiberglass-reinforced plastic, or any of the above tanks in association with

a secondary containment, or other equivalent design approved by the Department of Natural Resources and Environmental Control.

- b. New petroleum UST systems must be installed in accordance with the manufacturer's specifications, accepted engineering practices and one of the following industry codes: American Petroleum Institute, Installation of Underground Petroleum Storage Systems, Recommended Practices 1615 or Petroleum Equipment Institute, Recommended Practices for Installation of Liquid Storage Systems, Recommended Practices 100-87.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part B, Section 1.01(A and B), revised March 12, 1995]

- 2. Owners and operators of existing petroleum UST systems must provide a method, or combination of methods, of release detection that:
  - a. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product.
  - b. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.
  - c. Meets the performance standards under Part B, Section 2.05 of the Regulations Governing Underground Storage Tank Systems, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after July 12, 1985 except those permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for precision tank testing, automatic tank gauging, line leak detectors, and line tightness testing methods specified in this Section with a probability of false alarm of at least 0.95 and a probability of false alarm of no greater than 0.05.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems,

Part B, Section 2.05(A, B and C), revised March 12, 1995]

3. Owners or operators of petroleum UST systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:
  - a. For owners or operators of petroleum UST systems that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.
  - b. For all other owners or operators of petroleum UST systems; \$500,000.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part F, Section 4.01, revised March 12, 1995]

4. Owners or operators of petroleum UST systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:
  - a. For owners or operators of 1 to 100 petroleum UST systems; \$1 million; and
  - b. For owners or operators of 101 or more petroleum UST systems; \$2 million.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part F, Section 4.02, revised March 12, 1995]

### **CMP Policies for UST Systems for the Storage of Heating Fuel**

1. All new UST systems with a capacity of greater than 1,100 gallons installed for the storage of heating fuel shall be designed, constructed and installed in accordance with manufacturer's

specifications, and accepted engineering practices and procedures; and in a manner which will prevent releases of regulated substances to the ground waters, surface waters or soils of the State due to corrosion, structural failure, spills and overfills for the operational life of the tank. The material used in the construction and/or lining of the tank and piping shall be compatible with the substance to be stored. All new UST systems greater than 1,100 gallons shall meet the following requirements:

- a. Acceptable designs for tank construction include cathodically protected steel, fiberglass-reinforced plastic, steel-fiberglass-reinforced plastic composite, cathodically protected double-walled steel or double-walled fiberglass-reinforced plastic, or any of the above tanks in association with a secondary containment system, or other equivalent design approved by the Department.
- b. All new heating fuel underground piping systems shall be properly designed, constructed and protected from corrosion in accordance with accepted corrosion engineering practices and one of the following industry codes:

NFPA 30, NFPA 329, API 1615, API 1632, NACE Standard RP-01-69, UL Standard 971, UL Standard 567, UL of Canada ULC-107, UL of Canada S633-M81, and RP100-90.

1. All integral piping systems shall be designed, constructed, and installed in a manner which will permit periodic tightness testing of the entire system.
2. Each owner and operator of any integral piping system shall test the piping whenever the associated tank is tested. All tank and line tightness tests shall be conducted in accordance with NFPA 329 or other equivalent methods subject to the approval of the Department.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part C, Section 2.01, revised March 12, 1995]

2. Commencing January 1, 1999, no person shall use, or maintain any existing heating fuel UST

system with a capacity of greater than 2,000 gallons without complying with one of the following requirements contained in the Regulations Governing Underground Storage Tank Systems:

- a. New UST system performance standards under §2 of Part C; or
- b. The upgrading/retrofitting requirements for both existing tanks, integral piping including release detection, spill and overfill protection, and corrosion protection requirements of §§3.02 and 3.03 of Part C; or
- c. Closure requirements under §4 of Part C, including applicable requirements for corrective action under §5 of Part C.
- d. Limiting the amount of product stored in the existing UST system to 2,000 gallons or less and complying with requirements of §3.06, Alternative Compliance Category.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part C, Section 3.01, revised March 12, 1995]

### **CMP Policies for UST Systems for the Storage of Hazardous Substances**

1. "Hazardous Substances UST System" means an underground storage tank system that contains a hazardous substance defined in Section 101(14) of the CERCLA (but not including any substance regulated as a hazardous waste under RCRA Subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Section 2 - Definitions, revised March 12, 1995]

2. All new UST systems installed for the storage of hazardous substances must be designed, constructed and installed in accordance with manufacturer's specifications, and accepted engineering practices and procedures; and in a manner which will prevent releases of regulated

substances to the ground waters, surface waters or soils of the State due to corrosion, structural failure, spills and overfills for the operational life of the tank. The material used in the construction and/or lining of the tank must be compatible with the substance to be stored. All new UST systems must meet the following requirements:

- a. Acceptable designs for UST systems storing hazardous substance must be fabricated in double-walled construction using any of the following materials: double-walled cathodically protected steel or double-walled fiberglass-reinforced plastic, or double-walled steel fiberglass-reinforced plastic composite, or other equivalent design approved by the Department of Natural Resources and Environmental Control.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part D, Section 1.01, revised March 12, 1995]

3. Owners and operators of existing UST systems used for the storage of hazardous substance must provide a method or combination of methods of release detection that:
  - a. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product; and
  - b. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
  - c. Meets the performance standards under Part D, Section 2.05 of the Regulations Governing Underground Storage Tank Systems, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after July 12, 1985 except those permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for precision tank testing, automatic tank gauging, line leak detectors, and line tightness testing methods specified in this Section with a probability of false alarm of at least 0.95 and a probability of false alarm of no greater than 0.05.

[Authority - State of Delaware Regulations  
Governing Underground Storage Tank Systems,  
Part D, Section 2.05 (A, B and C), revised March  
12, 1995]

### **CMP Policies for Pollution Prevention**

1. Whenever possible, the generation of waste should be reduced or eliminated as expeditiously as possible, and that waste that is generated should be recovered, reused, recycled, treated or disposed of in a manner that minimizes any present or future threats to human health or the environment.

[Authority - 7 Delaware Code 7802(a)(1)]

2. Industries should review their proposed projects for the possible use of pollution prevention opportunities.
3. DNREC's Pollution Prevention program is available to businesses to provide non-regulatory technical assistance and information on pollution prevention. Industries should utilize the DNREC Pollution Prevention Program's services to

ensure that the potential for degradation of the quality of air, land, and water is minimal.

### **5.E Coastal Management Coordination Policies**

1. State and local governments responsible for implementing the CMP shall provide an opportunity for one another, federal agencies, and other interested parties to review and comment on proposed actions which may be of more than local interest.
2. State agencies responsible for implementation of the CMP shall coordinate their CMP implementation responsibilities with each other to the extent necessary to assure well informed and reasoned program decisions.
3. All State agencies and local units of government shall consider, prior to any CMP decisions, the national interest in:
  - a. Planning for and locating facilities which are necessary to meet other than local requirements.
  - b. Coastal resource conservation and preservation.