

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
AND THE LAWS OF THE STATE OF DELAWARE
GENERAL PERMIT FOR STORM WATER DISCHARGES
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

In compliance with the provisions of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (33 U.S.C. §§ 1251 *et seq.*), hereinafter referred to as “the Act”, and pursuant to the provisions of Title 7, Del. C., § 6003, the Delaware Department of Natural Resources and Environmental Control (“the Department”) authorizes designated small municipal separate storm sewer systems (MS4s), collectively and severally, as permittees, to discharge storm water from all portions of the municipal separate storm sewer system located in Delaware that are owned, operated or maintained by any of the covered permittees to waters of the State of Delaware and that are located within the boundaries of the designated MS4 in accordance with the comprehensive storm water pollution prevention and management program, the discharge limitations, monitoring requirements and other provisions set forth in Parts I, II, III, IV, V, and VI herein.

Only small municipal separate storm sewer systems that submit a Notice of Intent and a storm water pollution prevention and management program in accordance with Part I.E. and Part II of this permit and obtain written authorization from the Department are authorized under this general permit.

This general permit shall become effective _____ and expires at midnight, on _____.

Bryan A. Ashby
Manager, Surface Water Discharges Section
Division of Water
Delaware Department of Natural Resources
and Environmental Control

Date Signed

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Part I. Discharges Authorized By This Permit

A. Area Covered

This permit covers regulated small municipal separate storm sewer systems (MS4s) located within the State of Delaware. A small MS4 is “regulated” if it is: (1) located in an “urbanized area” as determined by the latest Decennial Census by the U.S. Bureau of the Census; or (2) outside of an urbanized area but designated as a regulated small MS4 by the NPDES permitting authority. This permit applies to:

- 1) Systems owned by cities and towns;
- 2) Non-traditional designated MS4s;
- 3) Systems owned by a state or county; and/or
- 4) Systems owned by state transportation agencies.

B. Authorized Discharges

- 1) This permit authorizes the discharge of storm water from small MS4s defined at 40 C.F.R. §122.26(b)(16). This includes small MS4s located in an urbanized area under 40 C.F.R. §122.32(a)(1) and MS4s designated under 40 C.F.R. §122.32(a)(2). The permittee is authorized to discharge under this permit if:
 - a) The permittee is the operator of a small MS4 within the permit areas described in Part I.A;
 - b) The permittee is not a large or medium MS4 within the permit areas described in Part I.A;
 - c) The area is located fully or partially in an urbanized area as determined by the latest Decennial Census by the Bureau of Census; and
 - d) The permittee submits a Notice of Intent in accordance with Part I.E of this permit and obtains written authorization from the Delaware Department of Natural Resources and Environmental Control (the Department).
- 2) Limitations on Coverage

The following discharges, whether discharged separately or commingled with municipal storm water, are not authorized by this permit:

- a) Non-storm water and Industrial Storm Water:
Discharges of materials other than storm water, discharges of storm water associated with industrial activity or other storm water discharges required to

obtain an NPDES permit, except where such dischargers are:

- i) Regulated by a separate NPDES permit or the discharger has applied for such permit;
 - ii) Covered under the Department's NPDES General Permit Program regulations for Industrial Storm Water; or
 - iii) Identified by and in compliance with Part II.C.2 (a)(iii) of this general permit.
- b) Spills

Where the discharge of materials resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage, the permittee shall take all reasonable steps or require the responsible party to take all reasonable steps to prevent any discharge or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment, and follow up with any and all measures available to it that require any responsible party(ies) to ensure public safety. This permit does not transfer the liability for the spill itself from the party(ies) responsible for the spill nor relieve the party(ies) responsible for the spill from the reporting requirements under 7 Del. C. Chapter 60, §6028.

- c) Discharges shall not cause, have the reasonable potential to cause, or have the reasonable potential to contribute to an exceedance or violation of any applicable surface water quality standards, including but not limited to:
- i) Discharges of substances or materials in amounts that are toxic, or that would be toxic to humans, fish, aquatic life or wildlife as defined in the Delaware Surface Water Quality Standards ("SWQS");
 - ii) Discharges of floatable debris, oils, scum, foam, or grease; and
 - iii) Discharges that cause or contribute to degradation or loss of State-designated beneficial uses.

C. Permittee Responsibilities

- 1) The permittee is responsible for compliance with all permit conditions.
- 2) When two or more entities are co-permittees within an area covered by one Phase II MS4 general permit NOI Authorization to Discharge, each permittee is responsible for:

- a) Compliance with all permit conditions relating to discharges from portions of the MS4 where any of the following apply: (i) operation or maintenance of the MS4 is shared; or (ii) the requirement for implementation of the Storm Water Pollution Prevention and Management Program (“SWPP&MP”) set forth herein is shared.
- b) Specifying tasks for the implementation of the SWPP&MP elements set forth herein by identifying responsible parties through an inter-jurisdictional agreement. No later than six (6) months following the date of NOI Authorization to Discharge from the Department, all co-permittees shall coordinate with each other to develop an inter-jurisdictional agreement that defines relative responsibilities for each of the activities required herein, with a final agreement due within 15 months of the date of NOI Authorization to Discharge from the Department included within the SWPP&MP. The inter-jurisdictional agreement shall address, at a minimum, the following elements:
 - i. roles and responsibilities for each permittee, by SWPP&MP element
 - ii. monitoring responsibilities
 - iii. reporting responsibilities
 - iv. financial arrangements among permittees (if any), and
 - v. method and regularity of communication/coordination among permittees

Co-permittees remain individually responsible for fully complying with all requirements of the permit and terms as outlined within the SWPP&MP. Upon execution, the inter-jurisdictional agreement described herein shall be submitted to the Department and incorporated as an Appendix into the SWPP&MP described in Part II herein.

- c) Participating in an annual meeting of all co-permittees to coordinate the implementation of the SWPP&MP. Permittees shall prepare meeting notes from each annual meeting and include such notes in each Annual Report to the Department required by Section IV.F herein.

D. Discharge Limitations

- 1) The permittee must develop, manage, implement and enforce a Storm Water Pollution Prevention and Management Program (SWPP&MP) in accordance with the Clean Water Act and its implementing NPDES regulations, 40 C.F.R. Part 122, to meet the following requirements:
 - a) Effectively prohibit pollutants in storm water discharges or other unauthorized discharges into and from the MS4;
 - b) Attain applicable Waste Load Allocations (WLAs) for each established or

- approved Total Maximum Daily Load (TMDL) for each receiving water body, consistent with the requirements of 33 U.S.C. § 1342(p)(3)(B)(iii); 40 C.F.R. § 122.44(k)(2) and (3); and
- c) Compliance with all provisions and requirements contained in this permit, and with plans and schedules developed in fulfillment of this permit;
- 2) Compliance with the provisions contained in Parts II through IV of this permit, including any measurable goals as contained within the SWPP&MP, shall constitute adequate progress toward compliance with Delaware SWQS and WLAs for this permit term.
 - 3) If permittee(s) determines that, despite its/their best efforts to comply with Part I.D.1 above, any of the violations continue and discharges persist notwithstanding implementation of the SWPP&MP and other requirements of this permit, the permittee(s) shall notify the Department of the determination and thereafter, shall prepare and submit a report, hereafter referred to as the “Assessment Report”, that shall be submitted to the Department within 90 days and included within the Annual Report. In addition, the permittee shall perform the following activities, which it shall document in the Assessment Report:
 - a) Identify and describe all Best Management Practices (BMPs) currently being employed in that portion of the MS4 where the unpermitted discharge(s) persists;
 - b) Assess the effectiveness of existing BMPs by obtaining and analyzing all data necessary to assess existing BMP effectiveness, including but not limited to acres being treated by the BMPs and maintenance records; and
 - c) Identify any improvements to be made or any additional BMPs or control measures to be employed to address the conditions noted, including a schedule for implementing those improvements or additional measures. The permittee(s) shall incorporate each such additional BMP or control measure by reference into the SWPP&MP described in Part II herein.

E. Obtaining Permit Coverage

- 1) Regulated small MS4s seeking coverage under this permit must submit a Notice of Intent (NOI) to the Department (using form available at <http://www.dnrec.delaware.gov/wr/information/swdinfo/pages/ms4.aspx> or by contacting the Department at 302-739-9946). The NOI must shall be completed with the following information:
 - a) Name, mailing address and phone number of person responsible for overall coordination of the storm water management program;

- b) Name of entity to receive permit coverage;
- c) Identification of the legal status of the operator(s) of the MS4 as federal, state, county, or other public entity. If the entity to receive permit coverage is a city or town, indicate whether there are other MS4s within its boundaries, such as state highways, universities military bases, or prisons;
- d) Identification of the names of all known waters that receive a discharge from the MS4, including the following information for each such receiving water: [Maps are available from the USGS-U.S. Department of Interior website (<http://store.usgs.gov/>)]
 - i) If known, indicate the number of outfalls discharging to each waterbody.
 - ii) Indicate the designated uses of each waterbody (as designated in the State of Delaware Surface Water Quality Standards as amended. (<http://www.dnrec.delaware.gov/swc/wa/Pages/Watershed%20Assessment%20Surface%20Water%20Quality%20Management.aspx>)).
 - iii) Indicate whether the receiving water body is listed in the latest State of Delaware Combined Watershed Assessment Report (305(b) and Determination for the Clean Water Act Section 303(d) List of Waters Needing TMDLs. ([http://www.dnrec.delaware.gov/swc/wa/Documents/WAS/dave's%20docs/2014%20Delaware%20Integrated%20305\(b\)-303\(d\)%20Final.pdf](http://www.dnrec.delaware.gov/swc/wa/Documents/WAS/dave's%20docs/2014%20Delaware%20Integrated%20305(b)-303(d)%20Final.pdf))
If the water body is included on the Combined Watershed Assessment Report, provide the following details:
 - (1) TMDL status or Pollutant Attainment Classification;
 - (2) Pollutant or stressor causing impairment; and
 - (3) Probable source of pollutant or stressor (according to the 303(d) list).
- e) Signature by an authorized person under Part V. L. of this permit attesting to the following information:

“I certify under penalty of law this document and all attachments were prepared under my direction, or supervision, in accordance with a system designed to assure that qualified personnel gathered and evaluated the information submitted. Based upon my inquiry of the person(s) directly responsible for gathering the information, the information is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for willful violations.”

2) Submission of Notice of Intent

- a) All existing and newly regulated permittees (40 C.F.R. § 122.32(a)(1)) shall

- submit a Notice of Intent to the Department within 120 days of the permit effective date of this general permit, unless granted a longer period of time by the Department or EPA.
- b) Any newly designated permittee shall submit a Notice of Intent to the Department within 120 days after official notice of MS4 designation under 40 C.F.R. § 122.32(a)(2) by the Department, unless granted a longer period of time by the Department or EPA.
 - c) For renewal, permittees shall submit the NOI to the Department in accordance with Part V.H herein

Small MS4s seeking coverage under this permit must submit the Notice of Intent to the Department at the following address:

State of Delaware
Department of Natural Resources & Environmental Control
Division of Water/Surface Water Discharge Section/MS4
89 Kings Highway
Dover, DE 19901

F. Permit Term

This permit shall remain effective for a period not to exceed five (5) years. The terms and conditions of an expired permit may be automatically continued pending issuance of a new or reissued permit pursuant to Section V.H herein.

All content and timelines contained within this permit and the most recent Department-approved SWPP&MP will remain enforceable under this permit beyond the expiration date if the permit is administratively extended.

Part II. Storm Water Pollution Prevention and Management Program (SWPP&MP) and Monitoring

A. Schedule for SWPP&MP

Within 15 months from the from date of NOI Authorization to Discharge, the permittees shall submit a final comprehensive SWPP&MP as specified herein, which is designed to control the quality of the storm water discharged from the MS4 referenced herein. The permittees shall develop the SWPP&MP according to the following enforceable submission deadlines:

1. SWPP&MP Document Outline: submitted to the Department within 180 days from the date of the Department's NOI Authorization to Discharge.
2. SWPP&MP final draft for Department review: submitted to the Department within 365 days from the date of the Department's NOI Authorization to Discharge.
3. Month 13-17: Department review
4. Month 17-18: Plan modification per the Department's requirements and finalization
5. Month 18: Commencement of implementation of the SWPP&MP

Existing MS4 permittees that had a SWPP&MP in place prior to receiving coverage under this permit shall continue to implement their existing SWPP&MP until their new SWPP&MP is finalized per the above schedule.

During the first 15 months and until SWPP&MP finalization, the newly regulated permittees shall be working on developing the program elements that are incorporated into the SWPP&MP.

B. General Requirements for SWPP&MP

The permittee(s) shall ensure that the SWPP&MP includes all requirements set forth in this Section and that it is consistent with Section 402(p)(3)(B) of the Clean Water Act, the federal NPDES storm water regulations at 40 C.F.R. Part 122, and Delaware Executive Order No. 61, "Green Infrastructure" (2004). The permittee shall design the SWPP&MP to prevent increased loadings of pollutants of concern to an impaired waterbody with the ultimate objective as to not cause or contribute to a violation of water quality standards.

The SWPP&MP shall contain measurable goals and shall describe the controls necessary

to effectively prohibit the discharge into or from the MS4 of any materials other than storm water (see Part II.C.2.a) The SWPP&MP shall outline measures that will reduce the discharge of pollutants from the MS4 and shall also include a schedule for implementation.

The permittee(s) shall describe in detail in the SWMPP&MP all Best Management Practices (BMPs), control measures, and other actions to be implemented as part of this permit. The SWPP&MP shall contain contact information for at least one person responsible for implementing and/or coordinating the storm water management program for each permittee. The SWPP&MP shall cover the term of this permit and shall be updated as necessary, or as required by the Department, to ensure compliance with the statutory requirements of Section 402(p)(3)(B) of the Act. Modifications to the SWPP&MP shall be made in accordance with this permit.

Implementation of the SWPP&MP may be achieved through participation with the other permittees, public agencies, or private entities in cooperative efforts to satisfy the requirements of Part II herein, in lieu of creating duplicate program elements for each individual permittee. The SWPP&MP, taken as a whole, shall achieve the “effective prohibition of non-storm water discharges”, and compliance with Water Quality Standards as required by Section 301(b)(1)(C) of the Act through the implementation of “Maximum Extent Practicable” standards required by Section 402(p)(3)(B) of the Act.

Permittees that had a SWPP&MP in place prior to receiving coverage under this permit shall continue to implement it upon coverage until their new SWPP&MP is approved.

C. Specific SWPP&MP Requirements

The SWPP&MP shall be implemented in a manner consistent with the following requirements and address the concerns of all waters that receive discharge from the MS4 (including waterways that are listed as impaired but do not yet have a TMDL). Additionally, the permittee(s) shall ensure that all permittee staff responsible for one or more program elements receives annual training that relates to the type of work performed by the employee, to be quantified as a measurable standard within the SWPP&MP. Examples include, but are not limited to: storm water design and plan review; inspection and maintenance of the MS4 system or BMPs; the proper location, design, maintenance of green technology practices; or spill prevention/clean-up.

1. Public Education/Public Involvement

The permittees shall, utilizing available media of their choosing, develop and implement an education and outreach program that is designed to: (1) Increase the knowledge of the target communities regarding MS4s, impacts of urban runoff on receiving waters, and

potential BMP solutions for the target audience; (2) Change the behavior of target communities to reduce pollutant releases to MS4s and the environment; and (3) Decrease the discharge of pollutants to the MS4 by educating the public about issues associated with storm water runoff.

The Public Education and Outreach Program shall include the following:

(a) As part of the SWPP&MP, a public outreach and education strategy that includes:

- Clear goals and objectives
- Identified target audiences
- Message(s) specific to the target audiences
- Packaging and distribution of the message(s)
- Evaluation of the outreach plan

The education and outreach program shall be developed to promote, publicize and facilitate:

- (i) public reporting of the presence of illicit discharges or improper disposal of materials, including floatables, into the MS4, via a publicly-listed, water quality citizen complaints/reports telephone number;
- (ii) the proper management and disposal of used motor vehicle fluids and household hazardous wastes;
- (iii) the proper management and disposal of grass clippings, leaf litter and domestic animal wastes;
- (iv) the proper use of water to limit excess pollutants from non-storm water discharges from activities such as washing cars and lawn irrigation, from entering the MS4;
- (v) the proper use, application, and disposal of pesticides, herbicides, and fertilizers by commercial and private applicators and distributors;
- (vi) public participation events, such as stream clean-ups, drain stenciling, etc.;
- (vii) the proper maintenance of BMPs directed toward private and commercial property owners, and state or municipal entities responsible for maintenance; and opportunities for residential installation of Low Impact Development (LID) practices, and the use of Green Technology BMPs that reduce runoff and mimic natural hydrology.

- (b) As part of the SWPP&MP newly regulated permittees shall develop and submit to the Department for review a Public Education and Outreach Program no later than 365 days following date of the Authorization to Discharge under this permit. These permittee(s) shall implement the Public Education and Outreach Program no later than 18 months following date of the Authorization to Discharge under this permit.

Permittees that have an existing Public Education and Outreach Program shall review and update the Program to comply with Part II.C.1 no later than 365 days following the date of Authorization for Coverage under this permit. Subsequently, the permittee(s) shall update the Public Education and Outreach Program as necessary for all permittees to remain effective and relevant to current conditions.

For both new and existing permittees, the Public Education and Outreach Program shall be designed to achieve measurable improvements in the target audience's understanding of the causes and impacts of storm water pollution and the steps they can take to prevent it.

- (c) The Education and Outreach Program shall include at least two public educational opportunities focusing on storm water management each year and shall ensure that a minimum of one impression per year for every two people (population within the permittees jurisdictional boundaries) is made on the general public about storm water quality via direct contact, print, local TV access, local radio, internet, or other appropriate media.
- (d) A statistically-valid public education survey to evaluate the effectiveness of the Education and Outreach Program in increasing public awareness and changing behaviors about storm water pollution. A baseline survey (Public Education Survey #1) shall be conducted beginning within 18 months of the date of NOI Authorization to Discharge from the Department with the results submitted to the Department 180 days after the survey starts. A second survey (Public Education Survey #2) shall be conducted beginning no later than four years after the date of NOI Authorization to Discharge from the Department. Survey results shall be submitted to the Department no later than 180 days after the survey begins. The two surveys shall apply the same presumptions or modeling techniques to ensure survey results are comparable. If upon comparison of the two surveys, no measurable difference in public awareness and behavior is evident, the permittees shall reevaluate their Public Education and Outreach program and determine more effective methods of providing this program. The plan for the improved program shall be submitted to the

Department within 90 days from the date that the survey results are submitted. A sample survey as an option for permittees to implement can be found at by contacting the Surface Water Discharge Section at the location noted in Part I.E.2.

- (e) No later than 365 days from date of NOI Authorization to Discharge from the Department, the permittee shall develop and implement a process for the public to review and comment on the permittees draft SWPP&MP. No later than 18 months from the date of NOI Authorization to Discharge, the permittees shall develop and implement a process for consideration of public comments on the SWPP&MP.
- (f) The SWPP&MP shall include a plan for public participation in addressing the Minimum Control Measures required as a part of the Phase II MS4 permit. The permittee shall make efforts to reach out and engage all economic and ethnic groups during the public participation process (40 C.F.R. 122.34(b)(2)(i-ii). Additionally, the SWPP&MP shall contain procedures for receipt and consideration of information submitted by the public (40 C.F.R. 122.34(b)(4)(ii)(E)).

2. Illicit Discharge Detection and Elimination

a) Prohibitions

- (i) Within two (2) years of issuance of NOI Authorization to Discharge from the Department, permittees without an existing ordinance must develop county or municipal statutes or ordinances, or similar mechanisms, to effectively prohibit the discharge of materials other than storm water (refer to Part II.C.2.a.iv) to the MS4. Permittee shall require the elimination of illicit discharges and improper disposal practices and abatement and clean up. The permittee is prohibited from discharging or disposing of used motor vehicle fluids, household hazardous wastes, grass clippings, leaf litter, domestic animal wastes and sanitary sewer overflows (SSOs) into the MS4. The permittee shall promote - through education, public information and other measures - the proper management and disposal of used motor vehicle fluids (at a minimum, oil and antifreeze) and household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials). The permittees shall coordinate such efforts with the Delaware Solid Waste Authority,

the Department's and the Department's Division of Waste and Hazardous Substances. The permittee shall explore opportunities to facilitate existing recycling and household hazardous waste collection programs and identify ways to encourage more participation. Permittees with an existing storm water IDDE ordinance must ensure that the ordinance meets the requirements of this Part. Any changes related to revisions of an ordinance must be completed within 18 months of permit authorization.

- (ii) The permittee shall create and maintain a standard operating procedure and shall properly train all workers on methods to contain and safely remove wastes (including disinfection) originating from sanitary sewer overflows (SSOs) to avoid discharge to any portion of the MS4. (Permittee may refer to The Collection System Collaborative Benchmarking Group's Guidance Document, "Best Practices for Sanitary Sewer Overflow Prevention and Response Plan".) The permittee shall report any SSO that enters the MS4 or any SSO over fifty (50) gallons that has the potential to impact the MS4 to the Department's 24-hour Spills and Releases Hotline at 1-800-662-8802 as soon as possible, but no later than eight (8) hours following such a discharge. If the discharge is in excess of the Reportable Quantities (7 Del. C. §1203), the permittee shall report the incident to the Department via the 24-hour Spills and Releases Hotline immediately upon discovery and after activating any necessary response team. For any SSO that enters the MS4 or is over fifty (50) gallons that has the potential to impact the MS4, a written report shall be provided to the Department's Surface Water Discharges Section at the address noted in Part I.E.2.(c) within five (5) days of the release. This notification shall contain the following information:
- a. A description of the discharge, including an estimate of the amounts discharged, and the cause of non-compliance;
 - b. The period of noncompliance, including the dates and times and if the noncompliance has not been corrected, the anticipated time when the discharge will be eliminated and the system will return to compliance; and
 - c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.
- (iii) Unless identified as a significant source of pollutants to waters of the State, the following non-storm water discharges are examples of activities allowed to enter the MS4. Other activities may apply

if substantiated by permittees within the SWPP&MP and approved by the Department:

- a. water line flushing;
- b. diverted stream flows;
- c. rising groundwaters;
- d. uncontaminated groundwater infiltration to separate storm sewers;
- e. uncontaminated pumped groundwater;
- f. discharges from potable water sources;
- g. foundation drains;
- h. air conditioning condensate;
- i. irrigation water;
- j. springs;
- k. water from crawl space pumps;
- l. footing drains;
- m. individual residential vehicle washing;
- n. flows from riparian habitats and wetlands;
- o. dechlorinated swimming pool discharges; and
- p. discharges or flows from emergency fire fighting activities.

(b) Illicit Discharge Detection Program

- (i) The SWPP&MP shall include a program to detect illicit discharges and improper disposal into the MS4 and to require appropriate corrective action. Appropriate corrective action may be either the elimination of the illicit discharge(s) or the issuance of an NPDES permit for the continuance of the discharge. The permittee(s) shall include in its/their program a system to prioritize and investigate complaints/reports or monitoring information that indicates potential illicit discharges, including a spill or illegal dumping. Permittees shall immediately respond to problems/violations judged by the permittee to be urgent, severe, or an emergency, including, but not limited to, discharges that may pose a hazard to human health or discharges that pose a substantial endangerment to aquatic life. Within two years of the date of NOI Authorization to Discharge from the Department, each permittee shall provide a publicly-listed, water quality citizen complaints/reports telephone number. A summary of the IDDE reports and subsequent response actions shall be included in the annual reports each year.

(ii) Mapping

- a. New permittees shall develop the map(s) of the regulated small municipal separate storm sewer systems and the information on all outfalls from the regulated small MS4 by the end of the fourth (4th) year of permit coverage. For renewal permittees, the existing map(s) of your regulated small MS4 shall be updated and maintained as necessary during each year of coverage under the permit. (40 C.F.R. 122.34 (b)(3)(ii)(A));
- b. New permittees shall develop the map(s) of all storm sewer data, structural BMPs and other green technology BMPs within the boundaries of the regulated small MS4 area by the end of the fourth (4th) year of permit coverage. For renewal permittees, the existing map(s) of the sewer data, structural BMPs and other green technology BMPs within the regulated small MS4 area shall be updated and maintained as necessary during each year of coverage under the permit. The permittee(s) are not required to include smaller, residential-type dispersed BMPs, such as rain barrels and rain gardens. Mapping may include all existing and readily available information including project plans, records, drainage maps and field surveys, and must be based on methods that sufficiently identify structures in terms of data accuracy.
- c. Submit all data layers and/or mapping with the Annual Report (Part IV.F) package and upon request by the Department or EPA.

(iii) As part of the SWPP&MP, permittees shall develop a screening program for illicit discharges. The permittee's program shall include a schedule and methodology to evaluate at least 20% of its storm sewer system per year, using mapping and water quality data, to determine areas with high potential for illicit discharges and improper disposal. The permittee shall conduct dry weather screening and field inspection activities shall be conducted in areas which it has determined have high potential for illicit discharges and improper disposal. The permittee shall include in its evaluation consideration of, among other things, the following criteria:

- Past dry weather flow

- Past discharge complaints and reports
- Age of development
- Density of aging septic systems
- Aging or failing sewer infrastructure
- Density and age of industrial activities

(c) Illicit Discharge Elimination Program

The SWPP&MP shall include a plan to eliminate illicit discharges. The Illicit Discharge Elimination Program shall include the following elements:

- (i) As part of the SWPP&MP, the permittee shall implement a program to reduce the discharge of floatables (e.g., litter and other human-generated solid refuse) toward achieving compliance with water quality standards. The floatables control program shall include source controls and, where necessary, structural controls.
- (ii) If at any time the permittee, the Department, or EPA becomes aware of any illicit discharge, the permittee must take appropriate actions to address this condition within 30 days, documenting measures that were used to correct the condition. Such permit requirements do not preclude any enforcement action that may be taken by either the Department or EPA at any time.

(d) Industrial Storm Water Program

The permittee shall assist the Department with the inventory of Industrial Facilities within the boundaries of the permitted MS4. This inventory shall include those facilities subject to 7 Del. C. §7201-9.1, State of Delaware *Regulations Governing Storm Water Discharges Associated with Industrial Activity* (Industrial Storm Water Regulations). The method of assistance will begin with the Department providing the permittee with a list of the current permitted facilities within its jurisdiction and with the list of all SIC codes that are covered under the Industrial Storm Water Regulations. The permittee shall then add to this list as facilities are identified.

This inventory shall contain the following:

- a) Facility name and address;
- b) Mailing address;
- c) Operator name and contact information;

- d) SIC code or activity description; and
- e) GPS coordinates/GIS point data layer file, if available.

The permittee shall perform visual inspection of industrial facilities from a public vantage point (e.g. road or stream access) to assess general compliance with the Industrial Storm Water Regulations. If any compliance issues are noted or observed, the permittee shall inform the Department no later than 30 days. A summary of any identified industrial facilities shall be included with the Annual Report Package (Part IV.F).

The permittee shall provide the Department with the inventory of facilities and any observations of those facilities in the Annual Report package.

3. Storm Water Management During Construction

- a) The permittee shall include in the SWPP&MP a program to reduce the discharge of pollutants from active construction sites that are captured under the Delaware Sediment and Stormwater Regulations and NPDES Construction General Permit requirements to address both sediment and pollutants other than sediment discharged during construction, such as those noted in (iv) below. All permittees and co-permittees shall jointly implement and enforce a program to reduce the discharge of pollutants from construction sites, including:
 - i) Requirements for the review and approval of Sediment and Stormwater Plans according to standards set within the current Delaware Sediment and Stormwater Regulations (7 Del. C. Ch. 40) and Special Conditions for Storm Water Discharges Associated with Construction Activities (7 Del. C. Ch. 60);
 - ii) Requirements for the use and maintenance of appropriate structural and nonstructural sediment and erosion controls and other BMPs to reduce polluted discharges to the MS4 during the time when construction is underway;
 - iii) Requirements and procedures for the inspection of construction sites and enforcement of control measures, and the notification of operators if NPDES Construction General Permit requirements are not being met (i.e., Weekly inspections), and enforcement if necessary;
 - iv) Requirements for construction site operators to control wastes such as discarded construction or building materials, concrete truck washout, chemicals, litter, oil, and sanitation waste;
 - v) Requirements to ensure adequate training of site contractor in accordance with

the current Delaware Sediment and Stormwater Regulations (7 Del. C. Ch. 40) and Special Conditions for Storm Water Discharges Associated with Construction Activities (7 Del. C. Ch. 60);

- vi) Inspection requirements to ensure that BMPs are properly constructed and installed according to standards and specifications contained in the Delaware Erosion and Sediment Control Handbook;
 - vii) For newly regulated permittees, development and adoption of a local regulatory mechanism for enforcing onsite compliance with numbers (i) through (v) above within three (3) years of the date of NOI Authorization to Discharge under this MS4 General Permit from the Department; and
 - viii) If any or all of the Construction Site Stormwater Management Program will be overseen by another entity, including a Sediment and Stormwater Program Delegated Agency, the permittee shall enter into a Memorandum of Understanding (MOU) or Inter-Jurisdictional Agreement (IJA) with said agency that will ensure full coverage of permittee's responsibilities. This MOU or IJA shall be submitted to the Department no later than 180 days following the date of NOI Authorization to Discharge from the Department.
- b) Any amendments to the foregoing State or Federal regulations that may become effective during the term of this permit shall apply.
 - c) Should the Department's various Sediment and Stormwater Program Delegated Agencies fail to continue to implement their existing programs in compliance with the governing statute, then all permittees will continue to be responsible for the above conditions.

4. Post-Construction Stormwater Management

- a) The SWPP&MP shall include a program to reduce the discharge of pollutants and reduce the quantity of water leaving post-development construction sites for new development, as prescribed under the Delaware Sediment and Stormwater Regulations.
- b) Permittees shall implement and enforce a program to address post-construction stormwater runoff (quantity and quality) from new development and redevelopment projects. The program must include:
 - i) Procedures to require adequate long-term operation and maintenance of any BMPs employed;
 - ii) Requirements to inspect privately-owned stormwater management BMPs installed after 1991, for private and commercial developments, not to include

- resident-owned micro-scale BMPs such as rain barrels and small resident-owned rain gardens. Inspections shall occur on an annual basis, except in instances after BMP repair, in which case BMPs shall be inspected within one year after repair. BMPs shall be inspected based on any standards and specifications provided by the Delaware Sediment and Stormwater Program;
- iii) Requirements to update BMP inventories annually (see Mapping requirements in Part II A (2)(b)(ii));
 - iv) For newly regulated permittees, development and adoption of a local regulatory mechanism addressing post-construction stormwater quantity and quality and limiting the discharge of pollutants via stormwater runoff within three (3) years of the date of NOI Authorization to Discharge under this MS4 General Permit from the Department; and
 - v) If any or all of the Post Construction Stormwater Management Program will be overseen by another entity, including a Sediment and Stormwater Delegated Agency, the permittee shall enter into a MOU or IJA with said agency that will ensure full coverage of permittees responsibilities. This MOU shall be submitted to the Department no later than 180 days following the date of NOI Authorization to Discharge from the Department.
- c) Any amendments to the foregoing State or Federal regulations that may become effective during the term of this permit shall apply.
 - d) Should the Department's various Sediment and Stormwater Program Delegated Agencies fail to continue to implement their existing programs in compliance with the governing statute, then all permittees will continue to be responsible for the above conditions.

5. Good Housekeeping

The permittee shall, through the SWPP&MP, develop and implement a good housekeeping program that is designed to prevent and/or minimize discharges of pollutants associated with the permittee's operations. The good housekeeping program shall include:

- a) A training program for employees consistent with 40 C.F.R. 122.34(b)(6);
- b) A plan to include the current inventory of all facilities owned or operated by any of the permittees located in the MS4 service area that either maintain coverage under the NPDES Industrial Storm Water General Permit Program or that have the potential to contribute polluted discharges as a result of storm water. These facilities can include, but are not limited to, maintenance yards, municipally-

owned parking lots, or municipally-owned parks. This list is to be updated and submitted in the Annual Report package. The permittee shall inspect all facilities on the list on an annual basis according to Department guidelines. The permittee shall submit details of these inspections to the Department in the Annual Report package;

- c) A street cleaning program. The SWPP&MP shall contain the specification of a street cleaning program that will provide coverage for the entire MS4 area. An IJA or a MOU shall be developed if any other entity other than the permittee is responsible for roads that pass through permittee' boundaries. If established, the MOU or IJA must be provided to the Department no later than 180 days following the date of NOI Authorization to Discharge from the Department. The SWPP&MP must include specific provisions for all phases of repair and maintenance of roadways.
 - i) All streets, roads, rights of way and permittee-owned parking lots within the boundaries of the regulated MS4 shall have an associated street cleaning program described in the SWPP&MP. The permittee shall maintain these areas in such a manner as to minimize the discharge of pollutants to and from the MS4. Upon the effective date of this permit, the permittee shall, at a minimum, sweep/clean twice per year, once in the spring (following winter activities) and once in the fall (leaf clean up) all paved roadways with directly connected impervious area (DCIA) discharging storm water runoff to the permittee's MS4.
 - ii) The SWPP&MP must report a numeric measurable street cleaning regime. Permittees must demonstrate the adequacy of the street cleaning regime for pollutant removal and improved water quality. The SWPP&MP shall also describe procedures for the proper disposal of street sweeping debris and waste. The permittee shall summarize all street cleaning activities in the Annual Report package and include information about size, location, and frequency, of area swept.
- d) A catch basin cleaning program: The SWPP&MP shall contain the specification of a catch basin cleaning program that will provide coverage for the entire MS4 area. An inter-jurisdictional agreement or a Memorandum of Understanding shall be developed if any other entity other than permittee is responsible for the underground maintenance of storm water infrastructure (including catch basins) that passes through permittee' boundaries. If established, the MOU or IJA must be provided to the Department within 180 days of date of NOI Authorization to Discharge. The SWPP&MP must include specific provisions for all phases of repair and maintenance of catch basins. The permittee shall optimize routine cleaning and maintenance of catch basins such that the following conditions are

met:

- i) The permittee shall ensure that no catch basin sump shall be more than 50 percent full. A catch basin sump is more than 50 percent full if the contents within the sump exceed one half the distance between the bottom interior of the catch basin to the invert of the deepest outlet of the catch basin.
 - ii) The permittee shall document in the SWPP&MP and in the annual reports its plan for optimizing catch basin cleaning. Documentation shall include metrics and other information used to reach the determination that the established plan for cleaning and maintenance is optimal for the MS4; and
 - iii) The permittee shall report in each annual report the number of catch basins inspected, number cleaned, and the volume or mass of material removed from each catch basin to impaired waters and the total volume or mass of material removed from all catch basins;
- e) A program to reduce the contribution of pollutants associated with the application, storage and disposal of pesticides, herbicides, and fertilizers from permittee's areas and activities to the MS4. The program shall include, but not be limited to:
- i) Educational programs for permittee's employees who work directly with pesticides, herbicides, and fertilizers;
 - ii) A Nutrient Management Plan for all urbanized areas receiving nutrient applications according to requirements set forth by the Delaware Nutrient Management Law (Del. C. Title 3, Chapter 22 §2201-§2290).
 - iii) Application by certified applicators and annual summary report of applications to be included in annual report;
 - iv) Integrated pest management measures that incorporate non-chemical solutions;
 - v) The use of native vegetation; and
 - vi) The collection and proper disposal of unused pesticides, herbicides, and fertilizers;
- f) A program to manage snow and ice, including salt storage practices and alternative deicing practices; and
- g) A program to control litter on streets and highways, including the proper disposal of collected material.

D. Monitoring Requirements as Part of the SWPP&MP

1. Total Maximum Daily Loads (TMDL) Waste Load Allocations (WLA) and Applicable Water Quality Standards

A number of TMDLs have been approved or established by the EPA for waters located in the State of Delaware to which the permittees MS4 may discharge. These TMDLs may assign specific numeric Waste Load Allocations (WLAs) to watersheds located within the MS4 permit area. The WLAs represent all pollutant sources, including urban storm water, industrial storm water, agriculture, and septic.

For each TMDL with an applicable WLA approved prior to the effective date of this permit, the applicant shall submit the following information as part of the SWPP&MP document:

- a) TMDL name and pollutant(s) of concern;
- b) Description of applicable WLA;
- c) If it is anticipated that the a WLA cannot be achieved during the permit term, the permittee must develop, a compliance schedule for each applicable WLA for inclusion in the SWPP&MP outlining how the permittee's plans to comply with the applicable WLA, including timelines, interim milestones, and an end date; and
- d) Description of the actions that will take place over the permit term to achieve each applicable WLA or to make progress toward interim milestones as described in a compliance schedule.

Permittees shall address the TMDL WLAs for storm water associated with the MS4, in addition to applicable surface water quality standards from 7 Del. C. §7201, through the iterative implementation of programmatic BMPs that will prevent, reduce, or remove the targeted pollutants. The permittee shall implement all components of the SWPP&MP for all watersheds located within the MS4 permit area. Specific elements within the SWPP&MP which can be used to demonstrate load reductions are contained in the requirements for BMP monitoring and analysis (Part II.D.2). If any monitoring as part of the SWPP&MP reveals that additional or different BMPs are necessary, the permittee shall modify the SWPP&MP appropriately.

For any bacteria TMDLs within the area covered by this permit, permittees shall implement practicable, cost effective BMPs that have been identified as being effective at addressing the pollutant of concern.

By year four (4) of the permit term the permittees shall submit a GIS layer, or other Department-approved mapping method, for all urbanized/impervious areas within the coverage area of this permit, which shall be accomplished by confirming currently available land use/land cover data and impervious surface data (urban storm water, impervious surfaces, and industrial storm water). The impervious areas within the MS4 boundaries shall be identified as directly connected (effective impervious) to the MS4 or not directly connected to the MS4. This information shall be submitted to the Department with the Year 4 annual report and updated with each annual report thereafter.

For TMDLs throughout the state, where WLAs are assigned specific to urban storm water, the permittees shall be responsible for addressing reductions required by the TMDL as categorized as urban storm water and shall establish reductions over iterative stages of a long-term program, which shall be outlined within the SWPP&MP. Approved TMDL reports for each waterbody are available (<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx>).

For the Chesapeake Bay TMDL, as established on December 29, 2010, permittees within the Chesapeake drainage area will be responsible for addressing reductions as categorized as urban storm water and shall establish reductions over iterative stages of long-term program consistent with Delaware's Chesapeake Bay Watershed Implementation Plan (WIP), the Chesapeake Bay TMDL, and applicable Pollution Control Strategies (PCS).

For calculating TMDL load reductions for all TMDLs other than the Chesapeake Bay TMDL, all BMPs implemented after 1997 (baseline for establishment of TMDL WLAs) can be counted toward these reductions, which is based on the sampling timeframe in which TMDL data was collected. Annual loads, rather than daily loads, are to be used for all calculation and reporting purposes (<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx>). For calculating TMDL load reductions for the Chesapeake Bay TMDL, all BMPs implemented after 2005 can be counted toward those reductions.

2. Performance Monitoring Plan

- a) As part of the SWPP&MP, and consistent with 40 C.F.R. 122.44(i), permittee(s) shall develop and implement a plan for monitoring and analyzing the expected pollutant load reductions using existing data on BMP performance, establishing regular monitoring stations throughout the regulated area as described within this

- permit, and calculating load reductions on future development. The Performance Monitoring plan shall be designed to demonstrate any progress toward achieving applicable Water Quality Standards. The analysis of the BMP performance standards data will be used in tandem with the water quality monitoring data (for existing permittees per Part II.D.2(b)) to quantify the expected pollutant load reductions and provide an indicator of anticipated progress.
- b) As part of the SWPP&MP, the existing Phase II MS4 permittee(s) (i.e. those covered under an MS4 permit prior to effective date of this General Permit) shall develop and implement a statistically based Wet-Weather Outfall Monitoring Program for the MS4 to provide the data necessary for the following tasks:
- i) To assess the effectiveness and adequacy of BMP implementation toward meeting TMDLs;
 - ii) To estimate the annual cumulative pollutant loadings from the MS4;
 - iii) To estimate the event mean concentrations and seasonal pollutants in discharges from major outfalls; and
 - iv) To identify and prioritize portions of the MS4 requiring additional controls.
- c) Minimum Wet Weather Monitoring Plan Requirements for existing permittees. At a minimum, the following elements will be identified in the Wet Weather Monitoring Plan section of the Performance Monitoring Plan and included in your the SWPP&MP:
- i) The hydrologic and hydraulic characteristics of drainage area
 - ii) The measurement methodologies for flow and precipitation
 - iii) Sampling techniques
 - iv) Responsible individuals performing monitoring
 - v) The number and location of storm water discharge areas (e.g. outfalls) that will be monitored as part of the program
 - vi) The method of that will be performed on the water quality and quantity data that is obtained
- d) The permittee(s) shall submit their Performance Monitoring Plan to the Department for approval as part of the SWPP&MP in accordance with the schedule in Part II.A. Performance Monitoring Plan modifications (not to include changes in monitoring station locations) shall not be changed without notification to and approval from the Department.
- e) If additional or modified BMPs are determined to be necessary, the permittee(s) shall modify the SWPP&MP using the process described in Part II.E below to include additional BMPs and modifications, the expected additional pollutant load

reductions associated with the BMPs and modifications, and the associated schedule for implementing the BMPs and modifications.

3. Dry Weather Screening Plan

Permittees shall develop a Dry Weather Screening Plan per the requirements described in Part II.C.2.b(iii).

4. In-Stream Monitoring

The permittee may use State 305(b) reports as a substitute for in-stream monitoring if adequate to meet the goals of the SWPP&MP; the permittee may choose to provide in-stream monitoring data to support goals of TMDLs within the MS4 area.

E. Modification to the SWPP&MP

The SWPP&MP shall not be modified without the prior written approval of the Department unless as indicated below:

- 1) Changes adding (but not subtracting or replacing) components, controls, or requirements to the SWPP&MP may be made at any time without advance written notification to the Department.
- 2) Changes replacing an ineffective or infeasible BMP specifically identified in the SWPP&MP with an alternate must be approved by the Department in advance and may be requested at any time. Such requests shall include the following:
 - a) An analysis of why the BMP is ineffective or infeasible, or a description of why the newly proposed BMP would be more applicable (public participation, partnership opportunity, grant funding opportunity);
 - b) Expectations on the effectiveness of the replacement BMP; and
 - c) An analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced;
- 3) Any written requests to modify the SWPP&MP or changes made to the SWPP&MP shall include a certification signed by all permittees responsible for

SWPP&MP implementation that all permittees were given an opportunity to comment on the proposed change(s) prior to its (their) submittal; and

- 4) Changes or Updates Required by the Department:
Upon notification from the Department that the SWPP&MP does not adequately address the requirements herein, the permittees shall modify the SWPP&MP and submit the proposed changes to the Department within the timeframe specified by the Department. If changes compromise any terms of the inter-jurisdictional agreement, a modified inter-jurisdictional agreement must be also executed.

Part III. Evaluation of the SWPP&MP

No later than four (4) years from date of NOI Authorization to Discharge under this MS4 General Permit from the Department, the permittee(s) shall conduct a comprehensive effectiveness analysis of the SWPP&MP, with analysis measures to be described in a SWPP&MP monitoring plan that shall be included with the SWPP&MP. This analysis shall quantify the associated expected load reductions to estimate the anticipated progress toward meeting all applicable WLAs, and the progress toward meeting the program's goals and objectives as outlined within the SWPP&MP. The analysis shall further determine whether the implementation of the current and revised BMPs identified in the SWPP&MP are sufficient to make progress toward meeting WLAs or if implementation of additional BMPs beyond those selected are necessary.

The permittees shall assess the effectiveness of the SWPP&MP based on:

1. Documentation of SWPP&MP activities;
2. Surveys of public awareness and changing behavior;
3. Estimates of change in loadings, that is:
 - a. added by development that occurs;
 - b. prevented or reduced by installation of BMPs associated with new development; or
 - c. prevented or reduced by installation of BMPs associated with existing conditions (i.e., retrofits); and
4. Available water quality sampling data, as sampled as part of the monitoring plan within the SWPP&MP, if applicable.

Part IV. Sampling and Reporting Procedures

A. Flow Measurement

The permittee shall use flow measurement devices (where applicable) and methods that are consistent with accepted scientific practices to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The permittee shall install, calibrate and maintain the devices to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device.

B. Test Procedures

Test procedures for the analysis of pollutants shall conform to the applicable test procedures identified in 40 C.F.R., Part 136, unless otherwise specified in this permit.

C. Penalties for Tampering

State law, 7 Del. C. §6013, provides that any person who falsifies or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall upon conviction, be punished by a fine of not less than \$500 nor more than \$10,000 or by imprisonment for not more than six (6) months, or by both.

D. Record Contents

For each measurement or sample taken pursuant to the requirements of this permit, the permittee taking such sample shall record the following information:

1. The date, exact place, time and method of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed each analysis;
5. The analytical techniques or methods used;
6. The results of such analyses; and
7. Any quality assurance information.

E. Retention of Records

The permittee shall retain all records and information resulting from the monitoring activities required by this permit, all records of analyses performed, records of calibration and maintenance of instrumentation, all original strip chart recordings from continuous monitoring instrumentation and copies of all reports required by this permit for a period of five (5) years. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittees. The permittee shall make records available to the Department within 30 days of request or within the timeframe specified by the Department at the time of request.

F. Annual Report Requirements

Permittee(s) shall prepare and submit an Annual Report Package as specified herein. If more than one entity is permitted via the same NOI Authorization to Discharge under this General Permit one comprehensive Annual Report shall be submitted, with input from each co-permittee. The permittee(s) shall submit the Annual Report to the Department Surface Water Discharge Section no later than June 30th of each year after issuance of NOI Authorization to Discharge and shall cover all activities related to this permit during the preceding calendar year. The permittee(s) shall include in the Annual Report a summary of the data documenting its/their compliance with this permit (Appendix A), in addition to one MS4 Summary Report Form (Appendix B) per permittee. Annual Report data should report quantifiable data and information whenever possible, as outlined in the SWPP&MP.

All permittees are jointly responsible for timely submittal of the system-wide Annual Report, and each section addressed within the Annual Report (using the Annual Report template) shall identify individual tasks along with the jurisdiction responsible for performing them. The Annual Report shall indicate which, if any, permittees have failed to provide any required information (as identified in the inter-jurisdictional agreement) on the portions of the MS4 for which they are responsible. Each permittee is responsible for the content of the report relating to those portions of the MS4 for which it is responsible, as determined in the inter-jurisdictional agreement, and for failure to provide information for the system-wide Annual Report.

After issuance of this permit, the first Annual Report submission for existing Phase II MS4 permittees shall include reporting information from the existing SWPP&MP as described in the most recent annual report submitted to the Department until the final SWPP&MP is adopted (18 months after issuance of the NOI Authorization to Discharge under this permit by the Department). For newly regulated Phase II MS4 permittees, the first Annual Report submission should include a status update on the development of

each program element and any applicable deliverables. Once the new SWPP&MP is finalized, the Annual Report shall contain information relevant to the most recent SWPP&MP. The permittee shall ensure that the Annual Report comports with the reporting format contained in Appendix A hereto. The permittee shall ensure that all MOU's or IJAs entered into during the formation of the SWPP&MP are contained in the Annual Report following their finalization.

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Part V. Standard Permit Conditions

A. Legal Authority

Each permittee shall maintain legal authority to implement the programs outlined in the SWPP&MP as originally demonstrated in the NOI.

B. Duty to Comply

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The violation of any effluent limitation or of any other condition specified in this permit shall be grounds for enforcement as provided in 7 Del. C. §6005; for loss of authorization to discharge pursuant to this permit; for permit revocation and reissuance or modification pursuant to this permit; or for denial of a permit renewal application. Pursuant to 7 Del. C. §6019, the Department may seek voluntary compliance by way of warning, notice or other educational means. However, the law does not require that such voluntary means be used before proceeding by way of compulsory enforcement.

C. Adverse Impact

The permittees shall take all reasonable steps to minimize any adverse impact on the environment resulting from noncompliance with this permit, including accelerated or additional monitoring as necessary to determine the nature and extent of noncompliance and to assess its impact.

D. Facilities Operation

The permittees shall at all times maintain in good working order and operate efficiently all structural controls, collection and treatment facilities and systems (and related appurtenances) installed or used by the permittees to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes, but is not limited to, effective performance (based upon design), adequate funding, effective management, adequate operator staffing and training and adequate laboratory and process controls, including appropriate quality control procedures.

E. Removed Substances

The permittee(s) shall dispose of solids, sludges, filter backwash, or other similar substances that are removed in the course storm water infrastructure maintenance or in the course of collection or treatment of the discharges authorized herein in a manner such as to prevent any pollutant from such materials from entering surface waters or groundwaters. All removed substances must be properly disposed of in accordance with applicable State and Federal regulations.

F. Availability of Reports

Except for data determined to be confidential under Section 308 of the Act and the Freedom of Information Act, all reports prepared in accordance with the terms and conditions of this permit shall be available for public inspection at the offices of the Department of Natural Resources and Environmental Control. As required by the Act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for under 7 Del. C. § 6013.

G. Transfer of Permit

In the event of any change in ownership or control of facilities covered by this permit, this permit may be transferred to another person if all of the following apply:

- 1) The current permittee notifies the Department, in writing, of the proposed transfer at least 30 days in advance of the proposed transfer date;
- 2) The notice includes a written agreement between the transferor and the transferee, indicating a specific date for transfer of permit responsibility, coverage, and liability; and
- 3) Within thirty (30) days of receipt of the notification of the proposed transfer, the Department does not notify the current permittee and the new permittee of intent to modify, revoke and reissue, or terminate the permit and require that a new application be submitted.

H. Reapplication for a Permit

At least 180 days before the expiration date of this permit, the permittee(s) shall submit a new NOI application for permit coverage, unless permission for a later date has been granted by the Secretary. The Secretary shall not grant permission for applications to be submitted later than the expiration date of the expiring permit. Failure to submit an application for renewal 180 days before permit expiration may cause a lapse in permit coverage and also may result in enforcement action. In the event that a timely and sufficient reapplication has been submitted and the Department is unable, through no fault of the permittee(s), to issue a new permit before the expiration date of this permit, the terms and conditions of this permit are automatically continued through an administrative extension and remain fully effective and enforceable.

I. Permit Modification, Revocation and Reissuance, and Termination

- 1) After notice and opportunity for a hearing, this permit may be modified, terminated, or revoked and reissued in whole or in part during its term for cause including, but not limited to, the following:
 - a) Violation of any terms or conditions of this permit;
 - b) Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
 - c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge(s); and/or
 - d) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

- 2) In addition, after notice and opportunity for a hearing, this permit may be modified, revoked and reissued in whole or in part, but not terminated, for cause including, but not limited to, the following:
 - a) Facility modifications, additions, and/or expansions that are not otherwise sanctioned either by this permit or by the programs administered by the permittees in accordance with this permit;
 - b) Material and substantial changes or additions to the permittees' operation or activities which justify the application of permit conditions that are different or absent from this permit;
 - c) Information newly acquired by the Department, including, but not limited to, the results of the studies, planning, or monitoring described and/or required by

this permit;

- d) Revision, withdrawal or modification of State surface water quality standards or effluent limitations guidelines promulgated by the Department or the EPA, but only when the permit term or condition requested to be modified or revoked was based on a State water quality standard or an effluent limitation guideline duly promulgated by the Department or the EPA that was revised, withdrawn or modified;
- e) Judicial remand of effluent limitation guidelines promulgated by the EPA, if the remand concerns that portion of the guidelines on which the permit term or condition was based and the request is filed within ninety (90) days of the judicial remand;
- f) Any modification or revocation and reissuance of permits specifically authorized by the Clean Water Act;
- g) To comply with any applicable standard or limitation promulgated or approved under Sections 301, 304 and 307 of the Clean Water Act, if the effluent standard or limitation so issued or approved:
 - i) Contains different conditions or is otherwise more stringent than any effluent limitations in the permit; or
 - ii) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this subparagraph shall also contain any other requirements of the Act then applicable;

- h) To contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline;
 - i) To modify a schedule of compliance in an issued permit for good and valid cause by a date which is no later than the statutory deadline; or
 - j) To address new TMDL requirements, including relevant WLAs.
- 3) The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

J. Right of Entry

The permittee(s) shall allow the Secretary, the EPA Regional Administrator, or their authorized representatives, jointly and severally, upon the presentation of credentials and such other documents as may be required by law:

- 1) To enter upon the premises of the permittee(s) where a regulated facility or activity is located or conducted, or where any records are required to be kept under the terms and conditions of this permit; and

- 2) At reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit; to inspect any monitoring equipment or monitoring method required in this permit; to inspect any structural controls, collection, treatment, pollution management, or discharge facilities required under this permit; and to sample any discharge.

K. Duty to Provide Information

The permittee shall furnish the Department or the U.S. EPA, during normal business hours, any requested information to determine compliance with this General Permit. The permittee shall also furnish, upon request, copies of records required to be kept by this General Permit. [40 CFR 122.41(h)]. Permittees shall submit records to the Department within 30 days or a timeframe specified by the Department upon time of request.

L. Signatory Requirements

The permittee shall sign all applications, monitoring reports, SWPP&MP reports, certifications or other information required by this permit, whether submitted to the Department or maintained by the permittee(s), as follows:

- 1) By a principal executive officer or ranking elected official; or
- 2) A duly authorized representative of that person. A person is a duly authorized representative only if:
 - a) The authorization is made in writing by the person described above and is submitted to the Department; and
 - b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

For purposes of this paragraph, the principal executive officer of a federal, state, or public agency includes: (i) The chief executive officer of the agency (e.g., Cabinet Secretary); or (ii) A senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency (e.g., the Regional Administrator of EPA).

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, the permittee(s) must submit a new notice satisfying the requirements of this paragraph to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative no later than 30 days prior to the date of the next due deliverable.

M. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee(s) from administrative, civil or criminal penalties for noncompliance.

1) Penalties for Falsification of Reports

Section 309(c)(4) of the CWA provides that any person who knowingly makes a false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

2) Penalties for Violations of Permit Conditions

Part 309 of CWA provides significant penalties for any person who violates a permit condition implementing Parts 301, 302, 306, 307, 308, 318, or 405 of CWA or any permit condition or limitation implementing any such section in a permit issued under Part 402. Any person who violates any permit condition of this General Permit is subject to a civil penalty not to exceed \$27,500 per calendar day of such violation, as well as any other appropriate sanction provided by Part 309 of CWA.

3) Any person who violates 7 Del. C. Chapter 60 or any rule or regulation duly promulgated thereunder, or any permit condition or any order of the Secretary, shall be subject to the appropriate civil and administrative penalties pursuant to 7 Del. C. §6005 or criminal penalties pursuant to 7 Del. C. §6013.

N. Discharge of Pollutants

Any person who causes or contributes to the discharge of a pollutant into waters of the State or the United States either in excess of any conditions specified in this permit or

in absence of a specific permit condition, shall report such an incident to the Department as required under 7 Del. C. §6028.

O. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permittee(s) from any responsibilities, liabilities, or penalties to which the permittee(s) is/are or may be subject under 7 Del. C. Chapter 60.

P. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permittee(s) from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation.

Q. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

R. Construction Authorization

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

S. Fiscal Resources

All permittees shall provide sufficient resources, including but not limited to finances, staff, equipment, and support capabilities, to comply with this permit, including but not limited to implementation of the SWPP&MP. The Permittee(s) shall include in each Annual Report a demonstration of sufficient fiscal capability from all permittees covered by the Permit to meet its requirements.

T. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and to the remainder of this permit, shall not be thereby affected.

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Part VI. Definitions

“Act” means the Federal Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or the Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub.L. 95-217, Pub.L. 95-576, Pub.L. 96-483, Pub.L. 97-117, Pub. L. 100-4 (the Water Quality Act of 1987), Pub. L. 100-688, Pub. L. 100-581, Pub.L. 102-580, Pub. L. 102-240; 33 U.S.C. 1251 §§ *et.seq.*

“Best Management Practices” (“BMPs”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs can be applied before, during or after pollution generating activities to reduce or eliminate the introduction of pollutants into receiving waters.

“C.F.R.” is an acronym for the Code of Federal Regulations.

“Co-Permittee” refers to the those entities applying for coverage under the Phase II MS4 General Permit in combination with other entities that hold jurisdictional authority over a designated MS4 area.

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

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

“Directly Connected Impervious Area (DCIA)” refers to impervious area where the drainage of the related storm water runoff is routed directly to a storm water conveyance system or to a receiving body of water through channels, pipes, or other appurtenances, without interruption by vegetation or other pervious media.

“Discharge” for the purpose of this permit, when used without qualification, refers to the discharge of a pollutant.

“Discharge of a Pollutant” means any addition of any pollutant, or combination of pollutants, to State waters.

“Effective Impervious Area (EIA)” means square footage or other unit of area

measurement that is directly connected to the drainage collection system and can include street surfaces, paved driveways, sidewalks connected to road curbing, rooftops which hydraulically connect to storm sewers, and parking lots.

“Illicit Discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except those sanctioned by a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting and other activities referenced in Part II.A.3. of this permit.

“Low Impact Development (LID)” means an approach to land development (or re-development) that works with nature to manage storm water as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective impervious areas to create functional and appealing site drainage that treats storm water as a resource rather than a waste product.

“Maximum Extent Practicable” for the purpose of this permit, means using measures that are capable of being done after taking into consideration cost, feasibility, existing technology, and logistics in light of overall facility operations and project purposes.

“Minimum Control Measures” refers to the six programmatic elements that are expected to result in the reduction of the discharge of pollutants in receiving waters. The programmatic elements include: (1) Public Education, (2) Illicit Discharge Detection and Elimination, (3) Storm Water Management During Construction, (4) Post-Construction Storm Water Management, (5) Good Housekeeping/Pollution Prevention, and (6) Public Involvement. For the purposes of this General Permit, Public Education and Public Involvement have been combined into one programmatic element.

“MS4” means a Municipal Separate Storm Sewer System.

“Municipal Separate Storm Sewer” means: (1) a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, pipes or storm drains) owned or operated by a city, town, county, district, association, or other public body created by or pursuant to State law having jurisdiction over the disposal of sewage, industrial waste, storm water, or other wastes, storm water management, drainage or flood control, which is: (2) designed or used for collecting or conveying storm water; (3) is not a combined sewer; and (4) which is not part of a publicly owned treatment works as defined at 40 C.F.R. § 122.2.

“Permittees” refers to all of the entities listed on the Notice of Intent, and may include individual permittees, principal permittees and/or co-permittees.

"Person" means any individual, trust, firm, corporation (including a government corporation), partnership, association, institution, enterprise, state, municipality, commission, agency, political subdivision of a state or an interstate body, or an agent or employee thereof.

"Point Source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Pollutant", for the purpose of this permit, means any substance, which causes or contributes to, or may cause or contribute to, the degradation of water, air, and soil resources or to the health of humans, animals, or aquatic life. Examples may include, but are not limited to excess nutrients, chemicals, toxic substances, industrial, municipal or agricultural wastes, etc.

"Pollution" or "Water Pollution" means the man-made or human-induced alteration of the physical, chemical, biological or radiological integrity of any State waters.

"Redevelopment", including brownfield development, means any construction, alteration or improvement, including, but not limited to, the demolition or building of structures, filling, grading, paving, or excavating, where existing land use is residential, commercial, industrial, or institutional. Ordinary maintenance activities, remodeling of existing buildings, resurfacing of paved areas, and exterior changes or improvements are not considered to be redevelopment activities for the purposes of this permit.

"SWPP&MP" means Storm Water Pollution Prevention and Management Program.

"Secretary" means the Secretary of the State of Delaware Department of Natural Resources and Environmental Control.

"Storm Water" means storm water run-on or runoff, snow melt runoff, surface runoff and drainage.

"Structural controls" means installed or constructed curbs, dikes, berms, walls, sheds, impervious pads, ditches, diversions or other structures which limit the contribution or transport of significant materials and pollutants to storm water.

"Total Maximum Daily Load," or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

“Waters of the State” or “State Waters” means all water, on the surface and under the ground, wholly or partially within, or bordering the State of Delaware, or within its jurisdiction including but not limited to:

- (a) Waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean;
- (b) All interstate waters, including interstate wetlands;
- (c) All other waters of the State, such as lakes, rivers, streams,(including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sandflats, wetlands, sloughs, or natural or impounded ponds;
- (d) All impoundments of waters otherwise defined as Waters of the State under this definition;
- (e) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a)-(d).

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

“Watershed” means the land area that drains water to a particular stream, river, or lake.

"Surface Water Quality Standards" means the most current version of the Delaware Surface Water Quality Standards as amended and as subsequently revised and incorporated by reference (7 Del. C. §7401).

Appendix A: Annual Report Template

All permittees shall submit an annual system-wide report based on the template below. In the first Annual Report, the permittees may propose changes to this template to better reflect actions taken in compliance with the permit.

The annual report shall address the following:

- A. Permittee Updates
 1. Copy of Appendix B for all permittees (Summary Report Form)
 2. Status and summary of inter-jurisdictional agreement and associated meetings (if applicable)
 3. Summary of activities completed during the reporting period. The summary should describe and quantify program activities, responsible parties, and achievement of permit requirements or measurable goals. Please use the format as described in *Municipal Stormwater Program Effectiveness Assessment Guidance* (California Stormwater Quality Association, May 2007).
 4. Planned Activities and Changes. This section should describe activities planned for the next year, highlighting any changes made to improve BMPs or program effectiveness.
- B. SWPP&MP Category-Specific Content
 1. Public education and involvement
 - a. Status of public outreach strategy and outreach activities;
 - b. Status of public education surveys;
 - c. Summary of public involvement activities; and
 - d. Summary of past annual meeting or mandated workshops.
 2. Illicit discharge detection and elimination
 - a. Summary of illicit discharges reported and description of how incident was addressed;
 - b. Report on illicit discharge detection and elimination public information or other measures taken; and
 - c. Report on illicit discharge dry screening program results.
 3. Stormwater management during construction
 - a. Summary of activities, including number of plans reviewed, total inspections conducted, total number of sites, and enforcement actions taken; and
 - b. Statistics on how NPDES General Permit requirements have been met, in addition to requirements set by the Delaware Sediment and Stormwater Regulations.
 4. Post-construction stormwater management
 - a. Summary of number of maintenance inspections conducted by appropriate agency; and
 - b. Total number of BMPs (reported by jurisdiction).
 5. Good housekeeping
 - a. Updated inventory of all MS4 facilities owned or operated by permittee;

- b. Inspection schedule of those MS4 facilities;
 - c. Summary of control measures taken to minimize the impacts of discharges from various sources as listed in permit; and
 - d. Summary of all street cleaning and catch basin cleaning operations, as specified in the SWPP&MP;
 - e. Summary of program to limit infiltration from sanitary sewers into MS4;
 - f. Summary of pesticide, herbicide, and fertilizer program;
 - g. Summary of snow/ice program; and
 - h. Summary of litter control program.
6. Industrial storm water
- a. Updated inventory of industrial facilities;
 - b. Summary of educational materials distributed; and
 - c. Summary of inspections conducted, and any referrals to the Department.
7. Mapping
- a. Summary and update of the storm sewer map;
 - b. BMP data submitted; and
 - c. Updated maps submitted.
8. Performance monitoring plan
- a. Wet Weather Monitoring (if applicable)
 - i. Summary of monitoring data for storm water and ambient sampling collected during the reporting period; and
 - ii. Analysis of the monitoring data, including a comparison to past monitoring data collected (including charts and graphs)
9. Summary of annual employee training as required by permit
- C. Fiscal Resources
Annual expenditures for the reporting period and anticipated budget for the following reporting period.
- D. SWPP&MP Evaluation and Update
- 1. Status of program evaluation to be conducted by Year 4
 - 2. Status of any program modifications or updates