

State Permit Number: WPCC 3082/20
NPDES Permit Number DE 0051268
Effective Date: March 11, 2021
Expiration Date: March 10, 2026

GENERAL PERMIT AUTHORIZATION FOR DISCHARGES FROM CONSTRUCTION
ACTIVITIES UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION
SYSTEM AND THE LAWS OF THE STATE OF DELAWARE

In compliance with the provisions of the Clean Water Act, 33.U.S.C. §1251 et. seq., (hereafter CWA), 40 CFR §122.26, 7 DE Admin. Code 7201 Section 9.2 *Regulations Governing the Control of Water Pollution, Part 2 – Special Conditions for Stormwater Discharges from Construction Activities*, 7 **Del.C.** Ch.60 *Environmental Control*, 7 **Del.C.** Ch.40 *Erosion and Sedimentation Control*, 7 DE Admin. Code 5101 *Sediment and Stormwater Regulations*, the Department of Natural Resources and Environmental Control (hereafter the Department) hereby authorizes “operators” of construction activities that meet the requirements of Part 1.B of this National Pollutant Discharge Elimination System (NPDES) Construction General Permit (hereafter CGP) to discharge pollutants in accordance with the effluent limitations and conditions set forth herein. Permit coverage is required from the commencement of construction activities until one of the conditions for terminating CGP coverage has been met. The effluent limitations, monitoring requirements, and other permit conditions are set forth in Parts 1 and 2 hereof.

This CGP becomes effective on March 11, 2021. This CGP and the authorization to discharge expires at 11:59 PM, March 10, 2026.

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PART 1. COVERAGE UNDER THIS PERMIT

A. AUTHORIZATION TO DISCHARGE

To be authorized to discharge stormwater under this CGP, a person planning a construction activity must submit, in accordance with the requirements of Federal and State Regulations, a Notice of Intent (NOI) prior to commencement of any construction activities. Unless notified by the Secretary to the contrary, persons who submit such notification and have obtained an approved Sediment and Stormwater Management Plan (hereinafter Plan) in accordance with 7 DE Admin. Code 5101, *Sediment and Stormwater Regulations*, are authorized to discharge stormwater from construction activity under the terms and conditions of this CGP.

B. ELIGIBILITY CONDITIONS

To be eligible for coverage under this CGP, operator(s) must have control of the permitted activities on the site. Such control of permitted activities includes, but is not limited to, authority to direct those working on the site to take actions to comply with this permit, correct violations (including repair or installation of erosion and sediment controls), and/or halt construction activity until violations of the permit are corrected.

- The construction site must operate under a Plan that has been designed by a licensed professional and reviewed and approved by the appropriate plan approval agency of the Delaware Sediment and Stormwater Program.
- Responsible Personnel, as defined herein, that have successfully completed the Contractor Training Certification Program sponsored by the Department's Sediment and Stormwater Program shall be in charge of on-site clearing and land disturbing activity and provide daily oversight for site compliance.

This CGP covers all areas of the State of Delaware except for Federal facilities authorized by EPA that must seek coverage under the EPA CGP. This CGP covers all new and existing stormwater discharges that are composed in whole or in part of discharges from construction activity, as defined herein. This CGP also authorizes discharges composed of allowable discharges in Part 1.B.3 of this permit commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization. Stormwater discharges from construction activity at sites which have permit coverage for a discharge other than stormwater can be covered by this Part, or at the discretion of the Secretary, an existing individual permit may be amended to cover stormwater discharges from construction activities.

B.1 Site Construction Activities

The construction site requiring permit coverage under this CGP will engage in clearing, grading, and excavating activities that will result in a land disturbance equal to or greater than one (1) acre. This includes the disturbance of less than one acre of land that is part of a larger common plan of development or sale, as defined herein, which will ultimately disturb more than one acre.

B.2 Discharges from Support Activities

Discharges from support activities (e.g., concrete or asphalt plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) are covered under this CGP provided:

- a. The support activity is directly related to the construction site required to have NPDES permit coverage for discharges of stormwater from construction activity;
- b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity it supports; and
- c. Appropriate controls and measures are identified in a Plan covering the discharges from the support activity areas.

B.3 Non-Stormwater Discharges

The following non-stormwater discharges from construction activity are authorized under this CGP provided that, with the exception of water used to control dust and to irrigate vegetation in stabilized areas, these discharges are not routed to areas of exposed soil on the site:

- a. Discharges from emergency fire-fighting activities;
- b. Fire hydrant flushing;
- c. Landscape irrigation;
- d. Water used to wash vehicles and equipment, provided soaps, solvents, or detergents are not used for such purposes;
- e. Water used to control dust;
- f. Potable water including uncontaminated water line flushing;
- g. External building washdown, provided soaps, solvents, and detergents are not used, and external surfaces do not contain hazardous substances;
- h. Pavement wash waters, provided spills or leaks of toxic or hazardous substances have not occurred (unless all spill material has been removed) and where soaps, solvents, and detergents are not used. It is prohibited to direct pavement wash waters directly into any water of the U.S., storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, trap, or similarly effective control;
- i. Uncontaminated air conditioning or compressor condensate;
- j. Uncontaminated, non-turbid discharges of groundwater or spring water;
- k. Foundation or footing drains where flows are not contaminated with process materials such as solvents or contaminated ground water; and
- l. Construction dewatering water discharged in accordance with the Plan and the specifications found in the most recent version of the Delaware Erosion and Sediment Control (ESC) Handbook.

B.4 Prohibited Discharges

The following are prohibited discharges and are not covered under this CGP:

- a. Wastewater from washout of concrete;
- b. Wastewater from washout and cleanout of stucco, paint, from release oils, curing compounds, and other construction materials;
- c. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- d. Soaps, solvents, or detergents used in vehicle and equipment washing or external building washdown; and
- e. Toxic or hazardous substances from a spill or other release.

To prevent the above-listed prohibited non-stormwater discharges, operators must comply with the applicable pollution prevention requirements in Part 1.D.4.

B.5 Limits on Eligibility

The following discharges and activities are not eligible for NPDES CGP coverage:

- a. Discharges of pollutants occurring in watersheds for which there is a Total Maximum Daily Load (TMDL) allocation for construction stormwater sources are not eligible for coverage under this CGP unless the site has a Plan that is shown to reduce pollutant loading using Best Available Technology (BAT), as defined herein. For discharges not eligible for coverage under this CGP, the discharger must apply for and receive an individual NPDES permit.
- b. Discharges of pollutants in quantities that would cause or contribute to an exceedance of any applicable surface water quality standard for the receiving waters, including:
 - i. Discharges of substances or materials in amounts that are toxic, or that would be toxic to humans, fish, aquatic life, or wildlife;
 - ii. Discharges of floatable debris, oils, scum, foam, or grease in other than trace amounts. Excluded from this are naturally occurring substances such as leaves and twigs provided no person has placed such substances in or near the discharge; and
 - iii. Discharges that cause or contribute to degradation or loss of State designated beneficial uses of the receiving waters.
- c. Discharges of stormwater from post-construction that originate from the site after project completion, including any temporary support activity.
- d. Discharges mixed with non-stormwater. This exclusion does not apply to discharges identified in Part 1.B.3, of this CGP.
- e. Stormwater discharges, allowable non-stormwater discharges, and stormwater discharge-related activities that are likely to jeopardize the continued existence of any species that are federally-listed as endangered or threatened (“listed”) under the Endangered Species Act (ESA) or result in the adverse modification or destruction of habitat that is federally-designated as critical under the ESA (“critical habitat”).

- f. Stormwater discharges, allowable non-stormwater discharges, or stormwater discharge-related activities that would cause a prohibited “take” of federally-listed endangered or threatened species (as defined under section 3 of the ESA and 50 CFR §17.3), unless such takes are authorized under sections 7 or 10 of the ESA.
- g. Stormwater discharges, allowable non-stormwater discharges, or stormwater discharge-related activities that would negatively affect a property that is listed or is eligible for listing in the National Historic Register.

C. NOTICE OF INTENT (NOI) FOR CGP COVERAGE

C.1 Submission of Notice of Intent (NOI)

An electronic NOI (eNOI) to discharge stormwater from construction activities shall be submitted through the Department’s website (<https://apps.dnrec.state.de.us/eNOI/default.aspx>) and accepted by the Department as a condition of approval of the Plan. It is the operator’s, defined herein, responsibility to complete and submit the eNOI if their construction site meets the Delaware CGP eligibility criteria in Part 1. The eNOI must be submitted and accepted by the Department and a Plan approved prior to the commencement of construction.

There is the possibility that more than one person seeks Delaware CGP coverage for a particular construction site. In that instance, the additional person(s) submitted as part of the NOI would be known as co-permittees, defined herein.

Coverage under this CGP will expire when one of the following first occurs:

- a. The CGP is reissued or expires; or
- b. The approved Plan expires; or
- c. A Notice of Termination (NOT) form has been completed and accepted by the Department; or
- d. The Department administratively terminates coverage for a site.

C.2 Public Access to eNOI Information

The public can view eNOI information on the Department’s website.

C.3 Additional Information

When any operator subject to Part 1.C.1 of this CGP becomes aware that any relevant facts were omitted or submitted incorrectly on the NOI, the operator shall promptly submit such corrected information to the Department.

C.4 Change of Operational Control

When there is a change to a site’s operator, the new operator must submit a new electronic NOI, and the previous operator must submit an electronic NOT through the Department’s website.

C.5 Permitted Ongoing Projects

Construction activity beginning prior to and continuing on or after the effective date and holding valid coverage under the previous CGP will retain permit coverage under this CGP in accordance with the certification language contained in the initial and subsequent annual eNOI filings.

The permittee is responsible for maintaining an approved Plan through the life of the project. The Plan is valid for five (5) years from the date of original approval and can be extended in five (5) year increments with notification to the appropriate approval agency. Extension of the Plan is not automatically granted with issuance of an updated CGP.

C.6 Fees

A NOI renewal fee will be assessed annually for as long as the CGP coverage is active. Once the construction activity is complete and is verified by the appropriate plan approval agency, a Notice of Termination (NOT) can be submitted to the Department to terminate CGP coverage and cease the annual renewal fee.

C.7 Failure to Notify

Operator(s) who discharge stormwater from construction activity to waters of the State without CGP coverage are in violation of 7 **Del.C.** Ch.60, 7 DE Admin. Code 7201 Section 9.2 Regulations Governing the Control of Water Pollution, Part 2 – Special Conditions for Stormwater Discharges from Construction Activities, 7 **Del.C.** Ch.40 Erosion and Sedimentation Control, 7 DE. Admin. Code 5101 Delaware Sediment and Stormwater Regulations, and the CWA, and may be subject to penalties.

C.8 Shared Operational Control (Co-Permittee Status)

- a. Construction activities at a permitted site may become the responsibility of multiple operators when more than one operator has shared control of the site. When multiple operators maintain shared operational control, all are considered co-permittees of the site and must file an NOI as a co-permittee.
- b. An operator submitting an NOI who will share control of the permitted activities on the site shall require a duly authorized operator to submit to the Department a Co-Permittee form electronically. The co-permittee condition shall become effective upon receipt and Department acceptance the electronic Co-Permittee form submission. If operational control will be shared by more than one additional co-permittee, an electronic Co-Permittee form shall be submitted for all subsequent co-permittees.
- c. The original permittee must familiarize the subsequent co-permittees with the program and provide the subsequent co-permittees with a copy of the Plan as required in Part 1.E.1 of this CGP. All conditions and obligations outlined in this CGP will apply to the co-permittees upon Department acceptance of the electronic Co-Permittee form.

C.9 Notice of Termination (NOT)

Once the conditions of termination of coverage are achieved in accordance with Part 1.F.2 of this CGP, the authorized permittee of the site must submit an electronic Notice of Termination (eNOT). The eNOT is accessible through the Department's website.

C.10 Requirement to Post a Notice of Permit Coverage

A sign or other notice of permit coverage must be posted at a safe, publicly accessible location in close proximity to the construction site. The notice must be located so that it is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way.

If the active part of the construction site is not visible from a public road, then place the notice of permit coverage in a position that is visible from the nearest public road and as close as possible to the construction site.

The notice must include:

- a. The NOI number;
- b. Contact name and phone number to obtain additional construction site information;
- c. Contact name and phone number to obtain a copy of the approved Plan; and
- d. The following statement "If you observe indicators of stormwater pollutants in the discharge or in the receiving waterbody, call the DNREC's Spill Notification 24 HR Hotline at 1-800-662-8802."

C.11 Requirement to Maintain Documents on the Construction Site

- a. The NOI must be maintained at the construction site.
- b. During construction, maintain the approved Plan at the site.

D. EFFLUENT LIMITATIONS

The Department has not established numeric effluent limitations for stormwater discharges from construction activity. Therefore, in accordance with 7 DE Admin. Code 7201 subsection 9.2.4.1 of the Regulations Governing the Control of Water Pollution, the establishment of effluent limitations are in terms of performance standards established utilizing the BAT for erosion and sediment control and stormwater management. The use of Best Management Practices (BMP) contained in the Delaware Sediment and Stormwater Regulations and regulatory guidance documents constitute compliance with effluent limitations for stormwater discharges from construction activity.

The permittee must select, install, implement and maintain control measures at the construction site that minimize pollutants in the discharge as necessary to meet applicable water quality standards. The permittee must comply with the approved Plan referenced in Part 1.E.1 of this

CGP as well as with the Federal effluent limitations at 40 CFR §450.21. Federal effluent limitations include the following:

D.1 Erosion and Sediment Control Requirements

Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed and maintained to:

- a. Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;
- b. Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
- c. Minimize the amount of soil exposed during construction activity;
- d. Minimize the disturbance of steep slopes;
- e. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on site;
- f. Provide and maintain natural buffers around Waters of the State, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, where practicable;
- g. Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted; and
- h. Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

The implementation of erosion and sediment controls in accordance with the following requirements to minimize the discharge of pollutants in stormwater from construction activities must be implemented.

- D.1.1 Provide and maintain erosion and sediment perimeter controls adjacent to waters of the State. For any discharges to waters of the State located within 50 feet of the site's earth disturbances, one of the following alternatives must be achieved:
 - a. Provide and maintain a 50-foot undisturbed natural buffer supplemented by erosion and sediment controls; or
 - b. If infeasible to provide and maintain an undisturbed natural buffer, implement erosion and sediment controls to achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer supplemented by erosion and sediment controls.

D.1.2 Direct stormwater to vegetated areas and maximize stormwater infiltration and filtering to reduce pollutant discharges, where practicable.

D.1.3 Install sediment controls along any perimeter areas of the site that will receive pollutant discharges.

- a. Remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control.
- b. For areas at linear construction sites where perimeter controls are not practicable (e.g., due to a limited or restricted right-of-way), implement other practices (e.g., daily stabilization) as necessary to minimize pollutant discharges to perimeter areas of the site.

D.1.4 Minimize sediment track-out.

- a. Restrict vehicle use to properly designated exit points;
- b. Use appropriate stabilization techniques at all points that exit onto paved roads, sidewalks, or other paved areas that is consistent with the standard and specifications for stabilized construction entrances in the most recent version of the Delaware ESC Handbook;
- c. Implement additional track-out controls (e.g., use of wheel washing, rumble strips, and rattle plates) as necessary to ensure that sediment removal occurs prior to vehicle exit; and
- d. Where sediment has been tracked-out from the site onto paved roads, sidewalks, or other paved areas outside of the site, remove the deposited sediment by the end of the same business day in which the track-out occurs or by the end of the next business day if track-out occurs on a non-business day. Remove the track-out by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal. It is prohibited to hose or sweep tracked-out sediment into any stormwater conveyance, storm drain inlet or waters of the State.

D.1.5 Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil.

- a. Locate the piles outside of any natural buffers established and away from any stormwater conveyances, drain inlets, and areas where stormwater flow is concentrated.
- b. Install a sediment barrier (e.g., berms, dikes, fiber rolls, compost logs, silt fences, or sandbags) along all down gradient perimeter areas.
- c. Soil stockpiles must be temporarily or permanently stabilized within 14 calendar days in accordance with the standard and specifications for temporary or permanent stabilization in the most recent version of the Delaware ESC Handbook if the stockpiles are not part of active construction processes.
- d. It is prohibited to hose down or sweep soil or sediment accumulated on pavement or other impervious surfaces into any stormwater conveyance, storm drain inlet, or Waters of the State.

- D.1.6 Minimize Dust. On areas of exposed soil, minimize dust through the appropriate application of water or other dust suppression techniques in accordance with most recent version of the Delaware ESC Handbook.
- D.1.7 Minimize soil compaction. In areas of the site where final vegetative stabilization will occur or where infiltration practices will be installed:
- a. Restrict vehicle and equipment use in these locations to avoid soil compaction; and
 - b. Before seeding or planting areas of exposed soil that have been compacted, use techniques that rehabilitate and condition the soils as necessary to support vegetative growth.
- D.1.8 Protect storm drain inlets.
- a. Install inlet protection measures that remove sediment from discharges prior to entry into any storm drain inlet that carries stormwater flow from the site.
 - b. Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible.
- D.1.9 Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Examples of control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of a stormwater conveyance and at the outfall to slow down runoff.
- D.1.10 Installation of a sediment basin or similar impoundment.
- a. Situate the basin or impoundment outside of any waters of the State and any natural buffers established under Part 1.D.1.1.
 - b. Design the basin or impoundment to avoid collecting water from wetlands.
 - c. Design the basin or impoundment to provide storage for either:
 - i. 3,600 cubic feet per acre drained; or
 - ii. The calculated volume of runoff from a 2-year, 24-hour storm for disturbances greater than 20 acres.
 - d. Utilize outlet structures that withdraw water from the surface of the sediment basin or similar impoundment.
 - e. Use erosion controls and velocity dissipation devices to prevent erosion at inlets and outlets.
 - f. Remove accumulated sediment to maintain at least one-half of the design capacity and conduct all other appropriate maintenance to ensure the basin or impoundment remains in effective operating condition.

D.1.11 If using treatment chemicals (e.g., polymers, flocculants, coagulants).

- a. Use conventional erosion and sediment controls before and after the application of treatment chemicals. Chemicals may only be applied where treated stormwater is directed to a sediment control (e.g., sediment basin, perimeter control) before discharge.
- b. Select appropriate treatment chemicals. Chemicals must be appropriately suited to the types of soils likely to be exposed during construction and present in the discharges being treated (e.g., the expected turbidity, pH, and flow rate of stormwater flowing into the chemical treatment system or area) based on soil tests.
- c. Minimize discharge risk from stored chemicals. Store all treatment chemicals in leak-proof containers that are kept under storm-resistant cover and surrounded by secondary containment structures (e.g., spill berms, decks, spill containment pallets), or provide equivalent measures designed and maintained to minimize the potential discharge of treatment chemicals in stormwater or by any other means (e.g., storing chemicals in a covered area, having a spill kit available on site and ensuring personnel are available to respond expeditiously in the event of a leak or spill).
- d. Comply with state/local requirements. Comply with applicable state and local requirements regarding the use of treatment chemicals.
- e. Use chemicals in accordance with good engineering practices and specifications of the chemical provider/supplier. Use treatment chemicals and chemical treatment systems in accordance with good engineering practices, and with dosing specifications and sediment removal design specifications provided by the provider/supplier of the applicable chemicals.
- f. Ensure proper training. Ensure that all persons who handle and use treatment chemicals at the construction site are provided with appropriate, product-specific training. The training must cover proper dosing requirements.
- g. Use of cationic chemicals. Cationic chemicals shall not be used unless authorized in writing by the Department.

D.2 Soil Stabilization

- D.2.1 Stabilize exposed portions of the site. Implement and maintain stabilization measures (e.g., seeding protected by erosion controls until vegetation is established, sodding, mulching, erosion control blankets, hydromulch) that minimize erosion from exposed portions of the site. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days.

Following soil disturbance or re-disturbance, Permanent or Temporary Stabilization shall be completed for perimeter sediment controls, topsoil stockpiles, and all other disturbed or graded areas on the project site.

Unless an exception is approved on a case by case basis for a specific type of activity by the appropriate plan approval agency, not more than 20 acres may be disturbed at any one

time. Phasing of construction on sites will be required in excess of 20 acres to minimize areas exposed of ground cover and reduce erosion rates. Disturbance of a second 20-acre section may not proceed until temporary or permanent stabilization of the first 20-acre section is accomplished.

D.2.2 Final Stabilization Criteria. All soil disturbing activities at the site have been completed and one of the following criteria are met:

- a. A uniform (e.g. evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or
- b. Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

D.3 Dewatering Requirements

Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls. Any time a dewatering operation is used, it shall be previously approved by the appropriate plan approval agency construction site reviewer for a non-erosive point of discharge, and a dewatering permit should be approved by the Department's Well Permits Branch.

Comply with the following requirements to minimize the discharge of pollutants in ground water or accumulated stormwater removed from excavations, trenches, foundations, vaults, or other points of accumulation, in accordance with Part I.B.3 of this CGP:

- a. Treat dewatering discharges with controls to minimize discharges of pollutants;
- b. Do not discharge visible floating solids or foam;
- c. Use an oil-water separator or suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if dewatering is found to contain these materials;
- d. To the extent feasible, use vegetated, upland areas of the site to infiltrate dewatering water before discharge. It is prohibited to use waters of the State as part of the treatment area;
- e. At all points where dewatering is discharged, comply with the velocity dissipation requirements of Part I.D.1.9 of this CGP;
- f. Backwash water must be hauled away for disposal or returned to the beginning of the treatment process; and
- g. Replace and clean the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer's specifications.

D.4 Pollution Prevention Measures

Design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to:

- a. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
- b. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and stormwater; and
- c. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

Implement pollution prevention controls in accordance with the standard and specifications for Construction Site Waste Management and Spill Control in the Delaware ESC Handbook in addition to following requirements in this CGP to minimize the discharge of pollutants in stormwater and to prevent the discharge of pollutants from spilled or leaked materials from construction activities.

D.4.1 For material inventory, document the storage and use of the following materials:

- a. Concrete
- b. Detergents
- c. Paints (enamel and latex)
- d. Cleaning solvents
- e. Pesticides
- f. Wood scraps
- g. Fertilizers
- h. Petroleum-based products

D.4.2 For good housekeeping:

- a. Store only enough product required to do the job.
- b. All materials shall be stored in a neat, orderly manner in their original labeled containers and covered.
- c. Substances shall not be mixed.
- d. When possible, all of a product shall be used up prior to disposal of the container.
- e. Manufacturers' instructions for disposal shall be strictly adhered to.
- f. The site foreman shall designate someone to inspect all BMPs daily.

D.4.3 For waste management:

- a. All waste materials shall be collected and stored in securely lidded dumpsters in a location that does not drain to a waterbody.

- b. Waste materials shall be salvaged and/or recycled whenever possible.
- c. The dumpsters shall be emptied a minimum of twice per week, or more if necessary. The licensed trash hauler is responsible for cleaning out dumpsters.
- d. Trash shall be disposed of in accordance with all applicable Delaware laws.
- e. Trash cans shall be placed near the construction trailer.
- f. If fertilizer bags cannot be stored in weather-proof location, they shall be kept on a pallet and covered in plastic sheeting which is overlapped and anchored.

D.4.4 For equipment maintenance:

- a. If possible, equipment should be taken to off-site commercial facilities for washing and maintenance.
- b. If performed on-site, vehicles shall be washed with high-pressure water spray without detergents in an area contained by an impervious berm.
- c. Drip pans shall be used for all equipment maintenance.
- d. Equipment shall be inspected for leaks daily.
- e. Washout from concrete trucks shall be disposed of in a designated concrete washout area for hardening and proper disposal.
- f. Fuel nozzles shall be equipped with automatic shut-off valves.
- g. All used products such as oil, antifreeze, solvents and tires shall be disposed of in accordance with manufacturers' recommendations and local, state and federal laws and regulations.

D.4.5 For spill prevention:

- a. Fueling should only take place in signed designated areas, away from downstream drainage facilities and watercourses.
- b. Fueling must be with nozzles equipped with automatic shut-off to control drips. Do not top off.
- c. Protect the areas where equipment is being repaired, maintained, and fueled or parked from stormwater run-on and runoff.
- d. Use barriers such as berms to prevent stormwater run-on and runoff, and to contain spills.
- e. Place a "Fueling Area" sign next to each fueling area.
- f. Store hazardous materials such as fuel, solvents, oil and chemicals in secondary containment.
- g. Inspect vehicles and equipment for leaks on each day of use. Repair fluid and oil leaks immediately.
- h. Absorbent spill clean-up materials and spill kits must be available in fueling areas and on fuel trucks.
- i. If fueling is to take place at night, make sure the fueling area is sufficiently illuminated.
- j. Clean up spills
 - i. If it is safe to do so, immediately contain and clean up any chemical and/or hazardous material spills.
 - ii. Properly dispose of used oil, fluids, lubricants and spill clean-up materials.

- iii. Do not bury spills or wash down with water.
- k. Leaks and drips
 - i. Use drip pans or absorbent pads at all times. Place under and around leaky equipment.
 - ii. Do not allow oil, grease, fuel or chemicals to drip onto the ground.
 - iii. Have spill kits and clean up material on-site.
 - iv. Repair leaky equipment promptly or remove problem vehicles and equipment from the site. Clean up contaminated soil immediately.
 - v. Store contaminated waste in sealed containers constructed of suitable material. Label these containers properly.
 - vi. Clean up all leaks. Promptly dispose of waste and spent clean up materials.
- l. Waste management practices:
 - i. Potential spill areas shall be identified and contained in covered areas with no connection to the storm drain system.
 - ii. Warning signs shall be posted in hazardous material storage areas.
 - iii. Preventive maintenance shall be performed on all tanks, valves, pumps, pipes and other equipment as necessary.
 - iv. Low or non-toxic substances shall be prioritized for use.
 - v. Contact information for reporting spills shall be prominently posted.

D.4.6 For education:

- a. Best management practices for construction site pollution control shall be a part of regular progress meetings.
- b. Information regarding waste management, equipment maintenance, and spill prevention shall be prominently posted in the construction trailer.

D.5 Water Quality-Based Effluent Limitations

Discharges must be controlled as necessary to meet applicable water quality standards. In the absence of information demonstrating otherwise, the Department expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards. If at any time the permittee becomes aware, or the Department determines, that discharges are not being controlled as necessary to meet applicable water quality standards, the permittee must take corrective action as required in Part 1.E.7.1 and Part 1.E.7.2 of this CGP.

The Department may insist on the installation of additional controls (to meet the narrative water quality-based effluent limit above) on a site-specific basis, or require coverage under an individual permit, if information from the submitted NOI or from other sources indicates discharges are not controlled as necessary to meet applicable water quality standards. This includes situations where additional controls are necessary to comply with a wasteload allocation in an EPA established or approved Total Maximum Daily Load (TMDL).

If during coverage under a previous permit, a permittee was required to install and maintain stormwater controls specifically to meet the assumptions and requirements of an approved

TMDL (for any parameter) or to otherwise control the discharge to meet water quality standards, the permittee is required to continue to implement such controls as part of coverage under this CGP.

E. MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

E.1 Sediment and Stormwater Management Plan

The owner shall develop, fully implement, and maintain at the site, the approved Plan. The Plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with the Delaware ESC Handbook standard and specifications for Construction Site Waste Management and Spill Control, shall be incorporated into the Plan for construction activity. The Plan must include all elements contained in Part 1.D, as applicable to the project. The approved Plan is equivalent to the Stormwater Pollution Prevention Plan (SWPPP).

The Plan shall be signed by the owner and kept at the site. The Plan is valid for five (5) years from the stamped approval date issued by the appropriate plan approval agency.

The operator(s) shall keep the Plan current and revise the Plan whenever:

- a. There is a change in the design, construction, operation or maintenance of erosion and sediment control or stormwater management measures on the site; or
- b. The Plan proves to be ineffective in eliminating or significantly minimizing the discharge of pollutants, or in otherwise achieving the general objectives of controlling pollutants in stormwater discharges from construction activity; or
- c. To address any sources or potential sources of pollution identified as a result of a site inspection pursuant to Part 1.E.2 of this CGP; or
- d. Upon notification by the appropriate plan approval agency that the Plan does not adequately address the requirements of this CGP. The notification from the Department or the appropriate plan approval agency shall list and describe the deficiencies of the Plan and the timeframe by which approval of the revisions must be obtained.

Persons subject to Part 1.E.1 of this CGP, shall revise the Plan, submit the revisions to the appropriate plan approval agency, and receive approval for the revisions prior to construction or modification of the erosion and sediment controls or stormwater management measures on the site.

Under the requirements of 7 **Del.C.** Ch.40 Erosion and Sedimentation Control, and 7 DE Admin. Code 5101 Sediment and Stormwater Regulations, the Plan remains valid for five (5) years following the date of approval which may not necessarily coincide with the expiration date of this CGP. If construction continues beyond that five-year time period, an extension of the Plan approval may be granted by the appropriate plan approval agency. Unless the Plan is extended,

it is considered expired and any construction activity that occurs after the expiration date is in violation.

In no event shall failure to complete or update a Plan relieve any persons covered under this CGP of responsibility to implement actions required to protect the waters of the State, complete any actions that would have been required by such Plan, and to comply with all conditions of this CGP.

The Plan must be approved, and the NOI accepted by the Department prior to the onset of construction activity at the site for which coverage has been granted. Failure to obtain an approved Plan prior to construction activity constitutes a violation.

E.2 Monitoring

For the purposes of this Part, the operator(s) must conduct maintenance inspections of erosion and sediment controls and constructed stormwater management measures at least weekly.

The Secretary may require additional monitoring on a site following written notification.

After the first earth disturbance occurs on the site, and thenceforth during the entire period of permit coverage whether the site is active or inactive, the permittee shall conduct inspections of the permitted area. The person(s) inspecting the site must be a responsible person or a CCR. The responsible person and CCR must have successfully completed a Department-sponsored certification course.

E.3 Recordkeeping

The operator(s) shall retain records of all information required by this CGP for a minimum of three (3) years following acceptance of the NOT. During construction, the operator(s) must maintain at the site weekly reports of all inspections conducted in accordance with Part 1.E.2 of this CGP, which include:

- a. The date and time of the inspection;
- b. The name(s) of the individual(s) who performed the inspection;
- c. An assessment of the condition of erosion and sediment controls, and constructed stormwater management measures;
- d. A description of any erosion and sediment control and stormwater management measures' construction or implementation, and maintenance performed on those measures; and
- e. A description of the site's present phase of construction.

Persons subject to this CGP shall maintain all inspection reports, notices of violations, enforcement actions, and correspondence issued by the Department, its authorized agents, the appropriate plan approval agency, or a Certified Construction Reviewer.

E.4 Reporting Requirements

Operators subject to this CGP must retain the records described in Part 1.E.3 and submit the information upon request to the Department.

E.5 Other Requirements for Sediment and Stormwater Management Plans and Documentation

- a. All plans for construction activity and any reports prepared pursuant to this CGP, including self-inspection information, shall be available to the public under Section 308(b) of the CWA.
- b. Upon request by the public, the permittee covered by this CGP shall make such documents available. However, the permittee may claim applicable portions of these documents as confidential in accordance with 40 CFR Part 2.
- c. The permittee shall consider federally listed rare, threatened, and endangered species and the critical habitat for those species in the design of the Plan. If rare, threatened, and endangered species and/or the critical habitat of such species is identified, the permittee shall contact the appropriate approval authority to determine additional regulatory requirements.

E.6 Site Inspection Requirements

E.6.1 Person(s) Responsible for Construction Review. The person(s) conducting the construction review shall be responsible personnel, as defined herein, and/or a third-party certified construction reviewer (CCR) hired to conduct such construction reviews. The permittee is responsible for ensuring the qualifications of the person(s) conducting these construction reviews are satisfied.

Unless specifically waived by the plan approval agency, all construction activities are required to conduct a preconstruction meeting. The person(s) responsible for conducting the construction review shall attend the preconstruction meeting.

E.6.2 Frequency of Construction Reviews. Construction reviews must be conducted at least once every seven (7) calendar days.

E.6.3 Areas That Must Be Reviewed. During the construction review, the following areas must be reviewed:

- a. All areas that have been cleared, graded, or excavated and that have not yet completed stabilization consistent with Part 1.D.2.1 of this CGP;
- b. All stormwater controls (including pollution prevention controls) installed at the site;
- c. Material, waste, borrow, and equipment storage and maintenance areas;
- d. All areas where stormwater typically flows within the site, including drainage ways designed to divert, convey and/or treat stormwater;
- d. All points of discharge from the site; and
- e. All locations where stabilization measures have been implemented.

E.6.4 Requirements for Construction Reviews. During the construction reviews, the following must be conducted:

- a. Check whether all stormwater controls (i.e., erosion and sediment controls and pollution prevention controls) are properly installed, operational, and are working as intended to minimize pollutant discharges;
- b. Check for the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on site;
- c. Identify any locations where new or modified stormwater controls are necessary;
- d. Check for signs of visible erosion and sedimentation (i.e., sediment deposits) at all points of discharge;
- e. Identify if a discharge is occurring during the construction review:
 - i. Identify all discharge points at the site; and
 - ii. Observe and document the visual quality of the discharge and take note of the characteristics of the stormwater discharge, including color; odor; floating, settled, or suspended solids; foam; oil sheen; and other indicators of stormwater pollutants.
- f. Based on the results of the construction review, complete any necessary maintenance and corrective action under Part 1.E.7.

E.7 Corrective Actions

E.7.1 Conditions Triggering Corrective Action. Corrective action measures must be taken to address any of the following conditions identified at the site:

- a. A control measure needs repair or replacement;
- b. A control measure necessary to comply with the requirements of the CGP was never installed, or was installed incorrectly,
- c. The discharges are causing an exceedance of applicable water quality standards; or
- d. A prohibited discharge has occurred (see Part 1.B.4).

E.7.2 Corrective Action Deadlines

For any corrective action triggering conditions in Part 1.E.7.1, the following must occur:

- a. Take necessary steps to address the condition, including cleaning up any contaminated surfaces so the material will not discharge in subsequent storm events;
- b. When the problem does not require a new or replacement control or significant repair, the corrective action must be completed by the close of the next business day;
- c. When the problem requires a new or replacement control or significant repair, install the new or modified control and make it operational, or complete the repair, no longer than seven (7) calendar days from the time of discovery.

F. EFFECTIVE DATE OF COVERAGE

F.1 Commencement of Coverage

Coverage under this CGP begins for a site when:

- a. The eNOI has been submitted and accepted by the Department; and
- b. A Sediment and Stormwater Management Plan has been approved.

F.2 Termination of Coverage

Coverage under this CGP continues until Notice of Termination (NOT) has been submitted to the Department and it is determined by the Department or appropriate plan approval agency that:

- a. All items and conditions of the Plan have been satisfied in accordance with 7 DE Admin. Code 5101 Sediment and Stormwater Regulations,
- b. Post construction verification documents (PCVD) demonstrate that the permanent stormwater management measures have been constructed in accordance with the approved Plan and the 7 DE Admin. Code 5101 Sediment and Stormwater Regulations, and
- c. Final stabilization has been achieved in accordance with the definition in Part 1.G. of this CGP.

Permit coverage is not considered terminated until the permittee is notified by the Department.

G. DEFINITIONS

Appropriate Plan Approval Agency means the Department, Conservation District, county, municipality, or state agency that is responsible for review and approval of the Sediment and Stormwater Management Plan.

Best Available Technology (BAT) means a level of technology based on the very best (State of the art) control and treatment measures that have been developed or are capable of being developed and that are economically achievable within the appropriate construction category.

Best Management Practices (BMPs) means schedules of activities, prohibition of practices, maintenance procedures, and other management practices or measures to prevent or reduce the discharge of pollutants. BMPs include the following, among other practices and measures: structural and non-structural controls; treatment requirements; operating procedures and practices to control site runoff, or sludge disposal, or waste disposal, or spillage, or leaks, or drainage from raw materials storage.

Certified Construction Reviewer (CCR) means those individuals, having passed a Department-sponsored or approved training course, who provide on-site construction reviews for erosion and sediment control and stormwater management in accordance with the *Delaware Sediment and Stormwater Regulations*.

CFR means the Code of Federal Regulations.

Clean Water Act (CWA) means 33 USC 1251 et seq. (formerly known as the Federal Water Pollution Control Act Amendment of 1972).

Co-permittee means a discharger of stormwater from construction activity who is jointly and individually responsible for compliance with all conditions of this CGP and applicable laws with another entity.

Common Plan of Development or Sale means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one common plan. The "common plan" of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

Construction Activity means clearing, grading and excavating activities that result in a land disturbance equal to or greater than one acre, including the disturbance of less than one acre of land that is part of a larger common plan of development or sale that will ultimately disturb more than one acre.

Department means the State of Delaware Department of Natural Resources and Environmental Control (DNREC)

Discharge of Stormwater from Construction Activity means a discharge of stormwater from areas where soil disturbing activities (e.g. clearing, grading, or excavations), construction materials or equipment storage or maintenance (e.g. fill piles, borrow areas, concrete truck washout, fueling), or other industrial stormwater directly related to the construction process (e.g. concrete or asphalt batch plants) are located.

Effective Date means the date when this CGP has formally passed through a public comment period, a public hearing and has been formally adopted by the Department to become operative.

Final Stabilization means all soil disturbing activities at the site have been completed and either of the two following criteria are met:

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

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

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

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

- a. The homebuilder has completed final stabilization as specified above, or
- b. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.

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

Individual Permit means a permit which is written for one specific facility or site.

Licensed Professional in the State of Delaware means a design professional licensed under 24 Del.C. Ch. 2, 24 Del.C. Ch. 27, or 24 Del.C. Ch. 28.

Notice of Intent (NOI) serves as an application for NPDES permit coverage under this CGP.

Notice of Termination (NOT) serves as an application for termination of NPDES permit coverage under this CGP.

NPDES means the National Pollutant Discharge Elimination System, a national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits for the discharge of any pollutant or combination of pollutants and imposing and enforcing pretreatment and sludge requirements pursuant to Sections 307, 402, 318, and 405 of the Clean Water Act.

NPDES Permit means any permit authorizing the potential or actual point source discharge of pollutants to State waters, under prescribed conditions, pursuant to Section 6 of the State of Delaware Regulations Governing the Control of Water Pollution (7 DE Admin. Code 7201), the MOA with EPA, and CWA Section 401 and federal implementing regulations.

Operational Control means the responsibility for managing a construction activity subject to the provisions of this CGP.

Operator means any party associated with the construction activity who has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or the party that has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions. Where there are multiple operators associated with the same project, all operators must obtain permit coverage.

This definition is provided to inform permittees of the Department's interpretation of how the regulatory definitions of "owner or operator" and "facility or activity" are applied to discharges of stormwater from construction activity. Subcontractors generally are not considered operators for the purposes of this permit.

Owner means a person who has a legal interest in lands of this State, or who has an equitable interest in lands of this State, except when a person holds an interest in those lands as a security interest, unless through foreclosure or other action the holder has taken possession of those lands, and who undertakes, or for whose benefit, activities subject to these regulations are commenced or carried out on those lands, or the person responsible for maintenance of stormwater management systems constructed to comply with these regulations on those lands.

Permit Coverage means an authorization granted to a category of stormwater discharges.

Permittee means a discharger of stormwater from construction activity who is responsible for compliance with all conditions of this CGP and to whom coverage under this CGP has been granted.

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

Project Completion occurs when all items and conditions of the Plan have been satisfied, post construction verification documentation has been approved by the appropriate plan approval agency, and final stabilization has been achieved in accordance with the definition in this CGP.

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

Secretary means the Secretary of the State of Delaware Department of Natural Resources and Environmental Control (DNREC) or their duly authorized designee.

Sediment and Stormwater Management Plan (Plan) means a plan for the control of soil erosion, sedimentation, stormwater quantity, and water quality impacts resulting from construction activity. For the purposes of this CGP, a Sediment and Stormwater Management Plan is a plan developed in accordance with the requirements of 7 DE Admin. Code 5101 Sediment and Stormwater Regulations.

Stormwater means run-on or runoff of water from the surface of the land resulting from precipitation or snow or ice melt.

Total Maximum Daily Load (TMDL) means the amount of a given pollutant that may be discharged to a waterbody from point, nonpoint and natural background sources and still allow attainment or maintenance of the applicable narrative and numerical water quality standards. A "TMDL" is the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources of pollution and natural background. A "TMDL" must include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a "TMDL" attempts to match the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact.

Waters of the State 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; and
- e. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in a. through d. above.
- f. Waste and stormwater treatment systems that would otherwise meet this definition are not "waters of the State."

PART 2. STANDARD CONDITIONS

Standard permit conditions in this Part are consistent with the general permit provisions required under 40 CFR §122.41. These standard conditions must be included in all types of NPDES permits.

1. Duty to Comply

Failure to comply with the terms of this CGP shall constitute a violation and shall be grounds for enforcement action as provided in 7 **Del.C.** Ch.40 Erosion and Sedimentation Control and 7 **Del.C.** Ch.60 Environmental Control. Noncompliance with the terms of this CGP can also result in changes to or termination of the permit or denial of a permit renewal application.

2. Duty to Reapply

A permittee wishing to continue permitted activities after the CGP expiration date must reapply for and obtain a CGP permit.

3. Need to Halt or Reduce Activity Not a Defense

The permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the construction activity subject to this CGP to maintain compliance with the conditions of this CGP.

4. Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this CGP which has the likelihood of adversely affecting human health or the environment.

5. Proper Operation and Maintenance

The permittee must at all times operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this CGP. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the CGP.

6. Permit Actions

This CGP may be modified, revoked and reissued, or terminated for cause. A request by the permittee for a permit modification, revocation, reissuance, termination, or a notification of

planned changes or anticipated noncompliance does not suspend the permittee's obligation to comply with all permit conditions.

7. Property Rights

This CGP does not convey any property rights of any sort, or any exclusive privileges.

8. Severability

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

9. Duty to Provide Information

The permittee must furnish to the Department, within a reasonable time, any information needed to determine compliance with the permit or to determine whether there is cause to modify, revoke and reissue, or terminate the CGP. The permittee must also furnish, on request, copies of records that must be kept as required by the CGP.

10. Inspection and Entry

The permittee must allow the Department upon presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the site where a regulated activity is located or conducted, or where records must be kept under the conditions of this CGP;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this CGP; and
- d. Sample or monitor at reasonable times, for the purposes of assuring CGP compliance or as otherwise by the CWA, any substances or parameters at any location.

11. Monitoring and Records

Samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.

The permittee must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this CGP, and records of all data used to complete the application for this CGP, for a period of at least three (3) years from the date the CGP expires or the date the permittee's authorization is terminated. This period may be extended by request of the Department at any time.

Records of monitoring information must include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the CGP.

The CWA provides that any person who falsifies, tampers with, 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 more than \$10,000, or by imprisonment for not more than two (2) years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four (4) years, or both.

12. Signatory Requirements

All applications, including NOIs, must be signed as follows:

- a. For a corporation: By a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice president of the corporation in charge of principal business function, or any other person who performs similar policy or decision making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
- c. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA)

The permittee's approved Plan, including changes to the Plan, and any other compliance documentation required under this CGP, must be signed by a person described in Part 2.12 of this CGP or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in Part 2.12 of this CGP;
- 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 plant manager, operator of a well or well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
- c. The signed and dated written authorization is included in the approved Plan. A copy must be submitted to the Department, if requested.

Changes to Authorization. If an authorization under this permit is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new NOI must be submitted to the Department.

Any person signing documents in accordance with Part 2.12 of this CGP must include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I certify under penalty of law that I understand the terms and conditions of the Delaware National Pollutant Discharge Elimination System (NPDES) Special Conditions for Stormwater Discharges from Construction Activities."

For persons signing NOIs electronically, in addition to meeting other applicable requirements in Part 2.12 of this CGP, such signatures must meet the same signature, authentication, and identity-proofing standards set forth at 40 CFR § 3.2000(b) for electronic reports (including robust second-factor authentication).

The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this CGP, including monitoring reports or reports of compliance or non-compliance shall, upon

conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six (6) months per violation, or by both.

13. Planned Changes

Notice must be given to the Department as soon as possible of planned physical alterations or additions to the facility. Notice is required only when:

- a. The alteration or addition to the permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR §122.29(b); or
- b. The alterations or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in this CGP, nor to notification requirements under 40 CFR §122.42(a)(1).

14. Anticipated Noncompliance

The permittee must give advance notice of any planned changes that could result in noncompliance.

15. Permit Transfers

This CGP is not transferrable to any person except after notice to the Department. Where a site wants to change the name of the permittee, the original permittee must submit an NOT in accordance with Part 1.C.9 of this CGP. The new operator must submit an NOI in accordance with Part 1.C.4 of this CGP.

16. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this CGP must be submitted no later than 14 days following each schedule date.

17. Twenty-Four Hour Reporting

The permittee must orally report any noncompliance that might endanger human health or the environment within 24 hours after becoming aware of the circumstances. Within five (5) days of becoming aware of the circumstances, the permittee must provide a written submission including a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; the anticipated time the noncompliance is expected to continue (if not already corrected); and steps taken to reduce, eliminate, or prevent reoccurrence unless the Department waives the requirement. In addition, 24-hour reporting is required for an unanticipated bypass exceeding effluent limits; an upset exceeding effluent limits; and a violation of maximum daily effluent limitations for pollutants listed in the CGP for 24-hour reporting.

18. Other Noncompliance

The permittee must report all instances of noncompliance not reported under other specific reporting requirements at the time monitoring reports are submitted.

19. Other Information

If the permittee becomes aware that it failed to submit any relevant facts in its application, or submitted incorrect information in its application or other reports, it must promptly submit such facts or information.

20. Bypass

Definitions.

- a. Bypass is the intentional diversion of waste streams from any portion of a treatment facility.
- b. Severe property damage is the substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Bypass not exceeding limitations. You may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation.

Notice.

- a. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, the permittee must submit prior notice, if possible at least ten (10) days before the date of the bypass.
- b. Unanticipated Bypass. The permittee must submit notice of an unanticipated bypass as soon as possible to the time when it is known, but in no case longer than 24-hours after learning of the event.

Prohibition of bypass.

- a. Bypass is prohibited, and the Department or EPA may take enforcement action against the permittee for bypass, unless:
 - i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii. There was no feasible alternative to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back up equipment should have been installed in the exercise or reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - iii. The permittee submitted notices as required.

- b. The Department or EPA may approve an unanticipated bypass, after considering its adverse effects, if the Department or EPA determines that the bypass meets the three (3) conditions above.

21. Upset

Definition. Upset is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond your reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance or careless or improper operation.

Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the conditions necessary for a demonstration of upset, below, are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of an upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the cause(s) of the upset; and
- b. The permitted facility was at the time being properly operated; and
- c. The permittee submitted notice of the upset as required; and
- d. The permittee complied with any required remedial measures.

Burden of proof. In any enforcement proceeding, the permittee, as the one seeking to establish the occurrence of an upset, have the burden of proof.

Part 3. SPECIAL CONDITIONS

1. SPECIAL CONDITIONS

None (N/A)

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