

Part 2 SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES

§ 9.1.02.0 **DEFINITIONS**

As used in this Part, the following terms shall be defined as outlined herein:

- (1) **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 Plan.
- (2) **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 industrial category.
- (3) **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.
- (4) **Certified Construction Reviewer:** means those individuals, having passed a Department-sponsored or approved training course, who provide on-site inspection for sediment control and storm water management in accordance with the *Delaware Sediment and Stormwater Regulations*.
- (5) **C.F.R.:** means the Code of Federal Regulations.
- (6) **Clean Water Act (Cwa):** means 33 U.S.C. 1251 et seq. (formerly known as the Federal Water Pollution Control Act Amendment of 1972).
- (7) **Co-permittee:** is a discharger of storm water associated with construction activity who is jointly and individually responsible for compliance with all conditions of this Part and applicable laws with another entity.
- (8) **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.
- (9) **Department:** means the State of Delaware Department of Natural Resources and Environmental Control.
- (10) **Discharge Of Storm Water Associated With Construction Activity:** means a discharge of storm water 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 storm water directly related to the construction process (e.g. concrete or asphalt batch plants) are located.
- (11) **Effective Date:** means the date when these regulations have formally passed through a public comment period, a public hearing and have been formally adopted by the Department and become operative.
- (12) **Facility:** means any building, any structure, any complex of buildings or structures, or any process, production, equipment, or machinery, which makes it possible for any activity to be conducted.

(13) **Final Stabilization**: means that:

- a. All soil disturbing activities at the site have been completed and either of the two following criteria are met:
 - (1) 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
 - (2) Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- b. 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.
- c. For individual lots in residential construction, final stabilization means that either:
 - (1) The homebuilder has completed final stabilization as specified above, or
 - (2) 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.
- a. For construction projects on land used for agriculture purposes (e.g., pipelines across crop or range land, staging areas for highway construction, etc.) final stabilization may be accomplished by returning the disturbed land to its preconstruction agriculture use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to “water of the United States” and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) above.

(14) **Individual Permit**: means a permit which is written for one specific facility or site.

(15) **Municipal Separate Storm Water System (MS4)**: means a conveyance system which is not intended to convey anything but storm water and is owned by a municipal or public entity.

(16) **Notice Of Intent (NOI)**: serves as an application for NPDES permit coverage under this Part.

(12) **Notice Of Termination (Not)**: serves as an application for termination of NPDES permit coverage under this Part.

(18) **Npdes (National Pollutant Discharge Elimination System)**: means the 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.

(19) **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.”

- (20) **Operational Control**: means the responsibility for managing a construction activity subject to the provisions of this Part.
- (21) **Operator**: for the purpose of this Part, means any person associated with construction activity who has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications.
- (22) **Permit Coverage**: means an authorization granted to a category of storm water discharges pursuant to this Subsection.
- (23) **Permittee**: is a discharger of storm water associated with construction activity who is responsible for compliance with all conditions of this part and to whom coverage under this Part has been granted.
- (24) **Person**: means any individual, partnership, corporation, association, institution, enterprise, municipality, commission, political subdivision, or duly established entity.
- (25) **Project Completion**: occurs when all items and conditions of the Plan have been satisfied, as-built documentation has been approved by the Plan approval agency, and final stabilization has been achieved in accordance with the definition in this document. It is at project completion that permit coverage is terminated.
- (26) **Secretary**: means the Secretary of the State of Delaware Department of Natural Resources and Environmental Control or his duly authorized designee.
- (27) **Sediment And Stormwater Plan**: means a plan for the control of soil erosion, sedimentation, storm water quantity, and water quality impacts resulting from construction activity. For the purposes of this Part, a Sediment and Stormwater Plan is a plan developed in accordance with the requirements of the *Delaware Sediment and Stormwater Law and Regulations*.
- (28) **Storm Water**: means runoff or runoff of water from the surface of the land resulting from precipitation or snow or ice melt.
- (29) **These Regulations**: means the State of Delaware Special Conditions for Storm Water Discharges Associated with Construction Activity.
- (30) **Total Maximum Daily Load or 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 or WLAs for point sources and load allocations or LAs for nonpoint sources of pollution and natural background. A "TMDL" may 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.
- (31) **Transferee**: means the person who accepts permit responsibility from the original permittee.
- (32) **Transfer Of Authorization**: means to transfer control of permitted construction activities to either a duly authorized person who will control the permitted activities, or a new owner/operator for the site for which the permit has been issued.
- (33) **Transferor**: means the original permittee who transfers permit responsibility to another entity.

(34) **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) – (d).

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

§ 9.1.02.1 COVERAGE

A. Eligibility

The following discharges and activities are eligible for NPDES General Industrial Storm Water Permit coverage under this Part.

- 1. This Part covers all new and existing storm water discharges that are composed in whole or in part of discharges associated with construction activity [as defined by 40 Code of Federal Regulations (CFR), Section 122.26 (b)(14)(x), (15); see §9.1.02.0 DEFINITIONS]
- 2. Discharges from support activities (e.g., concrete or asphalt plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:
 - a. The support activity is directly related to the construction site required to have NPDES permit coverage for discharges of storm water associated with 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 Sediment and Stormwater Plan covering the discharges from the support activity areas.
- 3. Discharges composed of allowable discharges listed in 9.1.02.1.A and 9.1.02.6.B commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.
- 4. Storm water discharges associated with construction activity at facilities which have permit coverage for a discharge other than storm water can be covered by this Part, or at the discretion of the Secretary, an existing individual permit may be amended to cover storm water discharges associated with construction activities.

B. Limits on Eligibility

The following discharges and activities are not eligible for NPDES General Industrial Storm Water Permit coverage under this Subsection.

1. Discharges of storm water associated with industrial activity fully addressed by facilities with individual NPDES permits.
2. Discharges of pollutants occurring in watersheds for which there is a Total Maximum Daily Load (TMDL) allocation for associated water bodies are not eligible for coverage under this Part unless the facility has an approved Sediment and Stormwater Plan (Plan) that is shown to reduce pollutant loading to the level required by the TMDL or to the maximum extent practicable. To be eligible under this Part, the facility must incorporate into their Plan any conditions applicable to their discharges necessary for consistency with any TMDL implementation plan or plan for achieving State surface water quality standards. For discharges not eligible for coverage under this Part, the discharger must apply for and receive an individual NPDES permit.
3. 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:
 - a. Discharges of substances or materials in amounts that are toxic, or that would be toxic to humans, fish, aquatic life, or wildlife;
 - b. 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
 - c. Discharges that cause or contribute to degradation or loss of State designated beneficial uses of the receiving waters.
4. Discharges of materials other than storm water are prohibited and are not authorized by this Subsection.
5. Discharges of storm water from post-construction that originate from the site after project completion, including any temporary support activity.
6. Discharges mixed with non-storm water. This exclusion does not apply to discharges identified in 9.1.02.6(B).
7. Storm water discharges, allowable non-storm water discharges, and storm water 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”).
8. Storm water discharges, allowable non-storm water discharges, or storm water 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.

9. Storm water discharges, allowable non-storm water discharges, or storm water discharge-related activities that would negatively affect a property that is listed or is eligible for listing in the National Historic Register.

C. Individual NPDES Permit Coverage

1. Any person covered by this Subsection may request to seek coverage under an individual permit by submitting an individual application (Form 1 and Form 2F¹) as prescribed in Section 6 of the *Regulations Governing The Control of Water Pollution*. Coverage under this Subsection will continue until authorization for coverage under an individual permit has been issued to the person making the request.
2. The Secretary may require any person covered by this Subsection to submit an application and seek coverage under an individual NPDES permit.
 - a. The Secretary shall notify a person in writing when an individual permit application is required. The notice shall include a brief statement of the reasons for the decision, an application, and a statement setting a deadline for the person to file the application. The Secretary shall notify the person in writing that permit coverage under this Subsection shall automatically terminate on the effective date of the individual NPDES permit that is issued to the person.
 - b. If a person fails to submit an individual permit application in compliance with a notice from the Secretary, the applicability of this Subsection to the person shall automatically terminate at the end of the day specified for application or NOI submittal.
3. When an individual NPDES permit is issued to a person for discharges otherwise covered by this Subsection, the applicability of this Subsection is automatically terminated on the effective date of the individual NPDES permit.

D. Authorization

To be authorized to discharge storm water under this Part, a person planning a construction activity must submit, in accordance with the requirements of §9.1.02.3, an NOI form prior to commencement of any construction activities. Unless notified by the Secretary to the contrary, persons who submit such notification and have either obtained approved Sediment and Stormwater Plans or have been deemed exempt in accordance with the *Delaware Sediment and Stormwater Law and Regulations*, are authorized to discharge storm water associated with construction activity under the terms and conditions of this Part.

E. Transfer of Authorization

1. Transfer of control of permitted activities at the site.

¹ Form 1: NPDES permit application containing general information about the applicant and facility. This form must accompany the NPDES permit application, Form 2F.

Form 2F: NPDES permit application to discharge storm water associated with industrial activity.

A person submitting an NOI who does not intend to control the permitted activities on the site shall transfer authorization under this Part, at least ten (10) days prior to any land disturbing activities, to a duly authorized person who will control the permitted activities. To transfer authorization under this Part, the facility must submit and receive written Department approval of a completed Transfer of Authorization form, signed by both the transferor and transferee.

2. Transfer of property to a new owner.

A permittee/transferor may transfer coverage under this Part to a new owner should ownership change during the construction period. To transfer authorization under this Part, the facility must submit and receive written Department approval of a completed Transfer of Authorization form, signed by both the transferor and transferee.

3. Obligations of the permittee/transferor.

The permittee/transferor must familiarize the person who is assuming control of the permitted activities, the transferee or new owner, with the program and provide the transferee/new owner with a copy of the Sediment and Stormwater Plan as required in §9.1.02.5. All conditions and obligations outlined in this Part will apply to the transferee/new owner upon transfer.

4. The Department will maintain guidance related to Transfer of Authorization.

F. Shared Operational Control (Co-Permittee Status)

1. Construction activities at a permitted site may become the responsibility of multiple persons when more than one person has operational control (see §9.1.02.0 Definitions) of the site. When multiple persons maintain operational control, all are considered co-permittees of the site.
2. A person submitting an NOI who will share control of the permitted activities on the site shall require a duly authorized person to submit to the Department a Co-Permittee form. The co-permittee condition shall become effective upon receipt and written Department approval of a completed Co-Permittee form, signed by both the original and subsequent co-permittee. If operational control will be shared by more than one additional co-permittee, a Co-Permittee form shall be submitted for all subsequent co-permittees.
3. The original permittee must familiarize the subsequent co-permittees with the program and provide the subsequent co-permittees with a copy of the Sediment and Stormwater Plan as required in §9.1.02.5. All conditions and obligations outlined in this Part will apply to the co-permittees upon completion of the Co-Permittee form.
4. The Department will maintain guidance related to Co-Permittees.

§ 9.1.02.2 STANDARD CONDITIONS

A. Entry and Inspection

Any person subject to this Subsection shall allow the Department to:

1. enter the facility subject to this Subsection during standard business hours;

2. inspect and copy at reasonable times, any records that must be kept under the conditions of this Subsection;
3. inspect at reasonable times any facilities or equipment; and
4. perform sampling of the storm water discharges from the site.

B. Signature Requirements

1. All Notice Of Intent (NOI) Forms shall be signed by:
 - a. a president, vicepresident, secretary or treasurer for a corporation; or
 - b. a general partner or proprietor for a partnership or sole proprietorship; or
 - c. a principal executive officer or ranking official for a municipality or public agency.
2. All other reports or information required by this Subsection shall be signed by a person described above or by a duly authorized representative. A person is a duly authorized representative only if the authorization is made in writing by the person described above and is submitted to the Department.
2. Any person signing documents in accordance with this Subsection shall make 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 submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for willful violations."; and

"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 Storm Water Discharges Associated with Construction Activities."

A. Proper Procedures

Any person subject to this Subsection shall at all times properly operate and maintain all facilities, systems and practices of pollution control which are installed, or implemented to achieve compliance with the requirements of this Subsection and with the measures of the Sediment and Stormwater Plan.

D. Duty to Mitigate

Any person subject to this Subsection shall take all reasonable steps to minimize or prevent any discharge of pollutants in violation of this Subsection.

E. Adverse Impacts

Any person subject to the requirements of this Subsection shall take all reasonable steps to minimize any adverse impact to State waters, including such accelerated or additional monitoring as necessary to determine the nature and extent of the non-complying discharge.

F. Transfers

Coverage under this Part is transferable. Coverage under this Part shall be transferred in accordance with the provisions outlined in §9.1.02.1.E.

G. Continuation of Expired Coverage

The requirements of this Part shall continue in force and effect until this Part is re-promulgated.

H. Other State or Federal Laws

Nothing in this Subsection shall be construed to preclude the institution of any legal action or relieve any person subject to this regulation from any responsibilities, liabilities, or penalties established pursuant to any applicable State or Federal law or regulation.

I. Penalties for Violations

Any person who violates conditions of this Subsection may be subject to penalties in accordance with 7 Del. C. Chapter 60. Violation of this Subsection is also a violation of the Clean Water Act and may be subject to penalties established under that statute.

J. Oil and Hazardous Substance Liability

Nothing in this Subsection shall preclude the institution of any legal action or relieve any person from any responsibilities, liabilities, or penalties to which a person is or may be subject under 40 C.F.R. Part 117 or 7 Del.C. Chapters 60, 62 or 63.

K. Need to Halt or Reduce Activity Not a Defense

Persons subject to this Part 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 Part to maintain compliance with the conditions of this Part.

L. Property Rights

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

M. Severability

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

§ 9.1.02.3 NOTIFICATION

A. Deadlines

1. New Projects

Any person who intends to obtain coverage under this Part for storm water discharges associated with construction activity, commencing after the effective date of this Part, must submit a Notice of Intent (NOI) Form in accordance with this Part prior to the onset of construction as a condition of approval of the Sediment and Stormwater Plan.

2. Permitted Ongoing Projects

- a. Any person who has or had permit coverage for storm water discharges associated with construction activity immediately prior to the effective date of this Part, who wishes to continue coverage must submit a new Notice of Intent (NOI) within 90 days of re-promulgation of this Part.
- b. Any person who has or had permit coverage for storm water discharges associated with construction activity prior to the effective date of this Part, and meets the termination of coverage requirements in accordance with § 9.1.02.7.B must submit a Notice of Termination (NOT) within 90 days of re-promulgation of this Part.

3. Unpermitted Ongoing Projects

For any person subject to this Part who has or had not obtained permit coverage for storm water discharges associated with construction activity taking place prior to the effective date of this Part, authorization to discharge under the renewed Part occurs at the time that the NOI is submitted. The Department reserves the right to seek enforcement action for any unpermitted discharges or noncompliance that occurs between commencement of construction and discharge authorization.

4. Late Notification

Any person subject to this Part is not precluded from submitting an NOI in accordance with the requirements of this Part after initiating construction activities. Authorization to discharge occurs at the time that the NOI is submitted. The Department reserves the right to seek enforcement action for any unpermitted discharges or noncompliance that occurs between commencement of construction and discharge authorization.

B. Contents of the Notice of Intent (NOI) Form

The Notice of Intent (NOI) shall be submitted on a form provided by the Department. The NOI shall include, at a minimum, the following information.

1. Applicant information including the operator name, contact person, mailing address, and telephone number;
2. Project information including the project name, location, county, and municipality, if applicable;
3. The project type and proposed methods of permanent storm water management;
4. The latitude and longitude of the facility;

5. The name of the receiving waters or municipal separate storm water system;
6. The plan approval agency name;
7. The total land area and the estimated area to be disturbed; and
8. The estimated construction start and project completion dates.

C. Additional Information

When any person subject to this Part becomes aware that any relevant facts were omitted or submitted incorrectly on the NOI

D. Where to Submit

Persons intending to obtain permit coverage under this Part must submit an NOI Form to the following address:

The Department of Natural Resources and
Environmental Control
Division of Soil and Water Conservation
Sediment and Stormwater Program
89 Kings Highway Dover, DE 19901

E. Fees

The completed NOI Form must be accompanied by the appropriate fee required by the Department and established by the State regulations to be considered complete.

F. Failure to Notify

Persons who discharge storm water associated with construction activity, who fail to notify the Department of their intent to be covered under this Part, and who discharge to waters of the State without an individual NPDES permit, are in violation of 7 **Del.C.** Chapter 60 and the federal Clean Water Act and may be subject to penalties.

§ 9.1.02.4 MONITORING

A. Effluent Limitations

The Department has not established specific effluent limitations for storm water discharges associated with construction activity. Therefore, this Part establishes effluent limitations in terms of performance standards established with the Best Available Technology (BAT) for erosion and sediment control and storm water management. Compliance with BAT associated with the *Delaware Sediment and Stormwater Regulations*, and/or Sediment and Stormwater Program standards and specifications, guidance, and policy will constitute compliance with effluent limitations for storm water discharges associated with construction activity.

B. For the purposes of monitoring, persons subject to this Part must:

1. During construction, maintain at the site the approved Sediment and Stormwater Plan (see §9.1.02.5).

2. Conduct the following:
 - a. weekly maintenance inspections of erosion and sediment controls, and constructed storm water management measures; and
 - b. inspections of erosion and sediment controls and storm water management practices the next business day after a rainfall event that results in runoff.

C. Record Keeping

1. During construction, persons subject to this Part must maintain at the site, written reports of all inspections conducted in accordance with item B above, that include:
 - a. the date and time of the inspection;
 - b. the name(s) of the individual(s) who performed the inspection;
 - c. as assessment of the condition of erosion and sediment controls, and constructed storm water management measures;
 - d. a description of any erosion and sediment control and storm water management measures construction or implementation and maintenance performed on those measures; and
 - e. a description of the site's present phase of construction.
2. Persons subject to this Part 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 required Certified Construction Reviewer.

3. Reporting Requirements

Persons subject to this Part must retain the records described in §9.1.02.4, B(1), and §9.1.02.4.C and submit the information upon request to the Department at the following address:

The Department of Natural Resources and Environmental Control
Division of Soil and Water Conservation
Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

B. Additional Monitoring

The Secretary may provide written notification to any facility, requiring additional monitoring.

§ 9.1.02.5 SEDIMENT AND STORMWATER PLAN

- A. Persons covered by this Part shall develop, fully implement, and maintain at the site, the approved Sediment and Stormwater Plan (Plan) and any other records that are required in

accordance with 7 **Del.C.** Chapter 40 and the *Delaware Sediment and Stormwater Regulations*. 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 Delaware Erosion and Sediment Control Handbook standard and specification for Construction Site Pollution Prevention, shall be incorporated into the Plan for construction activity.

- B. The Plan shall be signed in accordance with this Part and kept at the facility.
- C. Persons covered by this Part shall retain records of all information required by the Plan for a minimum of five (5) years.
- D. Keeping the Plan Current
 - 1. Persons covered by this Part shall amend the Plan whenever:
 - a. There is a change in the design, construction, operation, or maintenance of erosion and sediment controls or storm water 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 storm water discharges associated with construction activity; or
 - c. To address any sources or potential sources of pollution identified as a result of a site inspection pursuant to §9.1.02.4.B.; or
 - d. Upon notification by the Department or the appropriate plan approval agency that the Plan does not adequately address the requirements of this Part. The notification from the Department or the appropriate plan approval agency shall list and describe the deficiencies of the Plan.
 - 2. Persons subject to §9.1.02.5.D.1.(a) shall amend the Plan and submit these amendments to the Department or appropriate plan approval agency and receive approval for the amendments prior to construction or modification of the erosion and sediment controls or storm water management measures on the site.
 - 3. Persons subject to Part §9.1.02.5.D.1.(b), (c), and (d) shall amend the Plan and submit these amendments to the Department or appropriate plan approval agency and receive approval for the amendments within 30 days of notification by the persons subject to this Part, inspector, Certified Construction Reviewer, Department, or appropriate plan approval agency that the current Plan is inadequate. The Department may grant additional time for amending the Plan. A written request for an extension shall be made by the person subject to this Part to the Department.
 - 4. Under the requirements of the *Delaware Sediment and Stormwater Law and Regulations*, the Plan remains valid for three (3) years following the date of approval. If construction continues beyond that three-year time period, an extension or renewal of the Plan may be granted by the Department or the appropriate plan approval agency. Unless the plan is extended or renewed, the plan is considered expired and any construction activity that occurs after the expiration date occurs in violation of the *Delaware Sediment and Stormwater Law and Regulations* and this Part. For the purposes of this Part, permit coverage is only valid within the three (3) year period as long as construction activity is taking place.
- C. Failure to Prepare or Amend Plan

In no event shall failure to complete or update a Plan in accordance with this Part relieve any persons covered under this Part 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 Part.

D. Sediment and Stormwater Plan Deadlines

The Plan must be approved, and the NOI Form submitted to 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 of the *Delaware Sediment and Stormwater Law and Regulations* and this Part.

§ 9.1.02.6 NON-STORM WATER DISCHARGES

- A. Discharges to a storm water system of anything other than storm water, except those discharges described in subparagraph (B) below, shall either be eliminated or in compliance with an appropriate individual NPDES permit.
- B. Industrial facilities that qualify for coverage under this Subsection may discharge the following non-storm water discharges, through outfalls identified in the Plan:
 - 1. discharges from fire fighting activities and fire hydrant flushings;
 - 2. uncontaminated potable water sources including waterline flushings;
 - 3. lawn watering and similar irrigation drainage;
 - 4. water from the routine external washing of buildings, conducted without the use of detergents or other chemicals;
 - 5. water from the routine washing of pavement conducted without the use of detergents or other chemicals and where spills or leaks or toxic or hazardous materials have not occurred (unless a spilled material has been removed);
 - 6. uncontaminated air conditioner condensate, compressor condensate, and condensate that externally forms on steam lines;
 - 7. water from foundation or footing drains where flows are not contaminated with pollutants (e.g. process materials, solvents, and other pollutants);
 - 8. springs and other uncontaminated ground water; and
 - 9. mist discharges which originate from cooling towers (as long as the discharge has been evaluated for contaminated chemicals used in the cooling tower and determined that the levels of such chemicals in discharges would not cause or contribute a violation of applicable water quality standards).

§ 9.1.02.7 EFFECTIVE DATE OF COVERAGE

- A. Commencement of Coverage

Coverage under this Part begins when the Department has been notified pursuant to the provisions outlined in §9.1.02.3 of this Part.

B. Termination of Coverage

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

1. All items and conditions of the Plan have been satisfied in accordance with the *Delaware Sediment and Stormwater Regulations*;
2. As-built documentation verifies that the permanent stormwater management measures have been constructed in accordance with the approved Plan and the *Delaware Sediment and Stormwater Regulations*, and
3. Final stabilization has been achieved