

NPDES Permits

A Citizen's Guide to Delaware's National Pollutant Discharge Elimination System Permitting Process

A Joint Project of

**The Environmental and Natural Resources Law Clinic at the Delaware Law
School and the Mid-Atlantic Environmental Law Center**



MID-ATLANTIC ENVIRONMENTAL LAW CENTER



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National Pollutant Discharge Elimination System
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by

The Mid-Atlantic Environmental Law Center
and the
Delaware Law School's
Environmental and Natural Resources Law Clinic

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PURPOSE OF THIS GUIDE

Congress set lofty goals for the country when it passed the Clean Water Act in 1972. Part of the Act's original goal was to eliminate the discharge of pollutants into navigable waters by 1985, 33 U.S.C. § 1251(a)(1).^{*} Forty years ago, only a third of the nation's waters were safe for fishing and swimming. Sewage and industrial wastes flowed largely unregulated into the rivers, lakes, and streams of the United States. One of the Clean Water Act's primary tools for attacking this problem is a system of permits known as the National Pollutant Discharge Elimination System, or "NPDES," Program. This program has been instrumental in reducing pollutant discharges and allowing our waterways to become clean and usable once again: today, fully two-thirds of the nation's surveyed waters are safe for fishing and swimming.

Built into the NPDES permitting process is the opportunity for members of the public to have a voice in that process. As you will see below, the NPDES permit program works by requiring that facilities that discharge pollutants into the water must do so pursuant to and in compliance with a NPDES permit. By participating in the permitting process, a member of the public can add his or her thoughts to the body of information that the Delaware Department of Natural Resources and Environmental Control must consider when writing and issuing a final permit.

This guide is written to help Delaware citizens participate effectively in the NPDES permitting process. It is designed to help you understand the permitting process, and to give you the tools to help you successfully participate in that process.

^{*}Federal statutes are found in the United States Code (U.S.C.), federal regulations are found in the Code of Federal Regulations (C.F.R.), Delaware state statutes are found in the Delaware Code Annotated (Del. Code Ann.) and Delaware state regulations are found in the Delaware Administrative Code (Del. Admin. Code). These abbreviations will be used throughout the guide to identify the specific provisions where legal requirements can be found.

KEY TERMS AND DEFINITIONS

Clean Water Act	The federal statute that regulates the discharge of pollutants from a point source into navigable waters, 33 U.S.C. §§ 1251 <i>et seq.</i>
Comment and Response Document	A document issued by the Delaware Department of Natural Resources and Environmental Control that summarizes and responds to all of the comments made during the public comment period, 7 Del. Admin. Code § 7201-6.35.4
Effluent Limitation	As defined in the Clean Water Act, “any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance,” 33 U.S.C. § 1362(11)
Delaware Department of Natural Resources and Environmental Control (DNREC)	The state agency that has been delegated authority by the U.S. Environmental Protection Agency to regulate pollutants under the Clean Water Act and issue and enforce NPDES permits
Discharge Monitoring Report (DMR)	A mandatory monthly report of a facility’s effluent discharge samples to ensure that it is in compliance with its NPDES permit, 40 C.F.R. § 122.48, 7 Del. Admin. Code § 7201-6.42
Draft Permit	A draft of a NPDES permit that is available for public comment prior to permit finalization, 7 Del. Admin. Code § 7201-6.30.1
Environmental Protection Agency (EPA)	The federal agency that regulates pollutants under the Clean Water Act, issues and enforces NPDES permits, and delegates permitting authority to the states

Final Permit	The final version of a facility’s NPDES permit, which requires it to comply with the federal Clean Water Act and state regulations, 7 Del. Admin. Code § 7201-6.36
National Pollutant Discharge Elimination System (“NPDES”) Permit	A permit that regulates the discharge of pollutants from a point source into navigable waters, 33 U.S.C. § 1342, 7 Del. Admin. Code § 7201-6.1.2
Permit Application	A NPDES permit application that must be submitted by any point source that wishes to discharge pollutants into a navigable water, 40 C.F.R. § 122.21, 7 Del. Admin. Code § 7201-6.10.1
Point Source	As defined by the Clean Water Act, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture,” 33 U.S.C. § 1362(14)
Pollutant	As defined by the Clean Water Act, “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) ‘sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces’ within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is

approved by authority of the State in which the well is located,” 33 U.S.C. § 1362(6)

Public Comment Period

A 30-day public comment period during which DNREC accepts written comments from the public on a permit action, 7 Del. Admin. Code § 7201-6.30.3

Violation

An exceedance of a permit holder’s effluent limitations or a failure of a permittee to comply with monitoring and reporting requirements, or other conditions specified in the permit, 33 U.S.C. § 1319

NPDES PERMIT PROGRAM

THE BASICS

Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of a pollutant from a point source into navigable waters, “[e]xcept as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of [the Clean Water Act].” Thus, if a discharge from a point source is not in compliance with any of these sections, it violates the Clean Water Act and the person discharging the pollutant is liable for that violation. The exception at 33 U.S.C. § 1342 — section 402 of the Clean Water Act — is the focus of this guide.

Section 402 creates the **National Pollutant Discharge Elimination System** (“NPDES”) permit program. A person whose discharge complies with the terms of a NPDES permit falls within the exception of section 301 and, therefore, is not prohibited under the Act. The NPDES permit program is central to regulating the discharge of pollutants in compliance with the Clean Water Act.

The Clean Water Act authorizes the Environmental Protection Agency (“EPA”) to administer the NPDES program. However, the EPA has delegated this authority to many of the states’ environmental protection agencies, as required by 33 U.S.C. § 1342(b), including the Delaware Department of Natural Resources and Environmental Control (“DNREC” or “Department” or “agency”). Through this delegation, state agencies, such as DNREC, are given the authority to regulate and enforce certain programs under the Clean Water Act. The EPA can still take action against a facility that is in violation of its NPDES permit, even if the state has been delegated the authority to administer the program, 33 U.S.C. § 1319. Additionally, if the EPA finds that the state’s administration of the Clean Water Act is inadequate, it can remove the state’s authority through withdrawal, or de-delegation, 33 U.S.C. § 1342.

The EPA has issued regulations, contained in 40 C.F.R. §§ 124 *et seq.*, that apply to state NPDES programs. These regulations represent the minimum protections the state must provide; however, each state is free to adopt more protective standards should it deem them appropriate.

In 1974, Delaware was delegated authority over the NPDES individual permit program and in 1992, the state was delegated authority over the NPDES general permit program. The Delaware state legislature has not enacted a statute that parallels the federal Clean Water Act, but, around the same time as delegation, DNREC promulgated the state NPDES program through regulations. These regulations can be found at 7 Del. Admin. Code §§ 7201-1.0, *et seq.* The state regulations largely align with the federal regulations; however, when the state regulations do vary, the differences will be highlighted in this guide.

NPDES permits regulate the discharge of pollutants from a point source into a navigable water. The permits last for five years and the facility must apply for renewal of the permit at least 180 days before the expiration of its current permit, 7 Del. Admin. Code § 7201-6.14.3.3. The primary pollution control mechanisms in the NPDES program are called the effluent limitation standards (sometimes referred to as “permit limits”), which limit the amount of each pollutant a point source may discharge. NPDES permits also contain monitoring and reporting requirements. Most NPDES permits are approved unless the Department has determined that the water body that a facility wants to discharge into cannot handle anymore pollutants; however, the effluent limitations within each permit are meant to ensure that the water body is protected from excessive pollution. The determination of how much pollution a water body can handle is further discussed in the *Effluent Limitations* section later in this guide.

If you would like to take a look at the state regulations, they are available at:

<http://regulations.delaware.gov/AdminCode/title7/7000/7200/7201.shtml#TopOfPage>

Federal Definitions

There are a lot of terms used within the NPDES permit program that are defined by the Clean Water Act. Here are some of the major terms you need to be familiar with:

Discharge: “(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” 33 U.S.C. § 1362(12).

Point Source: “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.” 33 U.S.C. § 1362(14).

Navigable Water: “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

Pollutant: “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) ‘sewage from vessels or a discharge incidental to the normal

operation of a vessel of the Armed Forces' within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources." 33 U.S.C. § 1362(6).

Effluent Limitation: "any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance." 33 U.S.C. § 1362(11).

The definition of each term is not as straight forward as one would think. For example: What is a discernible, confined and discrete conveyance? And are not all waters considered a "water of the United States"? The federal courts have, over many cases, discussed the meaning of these terms and are still wrestling with what Congress meant by each.

The first of these definitional puzzles involves "discharge of a pollutant"—which under section 301 is illegal unless a statutory exception (like the NPDES permits in section 402) applies. At first glance, this language suggests that *any* discharge qualifies. However, the definition of "discharge" listed above indicates that it only applies to an addition of a pollutant "from any point source." This requires you to look at the definition for point source, which, although thorough, has its own vague language.

Another of these puzzles involves "waters of the United States." Not every water body qualifies. For example, the United States Supreme Court in *Rapanos v. United States*, 547 U.S. 715 (2006), held that wetlands must have "a continuous surface connection" to "relatively permanent, standing or continuously flowing bodies of water" connected to "traditional interstate navigable waters" or have a "significant nexus between the wetlands in question and navigable waters in the traditional sense. . . ." in order to be a "water of the United States." Even experts are unsure of exactly what the U.S. Supreme Court meant by this explanation.

Often, the definitions need additional clarification, which leads to confusion and litigation. Courts have also wrestled with the definition of "waters of the United States". In 2014, the EPA released a new proposed rule to more precisely define those waters that are protected under the Clean Water Act. This rule was finalized in May 2015. Currently, the Clean Water Rule is stayed due to litigation challenging the regulation.

For more information on the new “Water Rule” see:
<http://www2.epa.gov/cleanwaterrule>.

The important thing to remember is this basic idea: a facility must have a permit before sending harmful materials into the water via a point source or it will be in violation of both federal and state law and subject to an enforcement action.

State Definitions

Delaware law also defines terms that are important to NPDES permits:

Pollutant: “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil & product chemicals, and industrial, municipal and agricultural waste discharged into water” Del. Code Ann. tit. 7 § 6002(38), 7 Del. Admin. Code § 7201-2.0.

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

- Waters which are subject to the ebb & flow of the tide, including but not limited to, estuaries, bays, and the Atlantic Ocean;
- All interstate waters, including interstate wetlands;
- All 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;
- All impoundments of waters otherwise defined as waters of the State under this definition;
- Wetlands adjacent to waters (other than waters that are themselves wetlands).” 7 Del. Admin. Code § 7201-2.0.

Water Pollution: “human-made or human-induced alteration of the chemical, physical, biological or radiological integrity of water.” Del. Code Ann. tit. 7 § 6002(67), 7 Del. Admin. Code § 7201-2.0.

As you can see, Delaware’s definition of “Waters of the State” is much more detailed than the federal definition of “Waters of the United States.” This definition is in the state regulations, which means that it was created by DNREC, not the state legislature. As of the date of this publication, there have been no cases discussing the state definition, which demonstrates how a more detailed explanation can cause less confusion by both

the regulated and the regulators and leads to less interpretation by the courts through litigation.

Regulated Pollutants

As noted, “pollutant” under the Clean Water Act not only encompasses those toxic chemicals and garbage that one would associate with the term, but also heat, rock, sand, and dirt. The pollutants that are regulated in each permit depends on the point source that holds the permit. Each point source’s discharge is its own mixture of different chemicals, metals, and debris, and the impacts from that discharge might vary depending on the water into which it is discharging. For example, a discharge of heated water into a small stream that is designated for Cold Water Fish can have serious impacts on the fish in that stream, while the same amount of heated water discharged into a large river like the Delaware River might not. Each permit will have a list of pollutants that are regulated and monitored for each outflow of pollutants from the facility. Some of the most common regulated pollutants are: *Total Suspended Solids, Chlorine, pH, Temperature, Metals, Fecal Coliform (E.coli), Nitrogen, Phosphorus, Dissolved Oxygen, and Biochemical Oxygen Demand.*

TYPES OF PERMITS

General Permits

State agencies draft general permits that apply to all facilities in a specific industry or that apply to specific activities, such as industrial stormwater runoff. General permits are used when the agency has determined that, due to the nature of the type of facility or activity, standard effluent limitations, monitoring, and reporting requirements are adequate for an entire industry instead of needing unique requirements for each application. Currently, there are five (5) **General Permits** in Delaware, as listed below. In Delaware, general permits are regulated under the General Permit Program, 7 Del. Admin. Code § 7201-9.0. These regulations outline all of the requirements for general permits. The Department often falls behind in renewing them when their expiration dates pass. It is important to monitor general permit renewals and contact DNREC when there is a particular permit you have some concern about.

It should also be noted that when a new general permit is issued by DNREC, EPA must be given 90 days to review that permit. The EPA will comment, object, and make recommendations, 40 C.F.R. § 123.44(a)(2). General permits issued by the state must comply with the Clean Water Act and corresponding regulations, including the “General Permits” provision in the federal regulations, 40 C.F.R. § 122.28.

General Permits

- Stormwater Construction
- Pesticide Application
- General Industrial Stormwater
- Municipal Separate Stormwater System (MS4)
- Concentrated Animal Feeding Operations (CAFO) – Poultry (No Land Application)

Individual Permits

If a facility or activity does not fall under the General Permit Program, or DNREC determines a general permit is not appropriate for a particular facility, it must apply for an **Individual Permit**. These are designed specifically for each facility and have effluent limitations, monitoring, and reporting requirements tailored to the applicant. See Appendix pg. xxvii for an example of an individual NPDES permit.

There are opportunities for public involvement when DNREC decides whether to issue a new permit. This is the case for both an individual permit and a general permit, and the procedures for each are all but identical to each other.

Major and Non-Major Dischargers

Facilities are broken up into two main categories: major dischargers and non-major dischargers. For municipalities, a major discharger is one that has a flow rate of one (1) million gallons per day or greater (EPA Permit Compliance System Quarterly Noncompliance Report, Appendix A, 1988). For industrial facilities, Delaware does not have specific criteria that defines a “major discharger”. Instead, when DNREC reviews each permit application, it uses the EPA’s *Non-Municipal Permit Ratings System* (available online at http://cfpub.epa.gov/npdes/docs.cfm?view=allprog&program_id=14&sort=name) to determine whether the facility is a major discharger. This identification should be included in the public notice of the permit application, or the draft permit. The distinction will affect whether a fact sheet is issued with the draft permit and possibly some standards and conditions within the permit. However, regardless of whether the facility is designated as a major discharger or a non-major discharger on its permit — a discharge by a facility in violation of the permit under which it operates constitutes a violation.

Regulating Concentrated Animal Feeding Operations

Delaware has approximately 450 Concentrated Animal Feeding Operations, or CAFOs. Farms that hold a certain number of animals, as determined by the EPA under 40 C.F.R. § 122.23, are considered CAFOs and are regulated under the Clean Water Act, which means they must have a NPDES permit. CAFOs are the primary sources of nitrogen and phosphorus, two nutrients that are currently creating serious problems for aquatic life in the Chesapeake Bay.

Currently only one (1) CAFO facility in Delaware has a NPDES individual permit. The reason for this is that DNREC is developing several general permits that would encompass CAFOs. Without NPDES permits, CAFOs cannot be regulated properly and the lack of permits for these types of facilities creates a problem for the state's waterways.

For CAFO General Permits, each facility must submit a Notice of Intent, or NOI and a Nutrient Management Plan (NMP). Both documents are published for public comment. This is the only type of General Permit that requires such public participation. A checklist of what to look for in an NOI and NMP for the new General Permit for Large and Medium CAFO Poultry Operations Without Land Application can be found in the Appendix at pg. xvi.

EFFLUENT LIMITATIONS

One of the major parts of a NPDES permit is the effluent limitations, also known as parameters, or "permit limits." Effluent limitations are quantitative limits on how much of a particular pollutant a point source can discharge. These limitations are specified in each NPDES permit. Effluent limitations come in two forms: water quality based standard or technology based standards.

Water Quality Standards

Each state must create water quality standards for the state's waterways. Standards must be reviewed at least every three years, 33 U.S.C. § 1313(c). In order to create these standards, a state must first designate a waters "use" (on the following page is a list of all use designations in Delaware, 7 Del. Admin. Code § 7401-3.0). The use designation given to the water forms the basis upon which DNREC develops its water quality criteria. Once DNREC has designated a use for a waterway it may determine that the waterway is "impaired," or more polluted than DNREC thinks is proper for that use.

When DNREC finds that a water is impaired by a pollutant or pollutants, it calculates the Total Maximum Daily Load (“TMDL”) of each pollutant the waterway can handle while maintaining, or returning to, levels appropriate to its use. The TMDL is then divided such that DNREC can inform each facility discharging into that water the maximum amount of each pollutant it may discharge. The water quality based requirements for Delaware can be found at 7 Del. Admin. Code § 7201-8.0.

Technology Based Standards

A Technology Based Standard sets a particular quantity as a minimum amount of treatment for a pollutant – expressed either as a mass (pounds or kilograms per day) or a concentration (an amount per quantity of water, 10 milligrams per liter, for example). These standards use available control technologies to minimize the amount of pollutant that is discharged. Facilities have discretion to use any technologies to meet the limit. The technology based requirements for Delaware can be found at 7 Del. Admin. Code § 7201-7.0.

Delaware Use Designations

7 Del. Admin. Code § 7401-3.0

- Public Water Supply Source
- Industrial Water Supply
- Primary Contact Recreation
- Secondary Contact Recreation
- Fish, Aquatic Life & Wildlife (includes shellfish propagation)
- Cold Water Fish (put and take)
- Agriculture Water Supply
- ERES Waters (Waters of exceptional recreational or ecological significance)

Anti-degradation Analysis

A water’s use designation is also important for DNREC’s anti-degradation analysis. The Clean Water Act has an anti-degradation policy to ensure that the quality of our water ways only improves and does not degrade any further, 40 C.F.R. § 131.12.

The anti-degradation policy requires the maintenance and protection of the existing uses and water quality conditions.

Under the Clean Water Act, Delaware must have a state anti-degradation policy and implement such policy through water quality management practices, 40 C.F.R. § 131.12(a). Pursuant to Delaware regulations, 7 Del. Admin. Code § 7401-5.1, existing uses “shall be maintained and protected.” Additional protection is required for Exceptional Recreational or Ecological Significance Waters (ERES Waters), 7 Del. Admin. Code § 7401-5.6.1.1. Furthermore, DNREC must take “appropriate action to cause the systematic control, reduction, or removal of existing pollution sources, and the diversion of new pollution sources, away from ERES waters,” 7 Del. Admin. Code § 7401-5.6.1.2. DNREC must be mindful of this policy when it drafts NPDES permits for new and modified sources.

Anti-Backsliding Provision

The Clean Water Act also contains an anti-backsliding provision, 33 U.S.C. § 1342(o), which prohibits, with a few exceptions, a permit to have less stringent effluent limitations than the previous permit. Therefore, a facility should not be allowed to discharge more than it did in the past.

MONITORING REQUIREMENTS

All facilities are required to monitor their effluent discharges to ensure that they are in compliance with their permit, 40 C.F.R. § 122.41(j), 7 Del. Admin. Code § 7201-6.40. Below is an example of standard language for monitoring requirements in a NPDES permit:

“Samples and measurements taken for the purposes of monitoring shall be representative of the monitored activity.” . . . “[A]ll records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records), copies of all reports required by this permit, and records of all data used to complete the application for this permit shall be retained by the permittee for three (3) years from the date of the sample measurement, report, or application.”

REPORTING REQUIREMENTS

Once the facility has its discharge sampling results, it must report the data to DNREC, 40 C.F.R. § 122.41(l); 7 Del. Admin. Code § 7201-6.16.1.2.2.3. Facilities must complete “Discharge Monitoring Reports,” also known as DMRs, and submit them to

DNREC every month, as illustrated by this standard language from a NPDES permit -- “[A] properly completed DMR must be received by the following addresses within 28 days after the end of each monthly report period” DMRs consist of the sampling data collected by the facility as required by its NPDES permit.

Sometimes, facilities only have to report their effluent data, instead of meeting specific limitations set by their permit. However, for the effluent limitations that do exist, reported sampling values must be within the parameters of the facility’s permit or they are violating their NPDES permit, the Clean Water Act, and Delaware Regulations.

In Delaware, DMRs are not available to the public online. Therefore, the best way to check on reported information is through the EPA’s Enforcement and Compliance History Online, or ECHO, available at: <http://www.echo.epa.gov>. You can search this database for facilities with NPDES permits. Each facility page will include information on the facility’s permit, location, compliance history, environmental conditions, pollutants, and demographic profile. You will be able to click on a permit number for more detailed information on the facility’s permit history, outfalls, effluent limitations, violations, and inspections. See Appendix pg. x for step-by-step instructions on how to navigate this website.

Failure to correctly monitor and report is also a violation of the NPDES permit and is actionable by either DNREC or interested citizens, because they are also considered effluent limitations (see **Key Terms and Definitions** section, “Effluent Limitations” on page 5). Often, reporting violations accompany discharge violations, however, this is not always the case. Without a facility submitting its DMRs, how can a citizen know if that facility is exceeding its effluent limitations?

Some courts have questioned a citizen’s ability to sue a facility on the sole basis of failure to report its effluent limitations as required by its NPDES permit. As we will discuss later in this guide, a citizen or group needs “standing” to bring suit under the Clean Water Act. This requires that the plaintiff show that it has been injured in some way by the defendant’s actions. Injury for lack of information is harder to prove. In *Public Interest Research Group of NJ v. Magnesium Elektron, Inc.*, 123 F.3d 111, 124 (3rd Cir. 1997), the federal Third Circuit Court of Appeals (which hears cases for Delaware, New Jersey, and Pennsylvania) left the door open for citizens to bring suit solely for reporting violations, stating, “we think that it is at least possible that some plaintiff in the future might allege a specific and concrete injury arising from a defendant’s failure to monitor and report its effluent discharges.”

However, litigation is not the only way to hold facilities accountable for reporting violations. Citizens can also send letters to DNREC regarding the reporting violations, send letters to the facilities about the reporting violations, or when a facility is renewing its permit, include the reporting violations in a public comment.

HOW NPDES PERMITS GET ISSUED

Application

The first step for an individual who wishes to discharge from a point source in Delaware is to file a **Permit Application**. Under 7 Del. Admin. Code § 7201-6.30.1, notice of an individual permit application will be published in “a newspaper of general circulation in the county, city or town in which the discharge is located and in a daily newspaper of general circulation throughout the state” (the process for General permits is briefly discussed later in the guide). Renewal applications must be filed at least 180 days prior to the expiration of the current permit, under 7 Del. Admin. Code § 7201-6.50.2.

A Note About Renewal Permits

Often, permits are “administratively continued” by DNREC beyond their expiration date. This means that if an applicant submits a complete application at least 180 days prior to the expiration of its current permit, its current permit will remain effective while DNREC reviews and issues the renewal permit, 7 Del. Admin Code § 7201-6.14.3.3. General Permits can also be administratively continued, 7 Del. Admin Code § 7201-9.2.2.7. DNREC, along with environmental agencies all over the country, has a backlog of renewal NPDES permit applications and general permits.

Tentative Determination

When a permit application is received, the Secretary of DNREC will make a *Tentative Determination* whether to prepare a draft permit or deny the application, 7 Del. Admin. Code § 7201-6.12. This determination will be made prior to the public notice of the application. Tentative determinations will be made regarding permit conditions, discharge or effluent limitations and standards, schedules of compliance, monitoring requirements, and if applicable, any special conditions, 7 Del. Admin. Code §§ 7201-6.12.1.1-1.5.

Draft Permit and Public Comment Period

After the Application is deemed to be complete by DNREC, and the Secretary has made the tentative determination to move forward, the agency creates a **Draft Permit** for the discharger. When DNREC has prepared a new draft permit — either the initial draft, or a draft after a major revision to the permit — it posts public notice in the same

newspapers as the notice for the permit application, 7 Del. Admin. Code § 7201-6.30.1. This begins the 30-day public comment period under section 6.30.3 during which DNREC accepts written comments from the public.

DNREC will also prepare a *fact sheet* for any major discharger, listing information about the draft permit and the “major facts and the significant factual, legal, methodological, and policy questions,” considered by the agency, 7 Del. Admin. Code § 7201- 6.18.1. The fact sheet will only be sent to the permit applicant and parties who request it. The notice of the draft permit will include the address and telephone number of the office where you can request a copy of the *fact sheet*, 7 Del. Admin. Code § 7201-6.30.4.6.

If DNREC does not issue a fact sheet with the permit, it will issue a *Statement of Basis*, 7 Del. Admin. Code § 7201-6.19.1. The statement of basis will explain the conditions of the permit or the reasons for denying or terminating the permit, 7 Del. Admin. Code § 7201-6.19.2. You may also request to receive the statement of basis.

Fact Sheets

Pursuant to 7 Del. Admin. Code § 7201-6.18.2, the **Fact Sheet** will include: (1) A brief description of the type of facility or activity being permitted; (2) A quantitative description of the discharge proposed by the facility; (3) A brief explanation of statutory and regulatory requirements on which the permit requirements are based; (4) An explanation of the derivation of specific effluent limitations and conditions; (5) A sketch or detailed description of the location of the discharge; (5) Reasons against requested variances or modifications; (6) A discussion of intake pollutants, if appropriate; (7) Description of permit procedures; (8) Dates of public comment period; (9) Hearing request procedures and any other procedures that the public may participate in; and (10) Contact information for additional information.

See Appendix pg. xiv for an example of a General Permit Fact Sheet

Hearings

Under 7 Del. Admin. Code § 7201-6.33.1, during the public comment period you and any group of persons may make a request for a public hearing. The public hearing, if there is one, is an opportunity to make your comments stand out by putting a face and a voice — ideally, several faces and voices — to your message. Public hearings are formal

and structured. These hearings give the public an opportunity to present oral and/or written comments for the record.

Remember, although you have the right to request a public hearing, your request does not always have to be granted. DNREC is only required to hold a public hearing if you make a “meritorious request” for a public hearing, 7 Del. Admin. Code § 7201-6.33.1. A “meritorious request” is one that “exhibits a familiarity with the application and a reasoned statement of the permit’s probable impact.” You must make your request in writing and state the issues that will be raised at the hearing. Therefore, you have the best chance of your request being granted if your request is specific and thoughtful. Try to show “familiarity with the application” (this can be done by making references to things in the application) and discuss the “permit’s probable impact” (usually in terms of the adverse environmental impacts that you are concerned about).

DNREC also has the discretion to hold a hearing if it finds “significant public interest,” or it feels that a hearing “might clarify one or more issues involved in the permit decision,” 7 Del. Admin. Code § 7201-6.33.2.

Final Permit

Finally, DNREC will take final agency action and either issue or deny the permit. After the comment period and public hearing, if any, the agency will make any necessary changes to the permit. If the changes are relatively minor, DNREC will issue a **Final Permit**. If the changes are major, the Secretary, at his or her discretion, may produce a

Schedules of Compliance

7 Del. Admin. Code § 7201-6.17.1

Sometimes an agency will include a “schedule of compliance” in a permit. This normally provides the permittee with a time line in which to meet certain conditions of the permit when it is unable to immediately comply with all of the standards and limitations when the permit is issued. Schedules of compliance often require the permittee to send in its plan for compliance and reports of progress.

second draft permit and either reopen or extend the comment period, 7 Del. Admin. Code § 7201-6.35.5. Only the sections of the permit that have been modified or added will be up for comment, 7 Del. Admin. Code § 7201-6.35.5. If the agency takes final action, comments and DNREC’s response to the comments will be available for review, as discussed below. If there is no appeal, this is the end of the process, and the permit goes into effect.

Comment and Response Document

When DNREC makes its final permit decision, it will also issue a **Comment and Response Document** that will respond to all of the comments made during the public comment

period, including “which provisions of the draft permit have been changed in the final permit, and the reason for the change, or, if the requested change is not made, the reason for denying the change,” 7 Del. Admin. Code § 7201-6.35.4. This document is available to the public along with the notice of the Final Permit, 7 Del. Admin. Code § 7201-6.35.4. However, notice will only go to the applicant, those who submitted comments, and those who requested notice of the final permit decision, 7 Del. Admin. Code § 7201-6.36.2. So, it is important that if you did not submit a comment, you request notice of the permit decision. You can use the comment and response document to help you with appealing an agency decision, if you choose to do so.

Appeals of DNREC Actions

When DNREC makes its permit decision, you may not agree with the result and you may wish to appeal the decision. Your appeal may be on the facts or legal aspects of the permit decision, but in either case must be clear and specific.

An adjudicatory hearing is the first step in the appeal process. Appeals of a decision by the Secretary, including the issuance of a final NPDES permit, are made to the Environmental Appeals Board (“EAB”). You must file for an appeal within twenty (20) days after notice of the Secretary’s decision or publication of the final permit, Del. Code Ann. tit. 7 § 6008(a). The EAB will then hold a public hearing, Del. Code Ann. tit. 7 § 6008(b). Notice of the hearing must be given at least 20 days before the hearing is scheduled, Del. Code Ann. tit. 29 § 10131(d). You do not have to have counsel with you to appear in front of the EAB, but it is recommended due to the complicated nature of NPDES permits, Del. Code Ann. tit. 7 § 6008(b). You may also bring in additional evidence in support of your appeal, Del. Code Ann. tit. 7 § 6008(b). In order to overturn the Secretary’s decision on a permit, you must “show that the Secretary’s decision is not supported by the evidence on the record before the Board,” Del. Code Ann. tit. 7 § 6008(b). This can be a hard burden to overcome.

Filing an appeal does not mean the permit decision will be stayed, or put on hold – in other words, the facility can discharge according to its issued NPDES permit while your appeal is pending. In order to enjoin a facility from operating under a newly issued NPDES permit, the appellant must also apply for a stay of the permit pending the appeal “for good cause” to either the Secretary or the Court of Chancery, Del. Code Ann. tit. 7 § 6008(f). In order to get an injunction, you must show “a reasonable probability of success on the merits and the likelihood of irreparable injury absent the injunction,” *Formosa Plastics Corp. v. Wilson*, 504 A.2d 1083, 1087 (Del. 1986). This can be another high bar for appellants to overcome.

Standing to Appeal a DNREC Action

In order to appeal a permit decision to the EAB you must show that you have suffered an “injury” as a result of the decision. This is known as “standing” to appeal the decision. Under Del. Code Ann. tit. 7§ 6008, only persons or organizations who have been “substantially affected” by a permit decision may file an appeal. In the case *Oceanport Industries, v. Wilmington Stevedores*, 636 A.2d 892 (Del. 1994), the Delaware Supreme Court adopted the federal standard for standing, as established by the Supreme Court of the United States in *Assoc. of Data Processing Serv. Org., Inc. v. Camp*, 397 U.S. 150 (1970). To prove standing, appellant must (1) show injury-in-fact, and (2) show that “such injury is within the zone of interest to be protected by the statute.” *Oceanport Industries*, 636 A.2d at 904; *Data Processing*, 397 U.S. at 153-54.

In order to show “**injury-in-fact**,” appellant must meet the following three-part test:

- The injury must be “(a) concrete and particularized, and (b) actual or imminent, not ‘conjectural’ or ‘hypothetical’”;
- The injury must be “fairly traceable” to the permit decision; and
- “[I]t must be ‘likely’ as opposed to merely ‘speculative,’ that the injury will be redressed by a favorable decision” by the EAB. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Oceanport Industries*, 636 A.2d at 904.

As for the **zone of interest** prong of the standing test, the Delaware Supreme Court held that the goal of the Delaware Environmental Control statute is the “protection of the environment,” *Oceanport Industries*, 636 A.2d at 906. Therefore, so long as you allege an environmental injury, you will be within the zone of interest of the Environmental Control statute. On the other hand, Appellants motivated only by an economic interest, such as competition, will not fall within the zone of interest of the statute and will not have standing to bring an appeal of a permit.

For organizations that are appealing a permit decision, there are a few more hurdles to overcome in order to show standing. Delaware has also adopted the federal **organizational standing test**, which requires that: “1) the interests to be protected by the suit are germane to the organization's purpose; and 2) neither the claim asserted nor the relief requested requires the participation of individual members; and 3) the organization's members would otherwise have standing.” *Oceanport Industries*, 636 A.2d at 902; *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 342 (1977). However, an organization that has “standing in its own right where it has alleged some injury to its own interest,” does not need to meet this organizational standing requirement. *Oceanport Industries*, 636 A.2d at 903.

Appeals of EAB Decisions to Superior Court

EAB final decisions may be appealed to the appropriate Delaware Superior Court by filing a petition. The Superior Court is a Delaware court of law (unlike the EAB, which handles administrative adjudications). Appeals to Superior Court must be filed within thirty days of the EAB's decision, Del. Code Ann. tit. 7 § 6009(a). The petition must allege that the Secretary's permit decision "is illegal, in whole or in part," and must "specif[y] the ground of the illegality," Del. Code Ann. tit. 7 § 6009(a). The Superior Court will not set aside the EAB's decision "unless the court determines that the record contain no substantial evidence that would reasonably support the findings," Del. Code Ann. tit. 7 § 6009(b). "Substantial evidence" requires you to show enough evidence that a reasonable person would find it adequate to support your conclusion. *Oceanport Industries, v. Wilmington Stevedores*, 636 A.2d at 899.

Unlike the appeal of DNREC's decision, the issues raised in an appeal of the EAB's decision to the Superior Court are limited to those, "on the record," which means only the issues that were raised before the EAB and evidence is strictly limited to the record made at the EAB. Also, appeal of the EAB's decision will not automatically stay the EAB's decision, which means that it will not prevent that decision from becoming effective pending review, Del. Code Ann. tit. 7 § 6009(c). However, you can apply to the EAB or the Court of Chancery to stay the action until the Superior Court has made a decision on the appeal, Del. Code Ann. tit. 7 § 6009(c).

PUBLIC PARTICIPATION

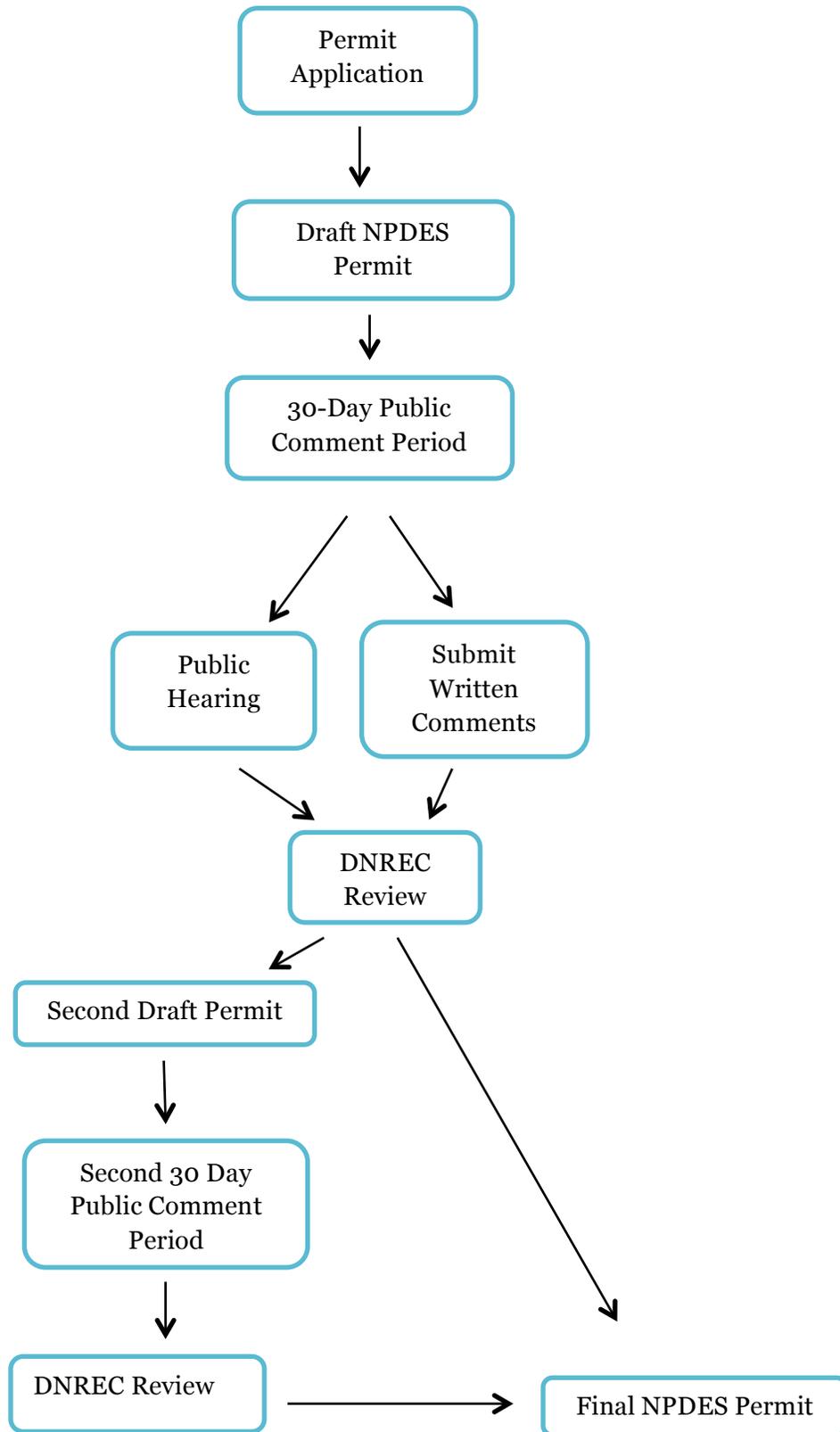
In the first section of the Clean Water Act, Congress specifically called for the public to participate in the decision-making process:

“Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be *provided for, encouraged, and assisted by* the Administrator and the States.” 33 U.S.C. § 1251(e) (emphasis added).

With all of the laws, regulations, and permits regulating the quality of our water, government agencies are unable to fully monitor and enforce all of the activity that falls under the Clean Water Act. Whether citizens comment on regulations, monitor compliance with permit provisions, or bring suit against violating facilities, the role of the public is essential to the preservation and enhancement of our environment.

Each person who seeks to participate in the decision-making process does so for his or her own reasons. You may want to stop or delay a permit; ensure that a permit meets minimum legal standards; ensure that issuance or denial of a permit is consistent with the department’s mission or policies; confirm that any compliance issues that the facility had in the past are addressed in the new permit, or any other reason that is important to you or your group or organization. If, in the final decision, one of those things does not happen in response to your initial involvement with the process, and you think it should have, then you may have grounds for appealing DNREC’s decision.

OPPORTUNITIES TO PARTICIPATE



Permit Application

The best time to influence a permit is when it is in its earliest stages -- after the application is submitted, but before DNREC issues a draft permit. Public notice of a completed application for an individual NPDES permit will be published in “a newspaper of general circulation in the county, city or town in which the discharge is located and in a daily newspaper of general circulation throughout the state,” 7 Del. Admin. Code § 7201-6.30.1. The most recent public notice can be found on DNREC’s website at: <http://www.dnrec.delaware.gov/Lists/Public%20Notices/AllItems.aspx>. You may also sign up for an email mailing list that will automatically send you all of the public notices that DNREC publishes. This is the easiest way to monitor permit applications, draft permits, hearings, and more.

To sign up to receive public notices, go to:

<http://www.dnrec.delaware.gov/Pages/dnrecLists.aspx>. Here you can click on “DNREC Public Notice” and send a blank email to the address provided.

The public comment period does not officially begin until there is a draft permit, but you should begin preparing to comment when the applicant first files — it may be as few as 180 days from that point before the applicant will be operating under this permit. You may be able to request copies of applications, internal working drafts of the permit, prior permits to compare to the eventual draft, and other useful documents and information through a Freedom of Information Act Request, discussed in the **How to Participate** section of this guide. If the new permit is a general permit, there is no requirement of public notice until DNREC has produced a draft.

Public Comment Period

The public notice will instruct you where to send comments, and any other directions particular to the permit under consideration, including how to request a hearing, 7 Del. Admin. Code § 7201-6.30. If you have not already requested to be notified of permit applications, public notice can be found in state and local newspapers (where the discharge is located), 7 Del. Admin. Code § 7201-6.30.1. The public comment period will last 30 days, 7 Del. Admin. Code § 7201-§ 6.30.3.

If you send the Secretary a request to do so (as explained above), he or she will add you to a mailing list, which will allow you to receive the notices of all NPDES permit applications. This will save you the time and energy of constantly looking through newspapers and contacting DNREC to see if there have been notices published.

Public Hearing

If you requested a public hearing, or sent in public comments on the draft permit, you will be notified of a public hearing, 7 Del. Admin. Code § 7201-6.34.1.3. If you did not submit any comments, or are not on the mailing list to receive public notices, be sure to look in the state newspapers and local newspapers in the area where the discharge is located for public notice of a hearing. As covered in “How NPDES Permits Get Issued,” public notice of the hearing will include the telephone number and address of the office from which you may request additional information.

The public hearing is a good opportunity to meet agency employees and other officials connected to the decision making process, and you may be able to lay the groundwork for future communication.

You can watch a video of a public hearing by clicking on the following link: <http://pittsburghfoundation.org/node/33931>. The permit in question is not a NPDES permit, and the hearing is located in Pennsylvania, but the process and the concerns of the parties are similar, and if you have never attended a public hearing this will prepare you for what to expect and allow you to see what works and what does not when presenting comments.

A Note on Public Participation Concerning General Permits

The above permit process is specific to individual permits. General permits have a slightly different process. If a general permit has already been issued by DNREC then the applicant must file a Notice of Intent to discharge (NOI) with DNREC under 7 Del. Admin. Code § 7201-9.0. DNREC is not required to publish notice of the NOI for public review and comment, except for Concentrated Animal Feeding Operation (CAFO) permits.

General permits are also only valid for five years, 7 Del. Admin. Code § 7201-9.1.8.2. The law requires the permits to be up for public comment when a draft permit is issued, which will happen when a general permit is either created or renewed, 40 C.F.R. § 122.28(a)(ii). No matter when or if public notice is required for a discharge under a general permit, there is very limited opportunity for public involvement in the renewal process (likely because the public is invited to participate in the initial rulemaking which

HOW TO PARTICIPATE

Public participation in the NPDES permitting process is relatively straightforward; however truly effective participation requires at least adequate preparation, sufficient information, and the right stylistic choices.

Finding the Facilities

If you would like to find out if a facility in Delaware is discharging pollutants under a NPDES permit and all you have is the name of the facility, or the name of the city and the zip code, then DNREC's Environmental Navigator tool is a quick and easy way to find its Permit Number and Facility Number. You can go to the main website to search based on the information you have:

<http://www.nav.DNREC.delaware.gov/DEN3/>. With this tool you can also search by permit number, or even look through every NPDES permit issued by DNREC. With the Environmental Navigator, you are also able to search for Inspections, Violations, and Enforcement Actions. (See Appendix pg. vi for step-by-step instructions on how to use this tool).

If you would rather get the information by telephone, you may also contact DNREC directly. The full contact information is available here:

<http://www.dnrec.delaware.gov/Pages/Contact.aspx>. If you do not have convenient internet access, the contact information is also included on page 33 of this guide.

Preparation

The first step is to decide what outcome you hope to achieve. Do you hope to improve the permit, support issuance of the permit, have the permit denied, or some other outcome? Maybe you will not know your precise objective for certain until you familiarize yourself with the law, 7 Del. Admin. Code § 7201-6.0, and review the draft permit itself or a fact sheet. Before reviewing any of the permit documents, you will need to become familiar with the scope of the issue. This involves knowing the pertinent statutes and agency regulations. Create a checklist of what you hope to see in the permit. (See Appendix pg. xiv-xv for examples of a checklist.) Base the checklist on the requirements contained in the statutes and regulations you have at this point familiarized yourself with, as well as facts and concerns you have that are not addressed but that you believe DNREC should consider.

It is also good to do some research on the facility whose permit you are commenting on. Is it renewing its permit? Has it had past permit violations? What pollutants does it discharge? Has the agency taken enforcement action against the

facility in the past? All of this information should be publically available under Delaware's Freedom of Information Act (Del. Code Ann. tit. 29 §§ 10001 *et seq*). You should also be able to find information using the Environmental Navigator tool on DNREC's website: <http://www.nav.dnrec.delaware.gov/DEN3/> (See Appendix vi for a guide on how to use it).

Additionally, you can gather information from the EPA ECHO database, available at: <http://www.echo.epa.gov>. This will provide you with basic information on the facility's permit, location, compliance history, environmental conditions, pollutants, and demographic profile. You will be able to click on a permit number for more detailed information on the facility's permit history, outfalls, effluent limitations, violations, and inspections. See Appendix pg. x for step-by-step instructions on how to use the site.

Freedom of Information Act

Under the Delaware Freedom of Information Act, also known as FOIA, (Del. Code Ann. tit. 29 §§ 10001 *et seq*) Delaware citizens can request access to public documents. Citizens can submit a formal FOIA request in writing, either through a letter, email, or online form, Del. Code Ann. tit. 29 § 10003.

You can use this tool to review previous NPDES permits, DMRs, or any other public documents related to a particular facility. This can help you understand more about a facility and will give you information to help you write an effective comment.

You can also request that any fees be waived, however, DNREC does not have a formal fee waiver policy.

For more information about DNREC's FOIA procedure go to: <http://www.dnrec.delaware.gov/wr/information/Pages/DWR-FOIA.aspx>.

HOW TO COMMENT

Written Comments:

The most common method of public participation is the written comment. A written comment to DNREC about an issue (or issues) with a permit application or draft permit, received during the public comment period, becomes part of the administrative record upon which the decision to approve or deny a permit is made. Once a comment is part of the record, DNREC must consider it when making its permit decision.

Most of the major steps in preparing written comments should be followed even if your ultimate goal is to submit a verbal comment. You will need the same information as you would for a written comment and you should present it in the same clear and easy-to-understand manner so that the reader understands the issues you want addressed, and what you think the best method is to address them.

Written comments are made to DNREC Office listed in the public notice. This notice will appear in the state and local newspapers and in your email if you have signed up to receive such notices.

Another simple way to provide a written comment is to join forces with a local organization. If the group is already planning to comment, then you can join in on its comment, and there may be a spot for you to add a note to go with the main comment. If the group is not planning to comment, you may be able to interest them if you have some information to present, particularly if the group is local to the facility.

Verbal Comments:

If DNREC concludes that there is significant public interest in a permit — either on its own, or after petitioning by the public — there will be a public hearing on the issues. At this hearing, members of the public may make brief comments that will become part of the administrative record and must be responded to by DNREC before it takes final action. It is most effective to use verbal commenting as a supplement to written comment, and it is not much more effort since the preparation for each is essentially identical.

You will see the call for requests or petitions for public hearings in the notice of the Draft Permit, where you will also see notice of any public hearing. A great place to look for events such as public hearings is the Delaware Public Meeting Calendar, located online here: <https://egov.delaware.gov/pmc/>. You can search by keyword, list by agency, or see a week long view. You can click on the events to see more information. See Appendix pg. v for how to use the calendar.

DNREC has published public hearing guidelines on its website, which will fully explain the public hearing process. You can find the guidelines at: <http://www.DNREC.delaware.gov/Admin/publichearings/Pages/default.aspx>.

For specific information on how to best make your written and verbal comments, see the **Effective Participation** section, below.

Follow Up

After you have submitted your comment you can take several steps to ensure that your voice is heard by the agency. First, review other people's comments (if possible) and submit additional comments if you have discovered more information or evidence to back up your original comments. If you made comments at a public hearing, send in written comments outlining what you said at the hearing. If you are an organization, make your comment publically available and issue a press release. Encourage others to submit comments, as well. The more people voicing an opinion, the more likely the agency will take it seriously when making its permit decision. Finally, once the comment period has ended, obtain a copy of DNREC's response to public comments. This document can be useful for future comments or when appealing a permit decision. As mentioned earlier in this guide, the comment and response document is noticed with the Final Permit and available to the public by request.

APPEALS

DNREC made a final permit decision and you are not happy with it – so you want to appeal. If you have not done so already, you should seek legal counsel for an appeal of a permit. Although legal representation is not required for an individual at this stage, Del. Code Ann. tit. 29 § 6008(b), the appeals process is complex and some parts of the process require specialized experience in order to do them correctly (and some must be done correctly the first time). Not only will an experienced lawyer know more about how to navigate the appeals procedure, but she will also have a better chance of spotting issues for your appeal. Public interest attorneys are often willing and able to take on these types of cases at no charge and can sometimes receive attorney's fees if you win the case.

CITIZEN SUIT

The Clean Water Act also contains a very important provision: the Citizen Suit, 33 U.S.C. § 1365. While this topic is beyond the scope of this guide, it is important to know the basics. The Citizen Suit provision allows a person to bring suit against anyone who discharges pollutants in violation of his or her permit or without a permit at all. An individual can also bring suit against the EPA or state administrator who has failed to perform a non-discretionary act. So long

Attorney's Fees

Delaware law does not have a provision which awards reasonable attorneys' fees to the winner of a law suit brought under state law.

However, most often you will bring suit under the Clean Water Act, which has the Citizen Suit provision. Under the Clean Water Act, 33 U.S.C. § 1365(d) allows for reasonable attorney's fees.

as you have a cognizable interest in the illegal discharge or failure to act, you can bring suit to ensure compliance with the law. Citizens can monitor permits and facilities to be sure that they are complying with the Clean Water Act and parallel state laws. Once you learn about the permit process and what must be in a permit, monitoring permits that are of interest to you becomes a simple task that just requires time. Although bringing legal action can involve knowledge beyond that of a typical individual or organization, there are several organizations that can help guide you through the process or find an attorney to represent you, including the Environmental and Natural Resources Law Clinic at the Delaware Law School and the Mid-Atlantic Environmental Law Center.

EFFECTIVE PARTICIPATION

Participation is good, but effective participation is even better. Below are some strategies for making sure your participation is successful.

Contact the DNREC Office

Individuals at DNREC main office can help answer your trickier questions and may be able to tell you the status of permit applications or draft permits before you would otherwise know about them. This can be important to your cause, because the best time to influence any agency document is before the draft permit is written. The office may also be able to put you on a notification list, so that you will get updated information without having to search for it. See below for contact information:

DNREC OFFICE
Division of Water

89 Kings Highway
Dover, DE 19901

General: (302) 739-9950

Stormwater Discharge Permits: (302) 739-9946

Have a Direct Influence on the Permit

The most common method for influencing a NPDES permit is submission of a comment, written or verbal, during the public comment period. We covered the process for doing this above in the **How to Comment** section. No matter what else you choose

to do, you should submit a written comment. The preparation of a written comment includes the steps you should take to prepare for any other type of involvement, and written comments must be considered by the agency.

The second method is to get involved in the formulation of a draft permit before it becomes public. This will require the most extensive and difficult preparation because, although this requires essentially the same preparation as submitting a written comment, you will need to have, or quickly acquire, significant knowledge of the issues and laws involved to comment effectively at this stage. However, as soon as you are notified of a permit application, you can prepare comments for the draft permit and submit to DNREC, even without knowing whether a draft permit is in the works. Although DNREC is not required to consider it, it gets your position to the agency before a draft permit is issued.

Make Sure Your Comment Is Heard by the Agency

Coordinate your comments with others to make sure your message is heard, and given the appropriate weight. Contact people and groups who share your concerns, including businesses and other government agencies whose comments are hard for DNREC to ignore. Groups often have greater knowledge of the issues and can bring credibility to your comments. The easiest and most certain way to make sure your comment is considered is to join forces with a local group or organization that shares your concern. Groups often choose to petition for signatures for its written comments, petition for a public hearing, or arrange for its members to speak at public hearings.

Often, groups have greater resources and expertise to understand the issues and determine effective tactics. You can do something as simple as adding your name to the group's comment, or you can get involved by volunteering your time. An alphabetical list of links to Delaware environmental organizations is available here: <http://www.eco-usa.net/orgs/de.shtml>.

Additionally, no matter what form your input takes, always be firm, respectful, and dignified. The person who reads or hears your comment will not be able to do anything — and will not want to do anything — with a comment that is accusatory, unclear, or off-topic. This is a chance for you to help make the rules, and your input is likely to be disregarded if it comes across as hostile.

Compose an Effective Written Comment

Just as you should take a strategic approach to your involvement in the permitting process, you should take a strategic approach to composing your written comment. The preparation of your written comment should form the basis for any other

input you make, for instance any verbal comment you make should cover the same points as your written comment.

Follow these steps as you prepare to compose your comment:

First, decide what outcome you want from your comment. What would you like to have happen as a result? Do you want the permit denied, approved, or added to in some way, or is there some other outcome you seek? Two important pitfalls to avoid at this stage are composing a comment in the form of a question and composing a comment that is not grounded in any legal requirement of the permit or the permitting process.

A comment in the form of a question is something similar to the following:

“Why did DNREC not consider the impact of the facility on ‘X’ when drafting the permit?”

Even if this question is valid, the purpose of the public comment period is not to answer the public’s questions (if you do have a question, contact DNREC prior to sending in your comment) and a question will not impact a final permit. Even if you are correct, and DNREC should have considered “X” factor in drafting the permit, the agency will not do the work of turning your question into the critique you intend it to be. As a result your comment will not be given much weight and an important observation may be lost in the process. What you want to say instead, if applicable, is the following:

“DNREC is required to consider the impact of the facility on ‘X’ because ‘Y’ law says it must.”

This type of comment connects DNREC’s failure to consider a specific factor to a particular legal requirement that DNREC consider such a factor. A comment that is not grounded in any legal basis will not be seen as pertinent by the reader, and will not effectively persuade the reader that anything about the permit or the permitting process followed — or whatever the issue you wanted to make clear happened to be — should (or should not) be reconsidered.

Take the following comment:

“The permit should not be granted because I live downstream from the facility and I do not want it there.”

A comment such as this one may well be factual and very likely influences your decision to comment. However, if you think DNREC has done something particularly right that should not be changed, or has done something wrong that should, then your comment will have to be designed to make it clear precisely what you mean.

Whatever we might wish it to be, the job of DNREC in drafting, granting, and denying NPDES permits is to follow the existing laws and regulations. Therefore, to be effective your comments will need to clearly tie what you would like to see happen to the permit to some requirement that has a basis in law. Similarly, your comment will be more persuasive when it is supported with evidence, whether scientific, or more simply, your recorded observations.

Here is a better way to communicate your concern:

“The permit should not be issued because the water into which the facility will discharge under the permit has been designated an ERES water and the impacts this facility’s permit would have on water quality would violate the requirements of 7 Del. Admin. Code § 7401-5.1 by providing for discharge limitations that would fail to maintain and protect the existing quality of the receiving waters.”

As an added benefit, if you are correct and DNREC does not follow the legal requirement, it can be the basis for the EAB overturning DNREC’s permit decision on appeal.

Second, consider coordinating your comment with a local organization that shares your concern and seeks an outcome similar to yours. An alphabetical list of links to Delaware environmental organizations is available here: <http://www.eco-usa.net/orgs/de.shtml>.

Third, create a checklist of things you would like to see in the permit. See Appendix pg. xiv-xv for examples. This will be a reflection of what you want the outcome to be. If you want the permit denied, your checklist will be the things in the draft permit you think violate the law or make approval a bad idea. If you want the draft permit altered, your checklist will be the sections for which you propose changes, or sections you wish to add.

When you are ready to compose your comment, follow these guidelines:

- ❖ Be concise, clear, and convincing. The person reading your comments will be busy, and will not want to make changes to the draft. If your comment is too long, or it is difficult to understand, it is less likely to achieve the outcome you want. Think of the rest of these guidelines as tools to help you be concise, clear, and convincing.
- ❖ Stick to your strongest points, and make the stronger of those first. It will not serve your strategic purpose to suggest every correction that occurs to you. Don't lose the impact of your main point by overloading your comment with suggestions that do not support it.
- ❖ Be specific. If you are not specific, your comments will not be clear and your reader will not know how to make the changes you want. Use real-world examples if you can and hypothetical examples if you need to.

Providing suggested language in your written comment is ideal. Your ideas are far more likely to become reality if you make it as clear and easy as possible for the permit authors to understand and implement them. In this case DNREC can tell exactly what you want because you have provided it with precisely what you would like to see as the final result. If you provide suggested language—and your entire comment is concise and convincing—you stand a good chance of influencing the agency's final decision on the permit.

Along with your suggestions for changes, identify sections of the permit you particularly like, if at all possible. DNREC may well contemplate changes you do not want and your support for those sections may make a difference. Finally, and perhaps obviously, it never hurts to let someone know you appreciate his or her work.

Make an Effective Verbal Comment

Verbal comments are made at public hearings. These hearings are held if one is requested or if DNREC determines that there is "significant public interest" or if a hearing "might clarify one or more issues involved in the permit decision," 7 Del. Admin. Code § 7201-6.33.2. There is no clarification as to what is considered "significant public interest," but local organizations may circulate a petition to gather signatures to show DNREC that there is public interest in the permit decision. If you organize your own petition, make sure the signatures you collect accompany your written comment and that everything is sent to the correct DNREC office by the deadline.

Here are some tips for making an effective verbal comment:

- ❖ Verbal comments are most effective when they are made in conjunction with a written comment, and when they are made in conjunction with a group, organization, or a number of fellow commenters.
- ❖ Practice reciting your comment out loud before the day of the meeting. Do not read directly from a script if you can manage it; instead, use notecards to remind you of key facts and to mark where you are.
- ❖ Bring a copy of your full comment with you to share with officials and to enter into the record.
- ❖ Be sure to stay within the time limit given. (Tip: 1 minute = 140-160 words).
- ❖ Address all of your remarks to “the Chair,” who is the man or woman who leads the hearing.
- ❖ Bring photos or other visual aids, such as a stack of petition cards or pictures of the polluting facility.
- ❖ At the meeting, introduce yourself to people and write down their names. This will help you figure out whom to follow up with later, and it will help the people hearing your comment remember it.
- ❖ Include your name and contact information, but remember that your comment will become a public document.

Before you speak at a public hearing, you should compose your comment.

First, compose a written comment by following the guidelines for written comments above. The preparation for each type of comment is the same, and the steps are necessary for you to compose a comment that gets the attention and results you want.

Second, pick one to three key points from your written comment to make up your verbal comment. Limiting what goes into your verbal comment allows you to fully explain the points you include, and fit those points into the few minutes you are given to make them.

Extra Tips for an Effective Verbal Comment

1. Only speak to what you are an expert on (law, health, family, social justice, etc.).
2. Be engaged, smile, say thank you.
3. If you are preparing robust comments to an agency, establish a relationship with them. Speak with the agency before giving your comments to find out what they are looking for, what they need help with, or to discuss ideas you have that they may not have thought of.

Following Up On Your Submitted Comment

If you want to continue participating in the process after you have made your comments, even after the close of the official comment period, there are a few ways to do so, some of which we have discussed earlier in the guide.

After you review the comments of others, you may submit an additional comment that responds directly to the points of the other commenters. These other comments may also alert you to another point or additional facts you would like to include in the record. Follow the same procedure as you would for any other comment. If it is after the comment period your new comment may or may not be included in the record, but it is not a useless exercise.

If you only made verbal comments, you should send a written copy of your comment, along with a letter requesting inclusion in the administrative record, to the appropriate DNREC office.

You may also rally support and get publicity for your position independent of the administrative process. Involve local groups, businesses, organizations, fellow citizens, and legislators at any level that represent you. If you are an organization, make your comment publically available and issue a press release.

CONCLUSION

We hope that this guide has been able to help you navigate the Delaware NPDES permitting process. Public participation in this process is vital to its success. The Appendix that follows this guide gives you additional information on how to review a NPDES permit and how to use several state and federal websites to find information on NPDES permits, as well as sample permit documents to help you familiarize yourself prior to getting involved in the permitting process.

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§ 1311(a)

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§ 1319

§ 1342

§§ 1342(b), (o)

§§ 1362(6), (7), (11), (12), (14)

§ 1365

§ 1365(d)

Environmental Control, Del. Code Ann. tit. 7 §§ 6001, *et seq.*

§§ 6002 (38), (67)

§ 6008

§§ 6008(a), (b), (f)

§§ 6009(a), (b), (c)

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§ 10003

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§ 122.21

§§ 122.28, 122.28(a)(ii)

§§ 122.41(j), (l)

§ 122.48

§ 123.44(a)(2)

§§ 124 *et seq.*

§ 131.12, § 131.12(a)

Regulations Governing the Control of Water Pollution, 7 Del. Admin. Code §§ 7201-1.0.
et seq.

Definitions, § 7201-2.0

Coverage, Prohibitions, Exemptions and Exclusions, § 7401-3.0

Water Quality Certification, § 7401-5.0

§ 7401-5.1

§§ 7401-5.6.1.1., 5.6.1.2

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§ 7201-6.1.2

§ 7201-6.10.1

§§ 7201-6.12, 6.12.1.1-6.12.1

§ 7201-6.14.3.3

§ 7201-6.16.1.2.2.3

§ 7201-6.17.1

§§ 7201- 6.18.1, 6.18.2

§§ 7201-6.19.1, 6.19.2

§§ 7201-6.30, 6.30.1, 6.30.3, 6.30.4.6

§§ 7201-6.33.1, 6.33.2

§ 7201-6.34.1.3

§§ 7201-6.35.4, 6.35.5

§§ 7201-6.36, 6.36.2

§ 7201-6.40

§ 7201-6.42

§ 7201-6.50.2

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Water Quality Based Requirements, § 7201-8.0.

The General Permit Program, § 7201-9.0

§ 7201-9.1.8.2

§ 7201-9.2.2

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Appendix

The following documents include original material developed by the Mid-Atlantic Environmental Law Center, as well as permit documents procured under the Delaware Freedom of Information Act (29 Del. C. ch. 100, et seq.). Some information from the public documents has been redacted to retain privacy for the permit holders. All sources and non-original material are accompanied by a citation.

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HOW-TO GUIDES

Step-by-Step Instructions on How to Use the Most
Common Federal and State Websites

HOW TO USE DELAWARE PUBLIC MEETING CALENDAR

FIRST, use your computer's web browser to visit: <https://egov.delaware.gov/pmc/>

Delaware.gov | Text Only Governor | General Assembly | Courts | Elected Officials | State Agencies

State of Delaware
The Official Website of the First State

Your Search... SEARCH Phone Numbers Mobile Help Survey

Public Meeting Calendar

VERSION 2.1.3
GOVERNMENT INFORMATION CENTER

Calendar View List By Agency Search By Keyword

Week of November 2

15 DAY WEEK MONTH

Monday 2	Tuesday 3	Wednesday 4	Thursday 5	Friday 6
- Authority on Radiation Protection	- Nutrient Management Full Commission Meeting	- Ardencroft Open Assessors Meetings	- State Route 1 and State Route 16 Grade Separated Intersection	- Council on the Blind (Modified)
- Department of Correction Public Hearing (Modified)	- 11th Street Streetscape Improvements	- Lincoln Informational Workshop	- Criminal Justice Council Public Hearing (Modified)	- Board of Geology
- SJR 4 Education Funding Improvement Commission Meeting	- State Board Workshop	- DNREC and DHSS Workshop	- DELJIS Public Hearing	- Criminal Justice Council Planning Day
More...	More...	More...	More...	More... Saturday

SECOND, click on “List by Agency” to see all of DNREC’s upcoming public meetings and/or hearings.

HOW TO USE ENVIRONMENTAL NAVIGATOR

FIRST, use your computer's web browser to visit:

<http://www.nav.dnrec.delaware.gov/DEN3/>

Note: you can also get to this webpage by going to

<http://www.dnrec.delaware.gov/Pages/Portal.aspx> (DNREC's home page) and on the left hand side, under **Services** click on "Environmental Navigator".

The screenshot shows the Delaware Environmental Navigator website. At the top is a banner for the State of Delaware with a search bar. Below the banner is the title "Delaware Department of Natural Resources & Environmental Control - Delaware Environmental Navigator". A navigation menu on the left lists various search options, with "NAVIGATION" circled in blue. The main content area includes a "Home" link, a description of the system, and a grid of images representing different environmental and industrial facilities. A list of "MOST ACTIVE FACILITIES" is provided on the left, including Dover Air Force Base, NRG Indian River Power Plant, Valero Petroleum Refinery, Calpine Mid-Atlantic Generation, DuPont Edgemoor Titanium Oxide Plant, and Occidental Chemical.

State of Delaware
The Official Website of the First State

SEARCH

Delaware Department of Natural Resources & Environmental Control - Delaware Environmental Navigator

Home »
Use DEN to explore the many types of information collected by DNREC such as permitted facilities, enforcement actions and environmental monitoring. DEN is a constantly growing system.

Click [background](#) to check for information currently available and plans for new information.

NAVIGATION
Home
Search Facilities
Search Programs
Search Inspections
Search Violations
Search Enforcement Actions
Search Permits
Search Releases
Data Download
Non-Site Specific Reports
Search by Maps
Glossary (US EPA)

MOST ACTIVE FACILITIES
Dover Air Force Base -
Dover
NRG Indian River Power
Plant - 29416 Power Plant
Rd, Millsboro
Valero Petroleum Refinery -
Delaware City
Calpine Mid-Atlantic
Generation - 200 Hay Rd,
Wilmington
DuPont Edgemoor Titanium
Oxide Plant - 104 Hay Rd,
Wilmington
Occidental Chemical - 1657
Dover

If you have any questions or comments about DEN please contact the DEN development team by clicking on "[Leave Feedback About This Application](#)" link in the footer.

THEN, depending on what information you already you, you can click on the applicable searches on the left hand column, under “Navigation.”

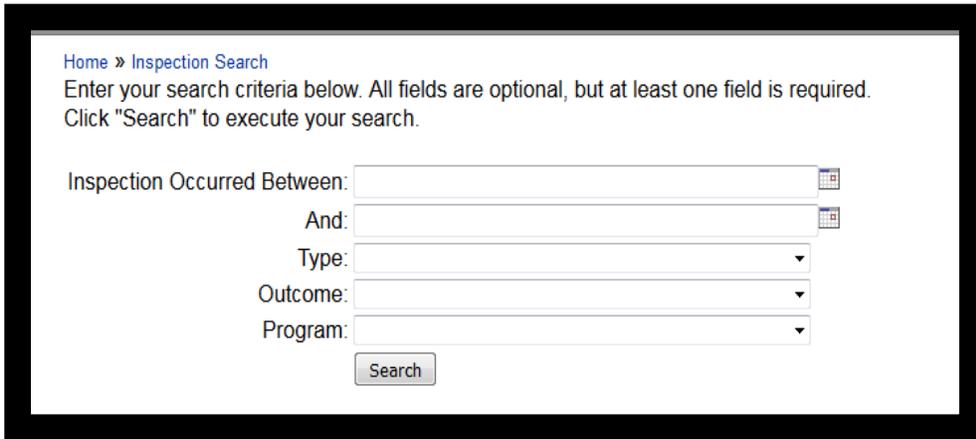
For example, if you have the Facility Name, click on *Search Facilities*, which will bring you to the page below:

The screenshot shows the 'Delaware Department of Natural Resources & Environmental Control - Delaware Environmental Navigator' website. The page title is 'Home » Facility Search'. Below the title, it says 'Select your search criteria below, and click 'Search.''. On the left, there is a 'NAVIGATION' menu with 'Search Facilities' circled in blue. The search form on the right has three tabs: 'Simple Search' (selected), 'Advanced Search', and 'ID Search'. The form contains a 'Facility Name' text input field, a 'DNREC Program' dropdown menu, and a 'Search' button.

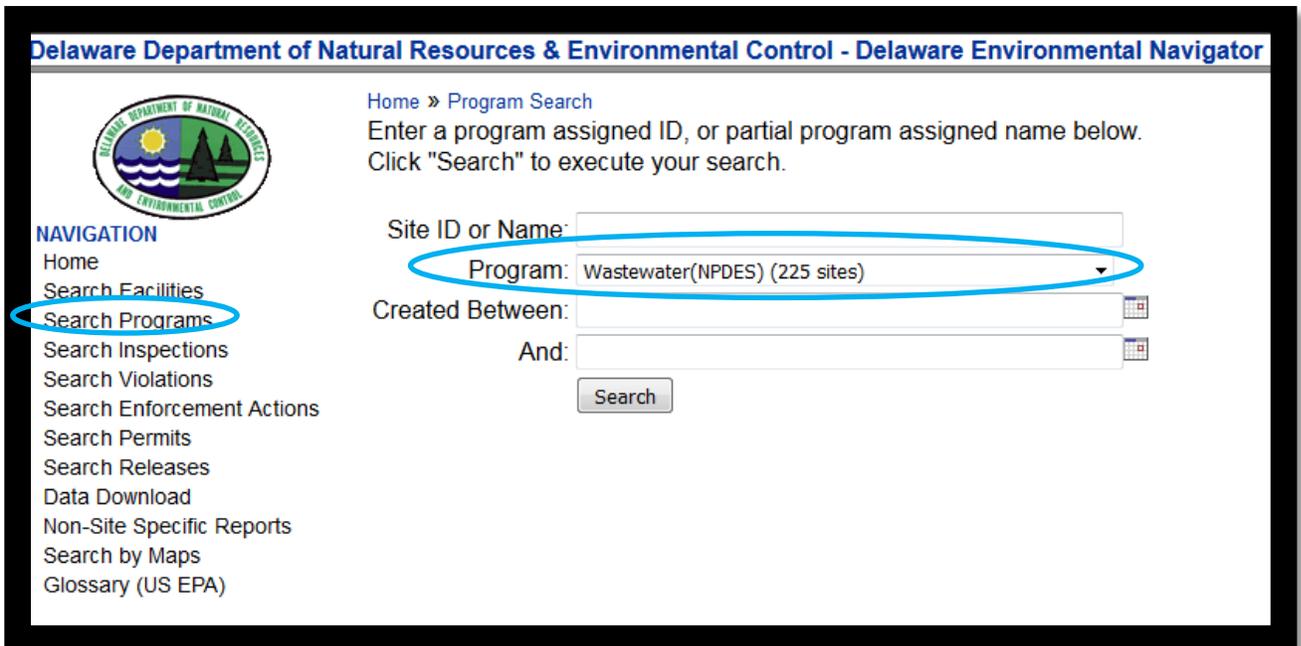
You can also search by Permit information by clicking on *Search Permits*:

The screenshot shows the 'Delaware Department of Natural Resources & Environmental Control - Delaware Environmental Navigator' website. The page title is 'Home » Permit Search'. Below the title, it says 'Enter your search criteria below. All fields are optional, but at least one field is required. Click "Search" to execute your search.' On the left, there is a 'NAVIGATION' menu with 'Search Permits' circled in blue. The search form on the right has several fields: 'Issued Between:' and 'Expires Between:' (both with date pickers), 'And:' (with a date picker), 'Permit Type:' (dropdown), 'Permit Status:' (dropdown), and 'Program:' (dropdown). There is a 'Search' button at the bottom.

ALSO, you can search for *Inspections, Violations, and Enforcement* actions, for example:



FINALLY, if you want to look at all of the facilities with NPDES permits, click on *Search Program* and in the “Program” drop menu, go to Wastewater (NPDES):



A Facility's page will look like this:



[Home](#) » [Allen Family Foods Plant Harbeson](#) » [Programs](#)

Allen Family Foods Plant Harbeson

Street address: Route 5, Harbeson, DE 19951 US, **Facility type:** Other Industrial Plant

Currently, only data for Wastewater(NPDES): Allen Harim Foods LLC is being shown.
[Click here to remove this filter and view all facility data.](#)

Programs

Program ID	Name Used By Program	Program
(All) ▾	(All) ▾	(All) ▾
DE0000299	Allen Harim Foods LLC	Wastewater(NPDES)

NAVIGATION

- Home
- Search Facilities
- Search Programs
- Search Inspections
- Search Violations
- Search Enforcement Actions
- Search Permits
- Search Releases
- Data Download
- Non-Site Specific Reports
- Search by Maps
- Glossary (US EPA)

DETAILS

- Programs (1)**
- Inspections (194)
- Violations (4)
- Enforcement Actions (3)
- Permits (5)
- Owner (1)
- Contacts (3)
- Alt. Site Names (6)
- Location (1)
- Regulatory Status (1)
- Releases (2)
- Outfalls (3)
- Tanks (0)
- Leaking Tanks (0)
- SIRB Sites (0)
- Documents (0)
- Map

Under "Details" you can gather additional information on the facility

HOW TO USE EPA'S ECHO DATABASE

The EPA's Enforcement and Compliance History Online ["ECHO"] database is, like the DNREC's Environmental Navigator is a way to find facilities with permits using an internet based search tool.

FIRST, point your computer's browser to the ECHO main page using this web address:
<http://echo.epa.gov/?redirect=echo>

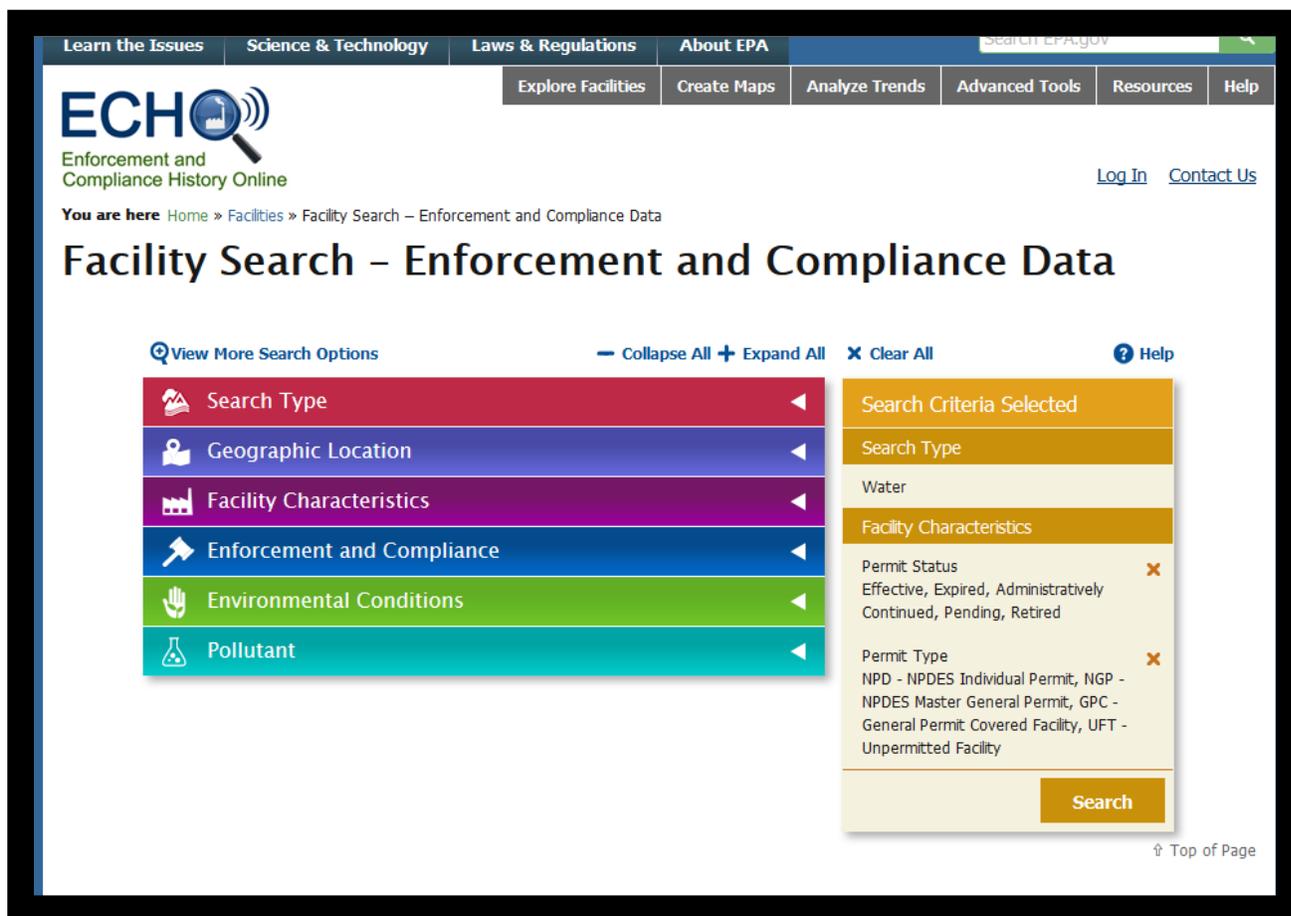
The screenshot shows the EPA ECHO website interface. At the top, there is the EPA logo and the text 'United States Environmental Protection Agency'. Below this is a navigation bar with links for 'Learn the Issues', 'Science & Technology', 'Laws & Regulations', and 'About EPA'. A search bar is located in the top right corner. The main content area is titled 'ECHO Enforcement and Compliance History Online'. A green banner at the top of the main content area states: 'You have been redirected from the former ECHO site to the modernized ECHO, now at echo.epa.gov. Please update your bookmarks, and see our [ECHO Modernization Information](#) page to learn about the new ECHO.' Below this banner, there are several sections: 'Search Community' with a 'Quick Search' field and a 'Search' button; 'Explore Facilities'; 'Create Maps'; 'Analyze Trends'; and 'Advanced Tools'. A callout box points to a 'Tutorial' link under the 'Quick Search' field, stating 'You may find the tutorial video helpful'. At the bottom, there are links for 'Help' and 'Resources'.

NOTE: if you need detailed assistance using the ECHO site, click on the word "Tutorial" directly under the "Quick Search" field. That will take you to a page with a video demonstration of how to use the ECHO site. There are also links to further assistance with the site to the right of the screen (<http://echo.epa.gov/help/tutorials>)

NEXT, if you know the city, state, or zip code of the area where you wish to find a permitted facility, you may enter that information in the field under “Quick Search” near the center of your screen, and click “search.”

OR, you can click on “Explore Facilities”. In order to search for NPDES permits, you click on *Water* underneath “Evaluate Compliance”.

This will bring you to a page where you can input various information about the type of permit you are looking for, the geographic location of a permit, permits with violations, and facilities discharging specific pollutants.



The best part about searching this way is that you can include a wide range of information into your search and you can search through the NPDES permits in an entire state, community, or even watershed.

ONCE you submit a search, you will see a screen like this:

Facility Name	NPDES ID	Mapped	Reports	Street Address	City	State	FRS ID	Current Significant Noncompliance (SNC) Status	Quarters in Noncompliance (3 yrs)	Effluent Violations (3 yrs)	Inspections (5 yrs)	Forms Actions
DUPONT EDGE MOOR	DE0000051			104 HAY ROAD	EDGEMOOR	DE	110000338830	V(NonRNCV)	12	32	6	
DELAWARE CITY REFINING CO.	DE0000256			2000 WRANGLE HILL ROAD	DELAWARE CITY	DE	110001148598	N(RptViol)	12	24	7	
PRINTPACK, INC.	DE0000485			600 GRANTHAM LANE	NEW CASTLE	DE	110000585055	V(NonRNCV)	4	3	8	
CALPINE MID-ATLANTIC	DE0000558			200 HAY ROAD	WILMINGTON	DE	110064591589	N(RptViol)	5	4	8	

Here is it zoomed into the facilities:

DUPONT EDGE MOOR	DE0000051			104 HAY ROAD
DELAWARE CITY REFINING CO.	DE0000256			2000 WRANGLE HILL ROAD
PRINTPACK, INC.	DE0000485			600 GRANTHAM LANE
CALPINE MID-ATLANTIC	DE0000558			200 HAY ROAD
FORMOSA PLASTICS CORPORATION	DE0000612			780 SCHOOL HOUSE ROAD
CRODA, INC.	DE0000621			315 CHERRY LANE

As you can see in the screenshot above, the Delaware City Refining Company operates under an NPDES Permit. Clicking on the Facility name brings you to a the “Detailed Facility Report”:

Detailed Facility Report

Expand All Collapse All

Report Violation Report Data Error Data Dictionary

Facility Summary



DELAWARE CITY REFINERY
 4550 WRANGLE HILL RD, DELAWARE CITY, DE 19706
 FRS ID: 110001148598
 EPA Region: 03
 Latitude: 39.588611
 Longitude: -75.635555
 Locational Data Source: EIS
 Industry: Utilities; Petroleum and Coal Products Manufacturing; Chemical Manufacturing
 Indian Country: N



Enforcement and Compliance Summary

Statute	Insp (5 Years)	Date of Last Inspection	Current Compliance Status	Qtrs in NC (of 12)	Qtrs in Significant Violation	Informal Enforcement Actions (5 years)	Formal Enforcement Actions (5 years)	Penalties from Formal Enforcement Actions (5 years)	EPA Cases (5 years)	Penalties
CAA	3	09/30/2014	No Violation	7	0	10	1	\$460,200	--	--
CWA	9	12/16/2014	Noncompliance	12	0	5	--	--	--	--
EPCRA	1	09/10/2015	--	--	--	--	--	--	--	--
RCRA	7	08/04/2015	No Violation	5	0	1	--	--	--	--

Related Reports

- Enforcement Case Report
- Air Pollutant Report
- CWA Pollutant Loading Report
- CWA Effluent Charts

Regulatory Information

Clean Air Act: (52193), Operating Major (DE0000001000300016), Operating Major (DE0000001000300404), (592), Operating Major (DE0000001000322216)
 Clean Water Act: Major, Permit Admin Continued (DE00000256)
 Resource Conservation and Recovery Act: Active (H) LQG (DER000501932), Inactive () Other (DED000621409), Active (H) LQG (DEN201000006), Inactive () Other (DED981045412), Active (HPA) LQG TSDf (DED002329738)

Other Regulatory Reports

Air Emissions Inventory (EIS): 588311
 Greenhouse Gas Emissions (eGGRT): 1007322
 Toxic Releases (TR): 19706TXCDL2000W

Indian Country: N

Enforcement and Compliance Summary

Statute	Insp (5 Years)	Date of Last Inspection	Current Compliance Status	Qtrs in NC (of 12)	Qtrs in Significant Violation	Informal Enforcement Actions (5 years)	Formal Enforcement Actions (5 years)	Penalties from Formal Enforcement Actions (5 years)	EPA Cases (5 years)	Penalties from EPA Cas
CAA	3	09/30/2014	No Violation	7	0	10	1	\$460,200	--	--
CWA	9	12/16/2014	Noncompliance	12	0	5	--	--	--	--
EPCRA	1	09/10/2015	--	--	--	--	--	--	--	--
RCRA	7	08/04/2015	No Violation	5	0	1	--	--	--	--

Related Reports

- Enforcement Case Report
- Air Pollutant Report
- CWA Pollutant Loading Report
- CWA Effluent Charts

Go To Enforcement/Compliance Details

Regulatory Information

Clean Air Act: (52193), Operating Major (DE0000001000300016), Operating Major (DE0000001000300404), (592), Operating Major (DE0000001000322216)
 Clean Water Act: Major, Permit Admin Continued (DE00000256)
 Resource Conservation and Recovery Act: Active (H) LQG (DER000501932), Inactive () Other (DED000621409), Active (H) LQG (DEN201000006), Inactive () Other (DED981045412), Active (HPA) LQG TSDf (DED002329738)
 Safe Drinking Water Act: No Information

Other Regulatory Reports

Air Emissions Inventory (EIS): 588311
 Greenhouse Gas Emissions (eGGRT): 1007322
 Toxic Releases (TR): 19706TXCDL2000W

- Facility/System Characteristics
- Enforcement and Compliance
- Environmental Conditions
- Pollutants
- Demographic Profile

Each facility page will include information on the facility's permit, location, compliance history, environmental conditions, pollutants, and demographic profile. You will be able to click on a permit number for more detailed information on the facility's permit history, outfalls, effluent limitations, violations, and inspections.

CHECKLIST FOR INDIVIDUAL NPDES PERMITS

- If the permit is a renewal permit, compare the draft permit to the old permit.
 - Are there any changes? If so, each change needs to have a reason why. Assess the reasoning given for each change.
 - Is there an increase of effluent limitations, a forgiveness period or a reduction in reporting or monitoring? If there is backsliding, it is illegal and should be addressed.
 - Read the fine print and all the clauses carefully, there may be hints of back sliding, variances or adjustments after a period of time.

- Is the facility new or is the facility increasing its capacity?

- Are the limits technology based or water quality based? If the receiving stream is on the 303(d) list or has a TMDL, water quality based limits are important in maintaining water quality.

- Are the effluent limitations stringent enough to protect the receiving water?

- What is the frequency of sampling for effluents?
 - What kind of discharge is coming from the facility?
 - Is the discharge affected by rain events?
 - Is the frequency of sampling often enough to record important events, such as rain events?

- What type of facility is it? Does it have all the parameters listed that should be listed?

- Are there parameters that are "measure only"? If so, there needs to be a reason why and a time frame as to when limits will be set.

- What is the discharge flow rate of the facility compared to the flow rate of the receiving stream? Make sure that the receiving stream flow rate is up to date and accurate.

- Review the toxicity testing of the effluents. Is there something that stands out?

- Do a compliance review: Review the most recent Discharge Monitoring Reports to see if there are any violations or errors in the reporting, and inspection reports to see if there is a repetitive error or issue that could be addressed in the permit.

CHECKLIST FOR GENERAL NPDES PERMITS

- Is the general permit over five years old? If so, the general permit must be renewed
 - The DNREC is required to renew general permits every five years.
 - Write to the DNREC to encourage the agency to renew the general permit.
 - If the DNREC is unresponsive, you can bring an action.

- Is there a public notice requirement when a facility issued a Notice of Intent for a general permit?
 - Public Notice of an application in a newspaper in the affected area/state

- Are the effluent limitations stringent enough to protect the receiving water?

- What is the frequency of sampling for effluents?
 - What kind of discharge is coming from the facility?
 - Is the discharge affected by rain events?
 - Is the frequency of sampling often enough to record important events, such as rain events?

- What type of facility is it? Does it have all the parameters listed that should be listed?

- Are there parameters that are "measure only"? If so, there needs to be a reason why and a time frame as to when limits will be set.

- Review the toxicity testing of the effluents. Is there something that stands out

NOTICE OF INTENT CHECKLIST

GENERAL NPDES PERMIT

Large and Medium CAFO Poultry Operations Without Land Application

Below is a comprehensive checklist for reviewing Notice of Intents for General NPDES permits for CAFOs. Every facility that is required to obtain a general permit must submit an NOI before discharging or before the expiration of its current permit. Once a draft permit is released, the public has 30 days to submit its comments. If any of these requirements are not met, you have grounds to challenge the issuance of a permit.

Public Notice:

Every time an applicant submits a Notice of Intent to discharge under the General NPDES permit for CAFOs, the Delaware Department of Natural Resources and Environmental Control (DNREC) must publish public notice of the NOI. Here are the requirements for public notice taken from 7 Del. Admin. Code 7201-9.5.8.2.1:

Location of Public Notice

- On the State of Delaware website;
- In a newspaper of general circulation in the county, city or town in which the facility is located; and
- In a daily newspaper of general circulation throughout the state.

Contents of Public Notice (in accordance with 7 Del. Code § 6004(b))

- Name and address of the owner/operator and the name of the facility submitting the NOI;
- A brief description of the facility described in the NOI;
- The type of discharge, the name of the receiving water and general description of the location of each discharge point indicating whether such discharge is new or existing;
- A statement indicating the Secretary's intent to issue a permit for the discharges described in the NOI;
- A brief description of the procedures by which the public may participate in the final permit decision, including:
 - The timeframe for providing comments
 - A description of the procedure for requesting a hearing or if the Secretary has determined to hold a public hearing, the date and time for such hearing; and

- The location at which the NOI, nutrient management plan or animal waste management plan, and terms of the permit may be inspected;
- ❑ Address and phone number of the Department office at which interested persons may obtain further information.

Notice of Intent

A Notice of Intent is submitted by each facility in order to be covered by a general permit. Below is a list of the requirements for the Notice of Intent NOI. The Federal and State regulations have been combined here to include all of the requirements under both federal and state law. The State and Federal Requirements below can be found at 7 Del. Admin. Code § 9.5.4.4 and 40 C.F.R. § 122.21(i)(1).

Procedure for NOI

- ❑ Complete; and
 - Contain all of the required information (listed below)
- ❑ Timely
 - Submitted prior to discharging; or
 - Submitted at least 180 days prior to the facility's current NPDES permit's expiration date

Contents of NOI

- ❑ Trade name of the facility, including the type of business (corporation, sole proprietorship, partnership, etc.);
- ❑ Name of owner/operator;
- ❑ Facility location and mailing addresses;
- ❑ Emergency address or description of the location of the facility including the closest road name intersection;
- ❑ Latitude and longitude of the production area;
- ❑ A topographic map of the geographic area in which the facility is located showing the specific location of the production area;
- ❑ Number and type of animals
- ❑ Housed in open confinement or housed under roof;
- ❑ Type of containment and storage and total capacity for manure, litter, and process wastewater storage;
- ❑ Estimated amounts of manure, litter, and process wastewater generated per year;
- ❑ Estimated amounts of manure, litter and process wastewater transferred to other persons per year (transferred off-site);
- ❑ Animal mortality system used; and
- ❑ A nutrient management plan or animal waste plan that satisfies state and federal requirements (see below).

Nutrient Management Plan

A Nutrient Management Plan (NMP) is required to be submitted with all NOIs. A NMP is “a plan written by a certified nutrient consultant in accordance with State Technical Standards to manage the amount, placement, timing and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turf grass.” 7 Del. Admin. Code § 7201-9.5.2.1. The State Technical Standards can be found at http://dda.delaware.gov/nutrients/NM_TechStandards.shtml.

Contents of NMP (Requirements taken from 7 Del. Admin. Code § 7201-9.5.5)

Plan Identification:

- Owner and operator name, owner and operator mailing address, county road number or name, telephone number and watershed designation of operation;
- The trade name of the facility, type of business (corporation, sole proprietorship, partnership, etc), mailing address, contact information for, but not limited to the owner and operator, and emergency address or location description to include the closest road name intersection of the facility;
- Nutrient consultant's name, company, address and telephone number, and certification number;
- Date of plan and duration of animal waste or nutrient management plan.
- Total acres owned, licensed, or leased by the owner and operator represented in the nutrient management plans or animal waste management plan and a brief description of agricultural commodities produced within the facility; and
- Certification statement signed by the owner or operator stating the owner and operator shall implement the nutrient management or animal waste management plan.

Field maps or aerial photographs:

- Individual field identification and boundaries for all owned, licensed or leased fields under control of the owner/ operator;
- A copy of soil survey map showing all soil types on each field or the soil texture identification of all pertinent soils;
- The location of all surface waters including drainage ditches, streams, ponds, etc;
- Irrigation systems where applicable; and
- Latitude and longitude of the production area.

Crop and Nutrient Information:

- The total number and type of animals, annual quantity estimate of manure and litter generation and storage methods;
- Description and method of temporary outside locations of manure;
- Total acres owned, licensed or leased by the owner or operator subject to the animal waste management plan or nutrient management plan and summary of needed nutrients;
- Realistic yield goal in accordance with State Technical Standards;
- Soil test results using protocols established in the State Technical Standards;
- Current and planned crop rotation.

Best Management Practices (BMPs):

- Overall manure balance budget that clearly identifies available manure, intended manure use, manure storage capacity, and excess manure;
 - Identify the intended use to include, but not limited to exportation, or other described uses in accordance with State Technical Standards;
- Description of manure storage capacity and general schedule or timeframe when manure is removed or transported to a temporary field staging, exportation or other uses to include but not be limited to:
 - Management practices to prevent manure storage, collection, and conveyance systems from leaking pollutants to Waters of the State.
 - For liquid storage: storage shall be managed to prevent a discharge of pollutants and must include a calendar plan for liquid and sediment removal, with a freeboard action level of not less than one foot, with a depth marker;
For solid storage: permanent and temporary storage shall be managed to prevent a discharge of pollutants and be consistent with State Technical Standards;
 - Emergency actions for spills and catastrophic events for liquid storage systems to include the volume of water generated and collected by a 25-year, 24-hour rainfall event;
 - Description of the adequate storage methods for manure, litter and process wastewater, and proper operation and maintenance of the storage facilities in accordance with State Technical Standards;
- Description and action plan to divert or segregate all clean water as appropriate from the production area and for collecting all water coming in contact with the production area in accordance with

State Technical Standards to include but not limited to the following categories:

- Approved methods in accordance with State Technical Standards to prevent direct contact between animals and Waters of the State; and
- Approved methods in accordance with State Technical Standards to prevent runoff from coming into contact with manure, litter, or process wastewater;
- ❑ Detailed animal mortality plan including the following contents:
 - A statement acknowledging that burial of dead animals is prohibited;
 - A description of the methods and procedures for daily handling and disposal of dead animals in a manner to prevent contamination of Waters of the State. Methods must be strictly prohibited in liquid manure, storm water, or process wastewater storage or treatment areas; and
 - The methods and procedures for handling catastrophic mortalities in accordance with State Technical Standards;
- ❑ Conservation practices to control nutrient loss sufficient to minimize the discharge of pollutants to Waters of the State (in accordance with State Technical Standards); and
- ❑ Chemicals and other contaminants handled on-site shall not be disposed of in any manure, litter, process wastewater, or storm water storage or treatment system

Additional Federal Requirements (Requirements taken from 40 C.F.R. § 122.42(e)(1)-(6))

Federal regulations identify the following criteria as ways to assess NMPs. If these criteria are not met, there are grounds to challenge the issuance of a general permit.

- ❑ Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- ❑ Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- ❑ Ensure that clean water will be diverted from the production area?
- ❑ Prevents confined animals from coming into direct contact with waters of the United States;
- ❑ Ensure chemicals and other contaminants handled on-site are disposed of in any manure, litter, process wastewater, or storm water storage or treatment system that are specifically designed to treat such chemicals and other contaminants;

- ❑ Ensure site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States appropriate;
- ❑ Identify protocols for appropriate testing of manure, litter, process wastewater, and soil; and
- ❑ Identify records that will be maintained to document the implementation and management of the minimum elements required.

For additional information on Concentrated Animal Feeding Operations and Nutrient Management Planning, see the Environmental Protection Agency's NPDES Permit Writers' Manual for CAFOs available at http://cfpub.epa.gov/npdes/docs.cfm?program_id=0&view=allnpdes&sort=name&amount=some&strtow=1277

**SAMPLE
GENERAL PERMIT
FACT SHEET**

FACT SHEET

NPDES CAFO GENERAL PERMIT
LARGE AND MEDIUM POULTRY OPERATIONS
WITHOUT LAND APPLICATION

NPDES CAFO Permit No. DE 5000N/11

Large and Medium Poultry CAFO's in Delaware that Discharge to Waters of the State shall have a NPDES CAFO discharge permit issued by DNREC under both State and Federal permitting authority.

Total Maximum Daily Loads

Permit requirements are consistent with existing and applicable Total Maximum Daily Loads (TMDLs) for impaired water bodies. The permittee shall continue to implement all BMPs currently in place and shall implement any additional BMPs required by the permittee's AWMP/NMP and this permit. The Department may require additional BMP's to minimize phosphorus and nitrogen transport to waters of the state as a requirement of this permit. For Large and Medium Poultry CAFOs within the Chesapeake Bay watershed, BMPs have been identified in Delaware's Phase II Watershed Implementation Plan (WIP) as specific production area practices to meet Agricultural Waste Load Allocations (WLAs). Such BMPs may include, but are not limited to: Nutrient Management Compliance; Soil Conservation and Water Quality Plans; Heavy Use Poultry Area Pads; Livestock Waste Structures; Manure Relocation; Poultry Waste Structures; Mortality Composters; Streamside Grass Buffers; Streamside Forest Buffers; Wetland Restoration, and; Shoreline Erosion Control.

Statutory and Regulatory Basis

Section 402 of the federal Clean Water Act, as amended, and Title 7, Delaware Code, Chapter 60, Section 6003, provide the statutory authority for permit issuance. Federal and state regulations promulgated pursuant to these statutes form the regulatory basis for permit issuance. Each CAFO must operate pursuant to the permit and must meet or exceed all standards and guidelines in the DNREC's *Regulations Governing the Control of Water Pollution*, Section 9.5 (CAFO Regulations); the Delaware Nutrient Management Regulations, the Delaware Nutrient Management Law, and each facilities individualized Animal Waste Management Plan (AWMP) or Nutrient Management Plan (NMP). Each facility must operate pursuant to the permit and must meet or exceed all standards and guidelines in accordance with the Animal Waste Management Plan as well as any future revisions of its Animal Waste Management Plan or Nutrient Management Plan (NMP) and Delaware's State Technical Standards.

Notice of Intent (NOI)

The Notice of Intent (NOI) submitted by individual CAFOs for consideration of coverage under the General CAFO NPDES permit will be considered incomplete until an Animal Waste Management Plan (AWMP) and/or Nutrient Management Plan (NMP) is submitted to the Delaware Department of Agriculture (DDA).

Implementation and Enforcement of this General NPDES CAFO Permit

In the State of Delaware, the NPDES CAFO program is implemented and overseen jointly by the Department of Natural Resources and Environmental Control (DNREC) and the Delaware Department of Agriculture (DDA), with the cooperation of the Nutrient Management Commission.

The U.S. Environmental Protection Agency (EPA) has delegated the legal authority to implement the NPDES permit program under the Clean Water Act in the State of Delaware to the DNREC, which serves as the lead agency for coordination with the EPA. The DDA is the primary initial point of contact with the regulated community: conducting inspections, collecting necessary documents, and reviewing Nutrient and Animal Waste Management Plans. The DDA, with the assistance and concurrence of the DNREC, has developed this permit to meet all necessary requirements. The DNREC, with the assistance of the DDA, will issue this final permit. The Nutrient Management Commission oversees the Nutrient Management Law and Regulations which governs the content of the Nutrient and Animal Waste Management Plans, which are an integral component of the CAFO program.

The DDA will be responsible for conducting inspections of farms covered under this permit to ensure compliance with its requirements. The DNREC retains its inspection authority. The DDA will take the lead in developing and implementing voluntary compliance strategies to bring an operation into compliance when needed. The DNREC will take the lead in developing and implementing compulsory compliance strategies to bring operations into compliance when voluntary measures have not been successful. The DDA will assist the DNREC in its enforcement activities and may act as DNREC's agent. The DNREC will initiate an enforcement action, should the DDA unsuccessfully resolve an enforcement issue.

Description of Discharge

Discharges in the form of manure, litter or process wastewater are permitted, provided that each facility operates its CAFO in accordance with Part I.C. of the attached permit which defines all applicable Effluent Limitations.

Duration of NPDES CAFO Permit

DNREC proposes to issue this NPDES General CAFO permit for a period not to exceed five (5) years, subject to the Effluent Limitations in the attached permit. The following are the basis for the proposed limitations.

Proposed Effluent Limitations

Each permittee is authorized to discharge from the facility in accordance with the conditions set forth in this permit, including Part I.C.1 and Part I.C.2 of this permit, from the date noticed of permit coverage, lasting through the expiration date of this General Permit. Violations of any of the following Effluent Limitations may result in enforcement action in accordance with Part II.A.21. of this permit.

1. Large Poultry Effluent Limitation Guidelines (ELG's)
 - a. In accordance with 7 Del. Admin. C. §7201-9.5.6.4.1.1.1 of the CAFO Regulations, there shall be no discharge of manure, litter or process wastewater pollutants to Waters of the State from the production area.
 - b. In accordance with 7 Del. Admin. C. §7201-9.5.6.4.1.1.1.2 of the CAFO Regulations, whenever precipitation causes an overflow of manure, litter or process wastewater, the overflow may be discharged into Waters of the State if:
 - i. The production area is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewaters plus the runoff and direct precipitation from a 25-year, 24 hour rainfall event; and
 - ii. The production area is operated in accordance with the measures and records required in 7 Del. Admin. C. §7201-9.5.5.0 of the CAFO Regulations.
 - c. If the Secretary determines that a discharge from the production area is an "Upset" in

accordance with Part II.A.23, the discharge shall not be a violation of the Effluent Limitations in this permit.

2. Medium Poultry Effluent Limitations

- a. The permittee shall operate according to all Best Management Practices (BMPs) addressed in the Animal Waste Management Plan (AWMP) and/or the Nutrient Management Plan (NMP) concerning management activities of manure, litter, or process wastewater in accordance with the State Technical Standards.
- b. If the Secretary determines that a discharge from the production area is an "Upset" in accordance with Part II.A.23, the discharge shall not be a violation of the Effluent Limitations in this permit.

Requirement to Implement Animal Waste Management Plan (AWMP) or Nutrient Management Plan (NMP)

Each permittee must implement its AWMP/NMP in accordance with Part II.A.2. of the attached permit. The AWMP/NMP must address the following nine (9) minimum requirements: 1) ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities; 2) ensure proper management of mortalities (dead animals) to ensure they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities; 3) ensure that clean water is diverted, as appropriate, from the production area; 4) prevent direct contact of confined animals with Waters of the State; 5) ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants; 6) site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to Waters of the State; 7) protocols for appropriate testing of manure, litter, process wastewater, and soil; 8) establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and 9) identify specific records that will be maintained to document the implementation and management of the minimum elements described in this section.

As defined in 7 Del. Admin. C. §7201-9.5.6.4 of the CAFO Regulations, the production area means that part of an AFO that includes the "animal confinement area", the "manure storage area", the raw materials storage area and the "waste containment areas", egg washing or processing facility and any area used in the storage, handling, treatment or disposal of mortalities. Animal confinement area includes the areas inside the poultry confinement houses and end pads in accordance with State Technical Standards. Manure storage and waste containment areas include storage sheds, and stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles.

Production Area Definition

Delaware interprets the following clarified definition of Production Area to apply to both Medium and Large Poultry operations which meet the definition of a CAFO and have a duty to apply for coverage under this General Permit.

As defined in 7 Del. Admin. C. §7201-9.5.6.4 of the CAFO Regulations, the production area means that part of an AFO that includes the "animal confinement area", the "manure storage area", the raw materials storage area and the "waste containment areas", egg washing or processing facility and any area used in the storage, handling, treatment or disposal of mortalities. Animal confinement area includes the areas inside the poultry confinement houses and end pads in accordance with State Technical Standards. Manure storage and waste containment areas include storage sheds, and stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles.

Special Conditions

Special Conditions in National Pollutant Discharge Elimination System (NPDES) permits require facilities to undertake activities designed to reduce the overall quantity of pollutants being discharged to Waters of the State. Special Conditions address unique situations and incorporate preventative requirements to reduce the potential for discharge of pollutants.

There are currently no special conditions applicable with this CAFO NPDES General Permit.

Public Notice and Process for Reaching a Final Decision

The public notice of Delaware's General CAFO NPDES permit (without land application), including all applicable supporting permit documentation, will be published in the Delaware State News and The News Journal, and posted on DNREC's and DDA's websites on October 28, 2015.

A public hearing is scheduled on Thursday, December 3, 2015 beginning at 7:00 PM at the Delaware Department of Agriculture Conference Center, located at 2320 South DuPont Highway, Dover, Delaware 19901. The public hearing will provide the public an opportunity to provide comments on the general permit. All comments received will be reviewed prior to issuing the general permit. Interested persons are invited to submit their written comments on the general permit and the tentative determinations made with respect to this NPDES general permit. All comments received by the close of business on November 27, 2015 at 4:30 PM will be considered by the DNREC in reaching a final decision.

After this General Permit is issued, Delaware intends to then proceed with public noticing groups of completed NOI's that have met all the requirements to be covered under this General Permit. Delaware will continue with this process until all facilities, which are required to be under the permit, are covered.

Department Contact for Additional Information

Bryan A. Ashby
Program Manager
Division of Water
Delaware Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9946
FAX: (302) 739-8369

**SAMPLE
INDIVIDUAL PERMIT**

State Permit Number [REDACTED]
NPDES Permit Number [REDACTED]
Effective Date: April 1, 2011
Expiration Date: March 31, 2016

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
AND THE LAWS OF THE
STATE OF DELAWARE

In compliance with the provisions of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (33 U.S.C. 1251 et seq.) (hereinafter referred to as "the Act"), and pursuant to the provisions of 7 Del. C., 6003

[REDACTED]

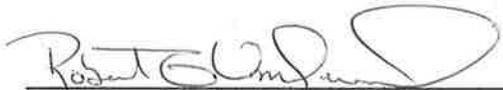
is authorized to discharge from the facility (Point Sources 001 and 002) located at

[REDACTED]

to receiving waters named

[REDACTED]

The effluent limitations, monitoring requirements and other permit conditions are set forth in Part I, II and III hereof.



Robert Underwood, Manager
Surface Water Discharges Section
Division of Water Resources
Department of Natural Resources and Environmental Control

4-1-11

Date Signed

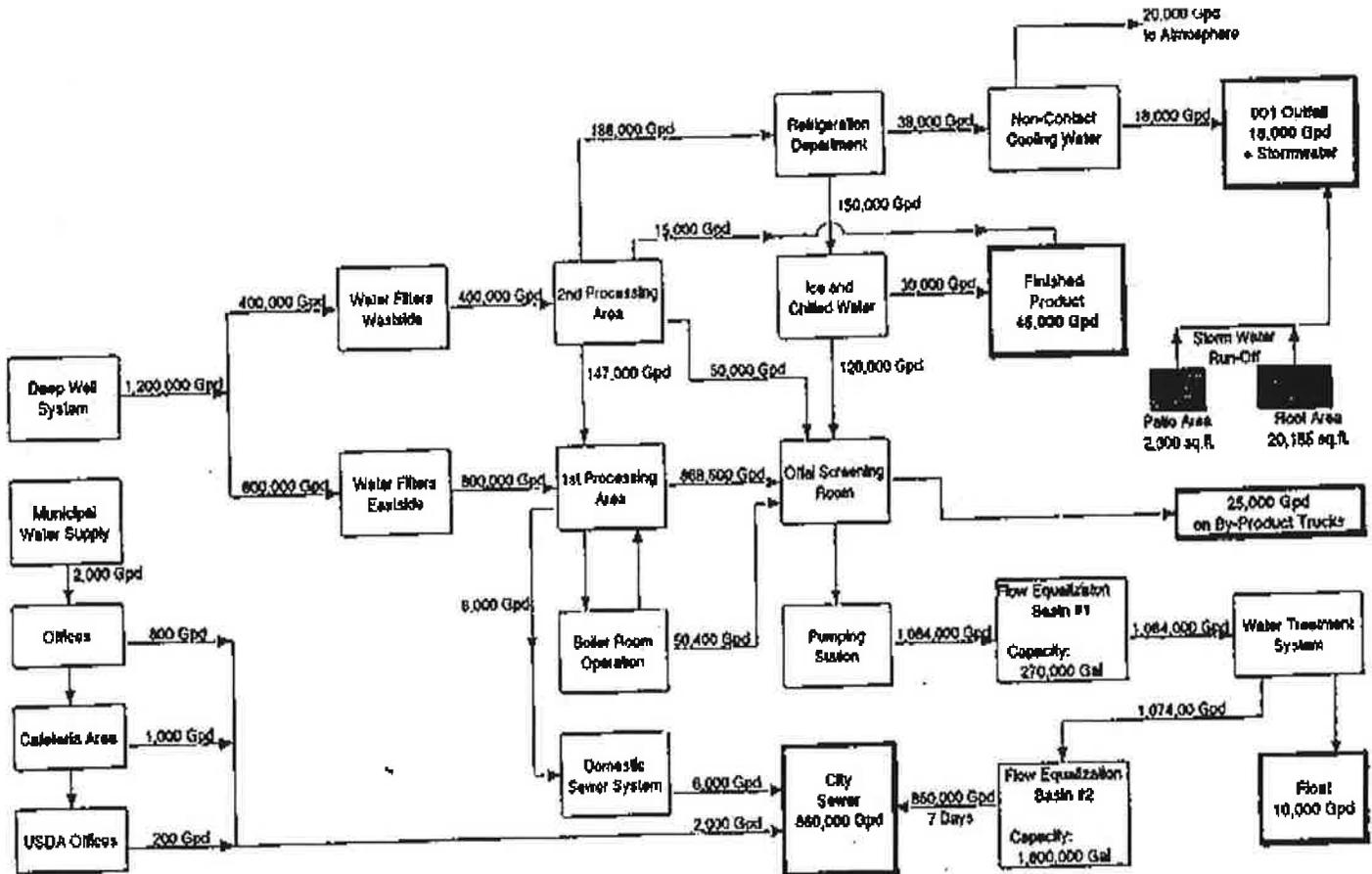
Part I

A. General Description of Discharges and Facilities

1. Permitted Discharges and Water Usage Flow Diagram

Outfall 001 – Non-contact cooling water from refrigerated facilities and storm water run-off from approximately 22,500 square feet of building roof and patio areas.

Outfall 002 – Storm water run-off from the Live Holding Shed area.



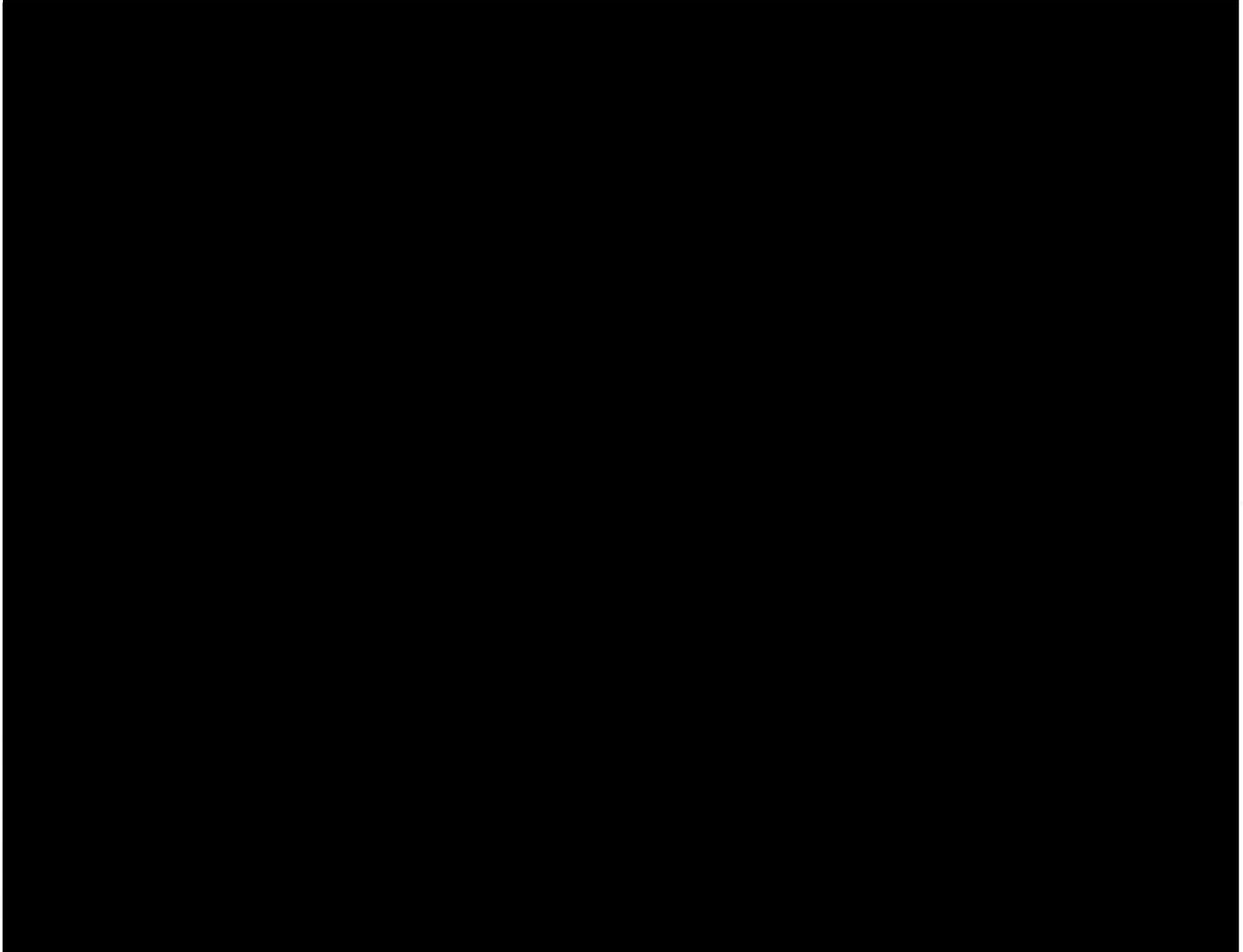
[REDACTED]
Water Usage Flow Chart

Effective Date: April 1, 2011
Expiration Date: March 31, 2016

Part I
State Permit Number [REDACTED]
NPDES Permit Number [REDACTED]
Page 3 of 18 Pages

A. General Description of Discharges and Facilities (continued)

2. Site Location Map



B. Effluent Limitations and Monitoring Requirements

1. Outfall 001 – EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning effective date and lasting through expiration date, the permittee is authorized to discharge from point source 001¹ the quantity and quality of effluent specified below:

Parameter	Effluent Limitations						Monitoring Requirements	
	Load			Concentration			Measurement Frequency	Sample Type
	Daily Average	Daily Maximum	Units	Daily Average	Daily Maximum	Units		
Flow ²	0.018		mgd				Once per month	Totalize
BOD ₅	0.45	0.75	lbs/day	3.0	5.0	mg/L	Once per month	Composite
Total Suspended Solids (TSS)	0.75	1.5	lbs/day	5.0	10.0	mg/L	Once per month	Composite
Temperature					86	°F	Once per week	I/S
pH	The pH shall be between 5.2 S.U. and 9.0 S.U. at all times.					S.U.	Once per week	Grab
The discharge shall be free from floating solids, sludge deposits, debris, oil and scum.								

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location: at the outfall pipe prior to discharge to the [REDACTED]

1 See Discharge Description on page 2 of 18 pages of this permit.
 2 Report both average daily and maximum daily flows on the discharge monitoring report (DMR).

B. Effluent Limitations and Monitoring Requirements (continued)

2. Outfall 002 – EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning effective date and lasting through expiration date, the permittee is authorized to discharge from point source 002¹ the quantity and quality of effluent specified below:

Parameter	Effluent Limitations					Benchmark Monitoring Concentrations ²	Concentration Units	Monitoring Requirements	
	Load			Concentration				Measurement Frequency	Sample Type
	Daily Average	Daily Maximum	Units	Daily Average	Daily Maximum				
Flow ²			mgd					Once per month	Estimated
pH	--	--	--	--	--	--	S.U.	Once per quarter	Grab
BOD ₅	--	--	--	16	26	--	mg/L	Once per quarter	Grab
Oil & Grease	--	--	--	8	14	--	mg/L	Once per quarter	Grab
Total Suspended Solids (TSS)	--	--	--	20	30	--	mg/L	Once per quarter	Grab
Ammonia (as N)	--	--	--	4	8	--	mg/L	Once per quarter	Grab
Total Kjeldahl Nitrogen (as N)	--	--	--			1.5	mg/L	Once per quarter	Grab
Nitrogen, Total (as N)	--	--	--	103	147	--	mg/L	Once per quarter	Grab
Phosphorus	--	--	--			2	mg/L	Once per quarter	Grab
Enterococcus ³	--	--	--	100	185	--	Col/100mL	Once per quarter	Grab
The discharge shall be free from floating solids, sludge deposits, debris, oil and scum.									

All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches and at least 72 consecutive hours from the previously measurable (greater than 0.1 inch rainfall) storm event. All samples shall be taken within 30 minutes after discharge starts, or as soon as thereafter as practicable. No sample shall be taken under circumstances that have the potential to endanger the person taking the sample. Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location: at the discharge of Outfall 002 at the property line.

1 See Discharge Descriptions on page 2 of 18 pages of this permit.
 2 Report both average daily and maximum daily flows on the discharge monitoring report (DMR).
 3 Compliance with the average enterococcus limit is based on a geometric mean.

C. Schedule of Compliance

1. The permittee shall comply with the requirements herein as soon as possible, but in no event later than the dates set forth in the following schedule:

None

2. No later than 14 calendar days following a date identified in the above schedule of compliance, the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

D. Monitoring and Reporting

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge.

2. Reporting

Monitoring results obtained during the previous one (1) month shall be summarized for each month and reported on a Discharge Monitoring Report Form ("DMR", EPA Form No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. Electronically-generated DMR forms may be used, if approved by the Department in writing. Signed copies of these, and all other reports required herein, shall be submitted to the Department at the following address:

STATE OF DELAWARE DEPT. OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL,
DIVISION OF WATER RESOURCES, SURFACE WATER DISCHARGES SECTION, R & R BUILDING,
89 KINGS HIGHWAY, DOVER, DELAWARE 19901
TELEPHONE: (302) 739-9946
FACSIMILE: (302) 739-8369

3. Definitions

- a. "Average daily loading" means the total discharge by weight during a calendar month divided by the number of days in the month that the production or commercial facility was operating. Where less than daily sampling is required, the daily average discharge shall be determined by the summation of all the measured daily discharges by weight divided by the number of days during the calendar month when the measurements were made.
- b. "Average monthly discharge" or "daily average discharge" is the arithmetic mean of all daily discharges during a calendar month, calculated as the sum of all daily discharges sampled and/or measured during the month divided by the number of daily discharges sampled or measured during such month.
- c. "Average monthly effluent limitation" or "daily average effluent limitation" means the highest allowable average of daily discharges over a calendar month.
- d. "Best management practices" or "BMP's" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices or measures to prevent or reduce the discharge of pollutants. BMP's include but are not limited to: structural and nonstructural controls; treatment requirements; operating procedures and practices to control spills or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs can be applied before, during and after pollution generating activities to reduce or eliminate the introduction of pollutants into receiving waters.

- e. "Biosolids" refers to the biomass or biological sludge generated or produced by biological wastewater treatment processes.
- f. "Bypass" means the intentional diversion of wastes from any portion of a treatment facility.
- g. "Composite sample" means a combination of individual samples obtained at specified intervals over a given time period, generally 24 hours.

In collecting a composite sample of a discharge other than a discharge of storm water or storm runoff (a non-storm water discharge), either: a) the volume of each individual sample is proportional to the discharge flow rate or b) the sampling interval is proportional to the discharge flow rate and the volume of each individual sample is constant. For a continuous non-storm water discharge, a minimum of 24 individual grab samples shall be collected and combined to constitute a 24 hour composite sample. For intermittent non-storm water discharges 4 hours or more in duration, the number of individual grab samples collected and combined to constitute a composite sample shall at a minimum be equal to the duration of the discharge in hours but not less than 12. For intermittent non-storm water discharges of less than 4 hours, the minimum number of individual grab samples collected and combined to constitute a composite sample shall be equal to the duration of the discharge in hours times 3 but not less than 3 samples.

- h. "Daily discharge" means the total discharge measured during a calendar day or any 24-hour period that reasonably represents the calendar day for sampling purposes. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of a pollutant discharged over a calendar day or the equivalent 24-hour period. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over a calendar day or the equivalent 24-hour period.
- i. "Daily maximum effluent limitation" is the highest total mass of a pollutant allowed to be discharged during a calendar day or, in the case of a pollutant limited in terms other than mass, the highest average concentration or other measurement of the pollutant specified during the calendar day, or any 24-hour period that reasonably represents the calendar day for sampling purposes.
- j. "Daily maximum temperature" is the highest arithmetic mean of the temperature observed for any two (2) consecutive hours during a 24-hour day, or during the operating day if flows are of shorter duration.
- k. "Direct Responsible Charge" or "DRC" means on-location accountability for, and on-location performance of, active daily operation (including Technical Supervision, Administrative Supervision, or Maintenance Supervision) for a Wastewater Facility, an operating shift of a system or a facility, or a major segment of a system or facility.
- l. "Estimate" is that based on a technical evaluation of the sources contributing to the discharge including, but not limited to, pump capabilities, water meters and batch discharge volumes.
- m. "Grab sample" is an individual sample collected in less than 15 minutes.
- n. "I/S" (immersion stabilization) means the immersion of a calibrated device in the effluent stream until the reading is stabilized.
- o. "Maximum instantaneous concentration" or "MIC" is the highest allowable measured concentration of a pollutant, obtained by analyzing a grab sample of the discharge.
- p. "Measured flow" is any method of liquid volume measurement the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.
- q. "Method Detection Limit" or "MDL" means the lowest concentration of a substance which can be measured with 99 percent confidence that the analyte concentration is greater than zero and is

determined from analysis of a sample in a given matrix containing the analyte.

- r. "Minimum analytical level" or "MAL" means the lowest concentration of a substance that can be quantified within specified limits of interlaboratory precision and accuracy under routine laboratory operating conditions in the matrix of concern. When there is insufficient interlaboratory study data, the "MAL" may be determined through the use of a multiplier of 5 to 10 times the method detection level or "MDL".
- s. "Monthly average temperature" is the arithmetic mean of temperature measurements made on an hourly basis, or the mean value plot of the record of a continuous automated temperature recording instrument, either during a calendar month, or during the operating month if flows are of shorter duration.
- t. "Non-contact cooling water" is that which is contained within a leak-free system, i.e. has no contact with any gas, liquid or solid other than the container used for transport.
- u. "Nuisance condition" is any condition that, as a result of pollutant addition to a surface water, causes unreasonable interference with the designated uses of the waters or the uses of the adjoining land areas.
- v. "Operator" means any person employed or appointed by any owner, and who is designated by such owner to be the person controlling the operations of the treatment works, including direct actions, decisions or evaluations which affect the quality of the discharge, and whose duties include testing or evaluation to control treatment works operations.
- w. "Pollution prevention" means any practice which results in a lesser quantity of emissions released or discharged prior to out-of-process recycling, treatment or control, as measured on a per-unit-of-production basis.
- x. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause 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.
- y. "Sewage" means the water carried human or animal wastes from septic tanks, water closets, residences, buildings, industrial establishments or other places together with such groundwater infiltration, subsurface water, storm inflow, admixture of industrial wastes, or other wastes as may be present.
- z. "Sewage sludge" means any solid, semi-solid or liquid residue removed during the treatment of municipal wastewater or domestic sewage, including but not limited to, solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet pumpings and sewage sludge products.
- aa. "Sludge" means the accumulated semi-liquid suspension, settled solids, or dried residue of these solids removed by any surface water or groundwater treatment facility or any liquid waste treatment facility or works, whether or not such solids have undergone treatment.
- bb. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. The basis for specific effluent limitations can be found in this permit's fact sheet. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- cc. "Whole effluent toxicity" means the aggregate toxic effect of an effluent or discharge measured directly by a toxicity test.

4. Test Procedures

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

5. Quality Assurance Practices

The permittee is required to show the validity of all data by requiring its laboratory to adhere to the following minimum quality assurance practices:

- a. Duplicate¹ and spiked² samples must be run for each constituent in the permit on 5% of the samples, or at least on one sample per month, whichever is greater. If the analysis frequency is less than one sample per month, duplicate and/or spiked samples must be run for each analysis.
- b. For spiked samples, a known amount of each constituent is to be added to the discharge sample. The amount of constituent added should be approximately the same amount present in the unspiked sample, or must be approximately that stated as maximum or average in the discharge permit.
- c. The data obtained in a and b shall be summarized in an annual report in terms of precision, percent recovery, and the number of duplicate and spiked samples run, date and laboratory log number of samples run, and name of analyst. The report shall cover the calendar year, January 1 through December 31, and shall be submitted to the Department, postmarked no later than the February 15 following the fourth quarter of reporting.
- d. Precision shall be calculated by the formula, standard deviation $s = (\sum d^2/k)^{1/2}$, where d is the difference between duplicate results, and k is the number of duplicate pairs used in the calculations.
- e. Percent recovery shall be reported on the basis of the formula $R = 100 (F-I)/A$, where F is the analytical result of the spiked sample, I is the result before spiking of the sample, and A is the amount of constituent added to the sample.
- f. The percent recovery, R, in e above shall be summarized yearly in terms of mean recovery and standard deviation from the mean. The formula, $s = (\sum (x-\bar{x})^2/(n-1))^{1/2}$, where s is the standard deviation around the mean \bar{x} , x is an individual recovery value, and n is the number of data points, shall be applied.
- g. The permittee or its contract laboratory is required to annually analyze an external quality control reference sample for each pollutant. These are available through the EPA regional quality assurance coordinator, or other EPA-approved supplier. Results shall be included in the Annual Report, required in paragraph c above.
- h. The permittee and/or its contract laboratory is required to maintain an up-to-date and continuous record of the method used, of any deviations from the method or options employed in the reference method, of reagent standardization, of equipment calibration and of the data obtained in a, b and f above.
- i. If a contract laboratory is utilized, the permittee shall report the name and address of the laboratory and the parameters analyzed together with the monitoring data required.

6. Records

- 1 Duplicate samples are not required for the following parameters: color, temperature, and turbidity.
- 2 Spiked samples are not required for the following parameters: acidity, alkalinity, bacteriological, benzidine, chlorine, color, dissolved oxygen, hardness, pH, oil & grease, radiological, residues, temperature, turbidity, BOD 5, and total suspended solids. Procedures for spiking samples are available through the Regional Quality Assurance Coordinator.

- a. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:
 - 1) The date, exact place and time of sampling or measurements;
 - 2) The person(s) who performed the sampling or measurements;
 - 3) The date(s) and time(s) analyses were performed;
 - 4) The individual(s) who performed each analysis;
 - 5) The analytical techniques or methods used;
 - 6) The results of each analysis; and
 - 7) The quality assurance information as stated above.
- b. An operator log must be kept on site at all times. This log should include time spent at the treatment facility on any date, and the nature of operation and maintenance performed.

7. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the Discharge Monitoring Report Form (EPA No. 3320-1). Such increased frequency shall also be indicated.

8. Records Retention

All records and information resulting from the monitoring activities required by this permit including hard copies of any electronically generated Discharge Monitoring Reports, all records of analyses performed, records of calibration and maintenance of instrumentation, and recording from continuous monitoring instrumentation shall be retained for three (3) years. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Department.

Part II

A. Management Requirements

1. Duty to Comply

- a. The permittee must comply with all the conditions of this permit. All discharges authorized herein shall be consistent with the terms and conditions of this permit.
- b. The discharge of any pollutant more frequently than, or at a level in excess of that identified and authorized herein shall constitute a violation of the terms and conditions of this permit. The violation of any effluent limitation or of any other condition specified in this permit is a violation of 7 Del. C., Chapter 60, and the Act and is grounds for enforcement as provided in 7 Del. C. §§6005, 6013, and 6018, for permit termination or loss of authorization to discharge pursuant to this permit, for permit revocation and reissuance, or permit modification, or denial of a permit renewal application. The Department may seek voluntary compliance by way of warning, notice or other educational means, pursuant to 7 Del. C. §6019, or any other means authorized by law. However, the Law does not require that such voluntary means be used before proceeding by way of compulsory enforcement.
- c. Any person violating Sections 301, 302, 306, 307, 318, or 405 of the Clean Water Act or any permit condition or limitation implementing such sections in a permit issued under Section 402 of the Act is subject to civil, administrative, and/or criminal penalties as set forth in 40 CFR 122.41(a)(2) and 122.41(a)(3).

2. Notification

a. Notification of Planned Changes

The permittee shall notify the Department in writing of any anticipated expansion or alteration of this permitted facility, any production increases, process modifications, or other changes which could result in new, different or increased discharges of pollutants. Notice is required only when such alteration, addition or change:

- 1) may justify the application of permit conditions that are different from those specified in this permit, or
- 2) may justify the application of permit conditions that are absent from this permit, or
- 3) meets any one of the following criteria:
 - a) The alteration or addition to this permitted facility may meet one of the criteria for determining whether a facility is a new source, as defined in Section 2 of the Department's Regulations Governing the Control of Water Pollution, as amended May 14, 2003; or
 - b) As a result of the alteration or addition, the nature of the discharge is or could be substantially different from that represented in the application originally submitted for the discharge(s) authorized herein, upon which this permit is based; or
 - c) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, including any uses or disposal sites not identified in the application for this permit or during this permit's issuance process; or

- d) The planned change in permitted facility or activity may result in noncompliance with the requirements of this permit.

Upon notification of a planned change, the Department may require the submission of a new application. The permittee is encouraged to notify the Department and submit any application well in advance of the scheduled date for the anticipated alteration or addition to allow sufficient time to process any modifications of this permit necessitated by the change and to avoid any resultant project delays.

b. Notification of Noncompliance

The permittee shall report all instances of noncompliance with this permit to the Department as outlined herein:

- 1) If, for any reason, the permittee does not comply with or will be unable to comply with any daily maximum effluent limitation or maximum instantaneous concentration specified in this permit, the permittee shall report such incident within 24 hours and provide the Department with the following information, in writing, within five (5) days of becoming aware of such conditions:
 - a) A description of the discharge and cause of noncompliance;
 - b) The period of noncompliance, including exact dates and times and if the noncompliance has not been corrected, the anticipated time when the discharge will return to compliance; and
 - c) Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.
- 2) If, for any reason, the permittee does not comply with any daily average or average monthly effluent limitation or standard specified in this permit, the permittee shall provide the information outlined above in paragraph b.1) with the discharge monitoring report (DMR) submitted in accordance with Part I.D.2. of this permit.
- 3) In the case of any upset or unanticipated bypass that exceeds any permitted effluent or discharge limitation, the permittee shall notify the Department within 24 hours. If this notification is provided orally, a written report shall be submitted within 5 days.
- 4) In the case of any discharge subject to any toxic pollutant effluent standard under Section 307(a) of the Act, the permittee shall notify the Department within 24 hours from the time the permittee becomes aware of a noncomplying discharge. Notification shall include the information outlined above in paragraph b.1). If this information is provided orally, a written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.
- 5) In the case of any other discharges which could constitute a threat to human health, welfare, or the environment, the information required above in paragraph b.1) shall be provided as quickly as possible upon discovery and after activating the appropriate emergency site plan, unless circumstances exist which make such a notification impossible. A delay in notification shall not be considered a violation of this permit when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment. A written submission covering these points must be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

- 6) The permittee shall report all instances of noncompliance not otherwise reported under the preceding paragraphs at the time the discharge monitoring report (DMR) is submitted. The report shall contain the information outlined above in paragraph b.1).
- 7) The Department may waive the written report as required herein on a case-by-case basis, if an oral report was provided within 24 hours.

c. Reporting Discharge(s) of Pollutants Pursuant to 7 Del. C. §6028

Any person who causes or contributes to the discharge of a pollutant into waters of the State or the United States either in excess of any conditions specified in this permit or in absence of a specific permit condition shall report such an incident to the Department as required under 7 Del. C. §6028.

3. Facilities Operation

The permittee shall at all times maintain in good working order and operate as efficiently as possible all collection and treatment facilities and systems (and related appurtenances) installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes but is not limited to, effective performance (based upon the facilities' design), adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, when necessary, to achieve compliance with the terms and conditions of this permit.

4. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to State waters resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and extent of the noncomplying discharge.

5. Failure

The permittee, in order to maintain compliance with this permit, shall control production and all discharges as necessary upon reduction, loss, or failure of the treatment facility until the treatment facility is restored or an alternative method of treatment is provided. The need to halt or reduce the permitted activity in order to maintain compliance with this permit shall not be a defense for a permittee in any enforcement action.

6. Alternative Power Source

In order to ensure compliance with the terms and conditions of this permit, the Department may require that the permittee provide an alternative power supply which is sufficient to operate the permittee's wastewater collection, conveyance and treatment facilities.

7. Removed Substances

Any solids, sludges, filter backwash, or other pollutants removed in the collection, conveyance or treatment of wastewater shall be disposed of in such manner as to prevent any pollutant from such materials from entering surface waters or groundwaters.

8. Bypass

- a. The Secretary may prohibit the intentional diversion or bypass of waste streams from any portion of the facility regulated herein in consideration of the adverse effect of the proposed bypass or where the proposed bypass does not meet the conditions set forth below in Part II.A.8.b.
- b. The intentional diversion or bypass of waste streams from any portion of the facility regulated herein is prohibited unless:
 - 1) The bypass is necessary to perform essential maintenance and auxiliary equipment, a redundant or back-up system or an alternate mode of operation is utilized to maintain treatment performance; or
 - 2) The following four conditions are met:
 - a) Bypass is unavoidable to prevent loss of human life, personal injury or severe property damage;
 - b) There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, plant shutdown or maintenance during normal periods of equipment down-time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent the bypass;
 - c) The permittee notifies the Department of the bypass or of the need to bypass as outlined below in paragraph 8.c below; and
 - d) The permittee is utilizing or will utilize all available alternative operating procedures or interim control measures to reduce the impact of the bypass on State waters.
- c. Notice
 - 1) If the permittee knows in advance of the need for a bypass, the permittee shall notify the Secretary, in writing, at least ten days before the date of the bypass, if possible.
 - 2) In the event of an unanticipated or unintentional bypass, the permittee shall notify the Department within twenty-four hours of discovery. Notice may be provided orally, but shall be followed up with submission of a written report that provides the information outlined in Part II.A.2.b.1) within five (5) days.
 - 3) The public shall be notified and given an opportunity to comment on bypass incidents of significant duration, to the extent feasible.

9. Upset

- a. An upset shall constitute an affirmative defense to an action brought for noncompliance with any technology based permit effluent limitations established herein, if the requirements of Part II.A.9.b below are met.
- b. To establish an affirmative defense for an upset, the permittee shall demonstrate, through properly signed and authenticated, contemporaneous operating logs, or by other relevant evidence that:

- 1) An upset occurred and that the permittee can identify the specific cause(s) of the upset;
 - 2) The permitted facility was at the time being operated in a prudent and workman like manner and in compliance with proper operation and maintenance procedures;
 - 3) The permittee submitted notice of the upset as required in Part II.A.2.b.3) (i.e., within 24 hours of becoming aware of the upset); and
 - 4) The permittee took all reasonable measures necessary to minimize any adverse impact to State waters.
- c. Burden of proof. The permittee shall have the burden of proving an upset in any case where an upset is claimed as a defense.

B. Responsibility

1. Right of Entry

The permittee shall allow the Secretary of the Department, the EPA Regional Administrator, or their authorized representatives, jointly and severally, upon the presentation of his or her credentials:

- a. To enter upon the permittee's premises where the regulated facility, treatment works, or discharge(s) is located or the regulated activity is conducted or where any records required to be kept under the terms and conditions of this permit are located;
- b. To have access to and copy, at reasonable times, any records required to be kept under the terms and conditions of this permit;
- c. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;
- d. To inspect at reasonable times any facilities, equipment, management or control practices, or operations regulated or required under this permit; and
- e. To sample at reasonable times any discharge or substance at any location for the purpose of assuring compliance with this permit or otherwise determine whether a violation of the Law or these regulations exists, as provided in 7 Del. C. §6024;

2. Duty to Provide Information Requested by the Department

The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine compliance with this permit or to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit. The permittee shall also furnish, upon request, copies of records required to be kept by this permit.

3. Duty to Provide Information Found to be Missing or Inaccurate

When the permittee discovers that it failed to submit any relevant facts in a permit application or that it submitted any incorrect information in any permit application or in any report to the Department, it shall promptly submit such facts or information.

4. Availability of Reports

Except for any data and information that is deemed to be confidential and claimed as such when submitted, and that is entitled to protection as trade secrets under State law, all reports prepared in accordance with the terms and conditions of this permit shall be available for public inspection at the Department's offices. This permit, the permit application and any information submitted to support the application (other than information entitled to protection as trade secrets pursuant to State law) and any effluent or discharge monitoring data shall not be deemed confidential and any claims of confidentiality will be denied. Knowingly making any false statement in any such report may result in the imposition of criminal penalties as provided under 7 Del. C., §6013.

5. Signatory Requirements

All applications, reports, or information submitted to the Department shall be signed and certified as outlined in Section 6.11 of the Department's Regulations Governing the Control of Water Pollution, as amended May 14, 2003.

6. Permit Transfer

- a. This permit is not transferable to any person, except after notice to and with the concurrence of the Secretary.
- b. In the event of a change in ownership or control of the facilities from which the authorized discharge(s) emanate(s), this permit may be transferred if the permittee:
 - 1) Notifies the Department, in writing, of the proposed transfer, in advance; and
 - 2) Submits to the Department a written agreement signed by all parties to the transfer, containing a specific date for transfer of permit responsibility, coverage and liability to the new permittee. The written agreement shall expressly acknowledge the current permittee is responsible and liable for compliance with the terms and conditions of this permit up to the date of transfer and the new permittee is responsible and liable for compliance from that date on; and
 - 3) The Department within thirty (30) days of receipt of the notification of the proposed transfer does not notify the current permittee and the new permittee of its intent to modify, to revoke and reissue or to terminate this permit and require that a new application be submitted.
- c. The permittee is encouraged to provide as much advance notice as possible of any proposed transfer, to allow sufficient time for the Department to modify this permit to identify the new permittee and to incorporate such other requirements as may be necessary under the Law or the Act.

7. Modification, Termination, or Revocation and Reissuance

This permit may be modified, terminated or revoked and reissued in whole or in part, during its term, for cause as provided in Section 6, Part V of the Department's Regulations Governing the Control of Water Pollution, as amended May 14, 2003. The filing of a request for permit modification, or revocation and reissuance, or termination, or a notification of any planned changes or anticipated noncompliance does not stay any permit condition.

8. Reapplication for a Permit

- a. The permittee must apply for and obtain a new permit if the permittee wishes to continue the activity regulated by this permit beyond its expiration date;
- b. At least 180 days before the expiration date of this permit, the permittee shall submit a new application or notify the Department of the permittee's intent to cease discharging by the expiration date;
- c. In the event that a timely and sufficient reapplication has been submitted and the Department is unable, through no fault of the permittee, to issue a new permit before the expiration date of this permit, the terms and conditions of this permit are continued and remain fully effective and enforceable;

9. Compliance with Effluent Standards for Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish such standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

10. Construction Authorization

This permit does not approve or authorize the construction, installation or modification of any wastewater/liquid waste collection, transmission or treatment facilities, system, or any other pollution control equipment or device necessary to achieve or to maintain compliance with the terms and conditions of this permit. Separate authorization for the construction, installation or modification of such pollution control facilities must be obtained from the Secretary.

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

11. Property Rights

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

12. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under 7 Del. C., Chapter 60, or any other State law or regulation.

13. Severability

The provisions of this permit are severable. If any provision of this permit is held invalid, the remainder of this permit shall not be affected. If the application of any provision of this permit to any circumstance is held invalid, its application to other circumstances shall not be affected.

Part III

A. *Special Conditions*

1. Supersedes previous permit

This permit supersedes NPDES Permit [REDACTED] and State Permit [REDACTED] issued on May 20, 2004.

2. Permit Reopener Clause

The Department or agencies under its supervision may perform or direct the performance of analyses or biosurveys on the receiving waters in the immediate vicinity of the permittee's discharge or further downstream, after the issuance of this permit. Such analyses or biosurveys may include evaluating impingement, entrainment, and thermal impacts the permittee's facility poses on its intake and receiving waters. If the results of these analyses or biosurveys suggest that the permittee's discharge is causing, or has the potential to cause, diminished attainment of designated protected uses (as defined by the State of Delaware's "Water Quality Standards for Streams") then this permit may be reopened and modified after notice and opportunity for a public hearing. At that time, additional effluent limitations, monitoring requirements and/or special conditions may be included in the permit. If it is determined that additional equipment is needed to meet the revised permit conditions, the permittee shall install the necessary equipment.

3. Stormwater Plan

The permittee shall continue to implement and maintain a Storm Water Plan (SWP) to minimize the discharge of contaminated storm water from its facility. The SWP shall be implemented and maintained to be in accordance with the requirements of the Delaware Regulations Governing the Control of Water Pollution (RGCWP), Section 9, "The General Permit Program", Subsection 1, "Regulations Governing Storm Water Discharges Associated With Industrial Activity", Part 1, "Provisions Governing All Storm Water Discharges". In particular, the SWP shall address practices including good housekeeping, inspections under wet and dry weather, sediment and erosion control, facility security, and managing runoff.

4. Notification – Re-activation of Outfall 001

Prior to planned change in the re-activation of surface discharge from Outfall 001 to the Sandy Branch, the permittee shall notify the Department, at least (30) days prior to planned change, in accordance with the requirements of Part II.A.2.a., "Management Requirement, Notification, Notification of Planned Changes" of this permit.

5. Requests for Monitoring Reduction

After the successful completion of two (2) years of testing in accordance with Part I, Section B, 'Effluent Limitations and Monitoring Requirements' for Outfall 002, the permittee may request the Department to review the data from these tests and change the monitoring frequency for this testing.

When the final Outfall 002 limits become effective, the Department may direct the permittee to resume quarterly monitoring. The permittee would then be eligible, after two (2) more years of successful monitoring, to request a monitoring reduction under this Special Condition.