Gina McCarthy, Administrator
United States Environmental Protection Agency
Office of Water, mail stop 4010M
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Docket # EPA-HQ-OW-2015-0828
Draft NPDES General Permit for Stormwater Discharges from Construction Activities

Dear Administrator McCarthy:

On behalf of the State of Delaware Department of Natural Resources and Environmental Control (DNREC), I respectfully submit the following comments on the notice and request for public comment for Draft National Pollution Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities (Draft CGP) as published in the Federal Register (Volume 81, No. 69) on April 11, 2016.

The U.S. Environmental Protection Agency (EPA) delegated the authority to issue the NPDES General Permit for Stormwater Discharges from Construction Activities (CGP) to DNREC. The DNREC’s Sediment and Stormwater Program (SSP) manages the CGP through a comprehensive approach to sediment control and stormwater management that includes monitoring of stormwater quantity and water quality control. DNREC’s understanding of and success with controlling sediment and stormwater pollution is as strong as any program in the country.

In general, DNREC is supportive of the revisions in the Draft CGP. Nevertheless, some of the revisions may be unachievable and/or incompatible with Delaware statutes and regulations.

**Group Stormwater Pollution Prevention Plan (SWPPP)**

EPA asks specifically for comment on whether a “group SWPPP” should be required where multiple operators are working on the same site. The group SWPPP would outline and delineate which operators were responsible for which portion of the site’s pollution prevention controls. DNREC’s co-permittee language in its CGP (7 DE Admin. Code 7201) is sufficient to
address multiple operators. Requiring the development of a group SWPPP is redundant and an unnecessary bureaucratic oversight achieved more efficiently through private agreements. DNREC does not recommend that EPA require the development of a group SWPPP when multiple operators are involved on the same project.

**Authorized Non-Stormwater Discharges**

EPA proposes to allow “external building washdown” be discharged as long as “external surfaces do not contain hazardous substances” and gives PCBs (polychlorinated biphenyls) as an example. Hazardous substances is a well-defined term under the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) but in the context of construction activity the U.S. Department of Labor’s defines hazardous substances differently (29 CFR §1910.120(a)(3)) and the Clean Water Act does not define hazardous substances. DNREC requests that EPA clarify which definition of hazardous substances it intends to use in the context of the CGP.

**Demolition**

EPA proposed pollution prevention requirements in part 2.3.3(f) for the demolition of 10,000 square foot structures because of possible PCB contamination. In response to Sierra Club, et.al. v. McLerran (July 14, 2015), EPA acknowledges data gaps in the “determining the magnitude of [PCB] sources” and “determining PCB sources.” Also, nowhere in Delaware Code is demolition understood as a land disturbing or construction activity. DNREC believes it is premature to include requirements for demolition because evidence is inconclusive that demolition is a source of PCB contamination and demolition is not a construction activity.

**Inspection Frequency**

EPA requested comment “on modifying the minimum site inspection frequency to once every 7 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater” (at 20). In DNREC’s professional judgment, when properly-trained responsible personnel are assigned to a construction site, inspection and monitoring of the erosion and sediment, and pollution prevention controls every 7 days is sufficient. DNREC does not endorse modifying the minimum site inspection frequency and it believes it should remain consistent with Part 4.1.2 of the CGP and 4.2 of the Draft CGP.

**SWPPP Availability**

EPA is considering requiring operators, either post online or submit to EPA, copies of the initial SWPPP as part of the Notice of Intent (NOI). In Delaware, the SWPPP is incorporated into a site’s sediment and stormwater plan and is a dynamic document. As construction proceeds, the initial SWPPP becomes irrelevant because it cannot provide current site conditions to the public; therefore DNREC recommends EPA not require the submission of the initial SWPPP.

---

1 EPA’s Plan for Addressing PCBs in the Spokane River. (July 14, 2105).
DNREC appreciates the opportunity to comment on the Draft CGP and looks forward to future dialogue. If you have any questions, please contact DNREC’s Sediment and Stormwater Program Manager, Matt Watkins at 302.739.9921 or matthew.watkins@state.de.us.

Sincerely,

[Signature]

David S. Small
Secretary