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By **Bridget L. Dorfman, Esq., Manko Gold Katcher & Fox, LLP**

Pennsylvania DEP Proposes New Stormwater Management Rules

On August 29, 2009, the Pennsylvania Department of Environmental Protection (“PADEP”) issued a Notice of Proposed Rulemaking that proposes significant amendments to regulations for erosion and sediment control and stormwater management that prescribe the way developers and others manage stormwater during construction activity. The proposed rules contemplate changes that, if finalized, will significantly impact the way earth disturbance activity (e.g., land clearing, grading, soil stockpiling, or any other human activity that disturbs the land’s surface) is regulated in Pennsylvania.

Among the more significant proposed changes, PADEP is proposing to codify the existing practice in PA with regard to post-construction stormwater management (“PCSM”), pursuant to which permittees must develop a written PCSM plan designed to preserve and even restore the quality of the Commonwealth’s waters and then implement, operate,



Bridget L. Dorfman

and maintain the best management practices called for in the PCSM plan over the long-term. Also significant, PADEP is proposing to add new requirements that would protect existing riparian forest buffers around sites within an Exceptional Value watershed. PADEP is also proposing a new permit-by-rule option for earth disturbance activity projects that pose low impact and low risk to receiving waters and that incorporate riparian forest buffers. Permit fees are also proposed to be

increased tenfold – the fee for a general National Pollutant Discharge Elimination System (“NPDES”) permit would go from \$250 to \$2500, and from \$500 to \$5000 for an individual NPDES permit.

Certain proposed changes are more administrative in nature. For example, the proposed rules include numerous new definitions, as well as clarifications to existing definitions. Some regulatory language is being revised for clarity. Changes are being proposed to reflect updates to the NPDES program under the federal Clean Water Act, which PADEP has administered on behalf of the U.S. Environmental Protection Agency since 1992. In addition, permittees and their operators and engineers would be required to attend a pre-construction meeting with either PADEP or the county conservation district before construction begins.

PADEP has specifically solicited comments regarding several topics, including the scope of the permit-by-rule option, who should have

responsibility for PCSM requirements, and whether riparian forest buffers should be made mandatory for all waters. PADEP will be accepting public comments on all aspects of the proposed rulemaking until November 30, 2009, and the final rules will likely be promulgated several months thereafter. Any owners or operators of projects where earth disturbance will be necessary (either now or in the future) should review the proposed rules, submit comments to PADEP if they so desire, and watch for the final rules to be issued in the coming months. Whatever form the final rules take, stormwater compliance in Pennsylvania is likely to become somewhat more complicated.

Bridget L. Dorfman is an associate at the environmental law firm of Manko, Gold, Katcher & Fox, LLP in Bala Cynwyd, PA. She focuses her practice on regulatory compliance matters and real estate development transactions. ■