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Erosion and Sedimentation Control Regulations

The erosion and sedimentation control regulations of the Pennsylvania Department of Environmental Protection (DEP) provide that a person proposing an earth disturbance activity that involves one acre or more of earth disturbance must obtain an individual National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges associated with construction activities prior to commencing the earth disturbance activity.

A provision in these regulations that has sometimes been overlooked requires that for any property containing a Post Construction Stormwater Management Best Management Practice (PCSM BMP), the permittee or co-permittee of the NPDES permit must file an instrument with the recorder of deeds to assure disclosure in the ordinary course of a title search of the property of the PCSM BMP and related obligations. This recorded instrument must (i) identify the PCSM BMP, (ii) provide for necessary access related to long-term operation and maintenance for PCSM BMPs, (iii) provide notice that the responsibility for long-term operation and maintenance of the PCSM BMP is a covenant that runs with the land and is binding upon and enforceable by subsequent grantees, and (iv) provide proof of filing with the notice of a termination of the NPDES permit.

These provisions affect not only new permits, but can impact existing permits for which renewal is sought.

The DEP and County Soil Conservation Districts are now increasing their enforcement on the requirements for NPDES permittees to prepare and record an instrument. As with other environmental regulations, non-compliance with these provisions can have adverse consequences.

Please contact John Lushis at jlushis@nmmlaw.com with any questions or concerns regarding earth disturbance activities.

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