

# “What keeps you up at night?”

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## Pennsylvania’s new erosion and sediment control regulations may go into effect as early as October 2010

By Andrew T. Bockis

### SUMMARY

**Changes to Pennsylvania’s erosion and sediment control regulations, which were proposed last summer, will likely go into effect within the next few months.**

Both the Pennsylvania Senate and House Environmental Committees declined last week to take formal action on the Pennsylvania Department of Environmental Protection’s proposed Erosion and Sediment Control and Stormwater Management regulations. The committees’ decisions not to take formal action mean that the regulations are “deemed approved,” and the Environmental Quality Board (EQB) may proceed with its promulgation of the regulations.

The forthcoming regulations will become effective 90 days after they are published in the Pennsylvania Bulletin, which could happen as early as this week. As a result, the regulations could be effective as early as October 2010.

### WHAT IS THE IMPACT OF AN OCTOBER 2010 EFFECTIVE DATE?

The forthcoming regulations will have a major impact on all projects that “move dirt” in Pennsylvania. Previous client alerts highlighting the major changes are available at [http://www.saul.com/common/publications/pdf\\_2315.pdf](http://www.saul.com/common/publications/pdf_2315.pdf) and [http://www.saul.com/common/publications/pdf\\_2498.pdf](http://www.saul.com/common/publications/pdf_2498.pdf). These changes will have an impact not only on commercial and industrial development projects, but on individual projects as well. For example, the regulations will apply to the construction of single family homes. There is an exception, however, for single family homes that are not part of a larger common plan of development and where the parcel was acquired by the applicant prior to the effective date of the regulations. Individuals who are considering purchasing vacant land to build a single family house ought to be aware of this exception, as its usefulness will likely expire in October 2010.

Further, DEP has given assurances that permit applications that are under review prior to the effective date of the new regulations will be subject to review under the current Erosion and Sediment Control regulations. Although there is no guarantee that this will remain the case, it weighs in favor of submitting project applications as soon as possible.

## COULD THERE BE ANY ADDITIONAL CHANGES?

Although the Senate and House Environmental Committees declined to take action on the regulations, there is an inkling that this may not be the Legislature's final word on the subject. In a June 29, 2010 letter to the EQB, Senator Mary Jo White, Chair of the Senate Environmental Resources and Energy Committee, stated that “[w]hile several issues remain outstanding, my colleagues and I believe it is more productive to try to address these concerns legislatively.” Such legislative changes could include an amendment to Article IV of The Clean Streams Law, allowing for DEP to exercise flexibility where the forthcoming regulations do not allow it.

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