



Fox Rothschild LLP
ATTORNEYS AT LAW

In the Zone

Presented by the Zoning and Land Use Practice Group

February 2010

PA EHB Suspends NPDES Permit Over Stormwater Concerns

By Robert W. Gundlach, Jr.



On October 22, 2009, the Pennsylvania Environmental Hearing Board rendered a decision impacting stormwater management planning in Exceptional Value (EV) watersheds.

In *Crum Creek Neighbors v. DEP, Pulte Homes*, the judge suspended an individual NPDES permit because, according to the decision, (1) the PA Department of Environmental Protection (PADEP) incorrectly analyzed the site as a nondischarge site when in fact there will be direct discharges to an EV stream, and

(2) the PADEP failed to require adequate investigation of the project's potential impact on the water flow in the EV stream.

The applicant's project, situated on top of a ridge, partially drained into an EV stream. The stormwater controls were accordingly designed and approved by the PADEP to manage the required two-year storm event and protect the receiving EV stream. However, the court found that runoff from a five-year storm would effectively create a direct discharge to the protected water.

Additionally, the court agreed with the appellant's position that the project had the

potential to reduce water flow in the EV stream and required further investigation and analysis.

The PADEP is attempting to establish a process for future stormwater management plan submissions that will address the court's concerns. However, it would seem plausible that future projects in special protection watersheds will potentially be subjected to additional design and hydro-geological studies.

For more information, please contact Robert W. Gundlach, Jr. at 215.918.3636 or rgundlach@foxrothschild.com.

Attorney Advertisement

© 2010 Fox Rothschild LLP. All rights reserved. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.