

A New Day Has Dawned - Construction Permits Subject To Citizen Objection

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It is a new day for the Maryland construction industry. Our fellow citizens now have the right to request a public hearing regarding any land-disturbing construction permit (disturbing one acre or more).

MNCBIA members are familiar with the need to obtain an NOI approval (NPDES Permit) from the Maryland Department of the Environment (MDE). Previously, this was a pro-forma process, along with local approval of Erosion and Sediment Control Plans (ESC Plans) and the Stormwater Management Plans (SWM Plans). Not anymore. Effective July 13, 2009, MDE began implementing the new General Permit that requires the publication of an NOI application prior to approval of the NOI. The notice gives any of our fellow citizens the ability to request a public hearing on the NOI (subjecting every development to more citizen scrutiny).

Legal Background

The NPDES Permit was administered by the State of Maryland, pursuant to the federal Clean Water Act, since 1974. The NPDES program allows issuance of permits for "discharges" (i.e., water flowing through and away from construction sites) into navigable waters. Maryland's laws dictating how construction projects design sediment and erosion control systems and stormwater management systems provide the protection for our waterways. Previously, it was sufficient for local staff to review the Plans (ESC Plans and SWM Plans) and determine compliance with applicable laws. Pursuant to a settlement agreement between MDE and the Waterkeeper Alliance—in a lawsuit challenging MDE's general stormwater permit for construction sites—it was agreed that the public would be notified of the proposed issuance of each land-disturbing, construction permit and given the opportunity to comment.

What Does This Mean To Me?

This means that the NOI application now must include new information concerning how your plans address the following: (1) utilization of "environmental site design," (2) maintenance of limits of disturbance to protect natural areas and to control construction equipment and vehicles, (3) evaluation and appropriate limitation of site clearing, (4) evaluation and designation of site area for phasing or sequencing, (5) identification of soils at high risk for erosion and use of advanced stabilization techniques, (6) identification of steep slopes and clearing limitations for their protection, (7) designation of stabilization requirements and time limits, and protection measures for discharges to the Chesapeake Bay, and (8) identification of impacted impaired waters (with a TMDL). This new information will aid MDE staff as they evaluate compliance of ESC

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Plans and SWM Plans with applicable laws. More importantly, this new information will provide our fellow citizens with a basis for objection to the issuance of the NOI. As long as our members' Plans comply with the applicable laws, the objections of our fellow citizens should not stop the issuance of the NOI. On the other hand, this new process will cost our members time and money.

Public Participation

MDE has established a Website database, providing the public with information on all NOI permit applications, pursuant to the settlement agreement. Once an application's information is posted on the MDE database, a minimum 45-day public participation period begins for sites disturbing three or more acres (or 30-days for sites disturbing one to less than three acres). If no comments are received within the time period and MDE has notification of ESC Plan approval, the NOI should be approved within 48 hours. If a citizen requests that the site obtain an individual permit, the applicant is notified and MDE will evaluate whether an individual permit is necessary. If the application is for disturbance of 150 or more acres that discharge to an impaired waterbody, an individual permit is required. It should be noted that MDE can determine after reviewing any NOI general permit application that an individual permit will be required.

The process for an individual permit first gives citizens the opportunity to request an informational meeting. After MDE makes a tentative determination to approve the NOI, citizens have the opportunity to request a public hearing. Once MDE makes a final determination, citizens have the opportunity to begin the appeal process by requesting a contested case hearing.

This new day will be challenging. It will require creative solutions to new challenges. ■

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