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## **Stormwater, What? Lenders Must Obtain Permits For Construction Properties in Foreclosure**

Last week, the Tennessee Department of Environment and Conservation ("TDEC") issued its new [Construction General Stormwater Permit](#), which will impact a sector that is generally not subject to environmental regulations. Under the new permit, if a lending institution obtains ownership of a construction site by foreclosure, TDEC now requires that institution to obtain stormwater permit coverage even if the property was covered under a valid permit prior to foreclosure.

This requirement arises as a direct result of the real estate market's toll on construction projects that have been halted or postponed by the current economic downturn. As lenders well know, these properties often go into foreclosure and sit without activity for months or even years. At many of these construction sites, grading of the land has occurred, and the soil is unstable and exposed to rain, thereby potentially causing degradation to local streams and waterways as a result of stormwater erosion. As the regulating entity for water quality, TDEC has set its sights on these construction sites.

Specifically with regard to foreclosures, the new permit states:

If the transfer of ownership is due to foreclosure or a permittee filing for bankruptcy proceedings, the new owner (including but not limited to a lending institution) must obtain permit coverage if the property is inactive, but is not stabilized sufficiently. If the property is sufficiently stabilized permit coverage may not be necessary, unless and until construction activity at the site resumes.

Accordingly, if the construction site is not stabilized, the lending institution must file a Notice of Intent to obtain coverage under the permit and carry out the additional environmental requirements that follow pursuant to the regulatory framework established in the permit.

For assistance in investigating whether a property is subject to the new permit requirements or obtaining permit coverage, please contact [Hart Knight](#) at (615) 744-8445 ([hknight@millermartin.com](mailto:hknight@millermartin.com)) or any other member of Miller & Martin's [Environmental Law Practice Group](#).

*The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.*

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