

# Construction OberView

Subscribe

Reprints

PDF

Construction Group

[www.ober.com](http://www.ober.com)

JUNE 2009

## Maryland Contractors Face Changes in Erosion and Sediment Control

*Joseph C. Kovars*

410-347-7343

[jckovars@ober.com](mailto:jckovars@ober.com)

By their very nature, construction sites are particularly likely to create conditions that, if left unchecked, can cause erosion and sediment loss. For this reason, federal and state laws establish various standards for the installation and maintenance of techniques and structures designed to minimize and control erosion and sediment loss during construction. Thanks to a recent settlement, these standards are likely to become more demanding for contractors in Maryland.

As a short background, the Clean Water Act established a National Pollution Discharge Elimination System (NPDES) to control pollution generated from runoff associated with industrial activities, including construction, by requiring permits limiting and restricting how such activities are performed. The State of Maryland administers the NPDES program through the Maryland Department of the Environment (MDE).

Any construction activity with a planned disturbance of one acre or more requires an NPDES permit from the MDE. To obtain the permit, the contractor must submit an erosion and sediment control plan that complies with Maryland regulations, as particularly set forth in the 1994 Maryland Standards & Specifications for Soil Erosion & Sediment Control.

The NPDES permit authorizes the contractor to discharge stormwater from the construction site, subject to the contractor complying with the approved erosion and sediment control plan and stormwater management plan, complying with water quality standards, performing self-inspections and maintaining appropriate records.

In 2008, MDE made a "final determination" to issue a new NPDES permit for stormwater associated with construction activity. The new permit included requirements from previous permits regarding compliance with approved erosion/sediment control and stormwater management plans, self-inspection and record-keeping, along with various procedural and substantive changes.

Early this year, a consortium of Maryland environmental organizations contested the new permit on the grounds that it unlawfully permitted the open

### In this Issue

**Maryland's Trust Fund Statute: Recent Developments**

***Maryland Contractors Face Changes in Erosion and Sediment Control***

**Classifying Workers: New Maryland Standards**

### Construction Group

Joseph C. Kovars, Co-chair

John F. Morkan III, Co-chair

Raymond Daniel Burke

David L. Cole, Jr.

James E. Edwards, Jr.

David G. Kinzer

Sylvia Ontaneda-Bernales

Eric Radz, Editor

Michael A. Schollaert

Peter F. Stine

Paul S. Sugar

Anthony F. Vittoria

M. Hamilton Whitman, Jr.

John Anthony Wolf

storage of poultry litter under conditions that would cause the discharge of pollutants, and failed to ensure contractor compliance with statutory water quality standards and waste load allocations. Document hosted at JD  
<http://www.idsupra.com/post/documentViewer.aspx?fid=e1ca8cc5-0efa-4dd8-9ffa-e83e>

A settlement of the legal challenge to the new permit was reached between the environmental organizations and the MDE in May 2009. As part of the settlement, MDE committed to initiate a comprehensive review of the State's erosion and sediment control standards in 2009, and to develop proposed modifications to the standards by May 2010. Areas to be evaluated will include environmental site design requirements, new stabilization standards, new standards for Best Management Practices, and new technology.

Also as part of the settlement, MDE will incorporate into the NPDES permit specific effluent limits issued by the EPA that are applicable to construction stormwater; establish procedures to ensure expanded opportunities for public review and comment upon stormwater planning documents for construction projects; and impose individual permitting requirements for large construction at specified sites that are currently over-burdened by sediment.

The impending modifications to the erosion and sediment control standards, as well as the other commitments made by MDE under the settlement, will undoubtedly affect the manner and cost of construction in Maryland. However, only when the MDE takes specific action to implement its commitments will it be possible to truly assess their potential impact.

**Copyright© 2009, Ober, Kaler, Grimes & Shriver**