



PENNSYLVANIA DEP GETS TOUGH WITH PERMIT EXTENSIONS

Governor Rendell recently signed into law the Permit Extension Act which automatically extends the expiration date of **certain** permits issued by the Pennsylvania Department of Environmental Protection until July 1, 2013.

DEP recently issued its required guidance as to whether any of its permits are covered by the recently enacted Permit Extension Act (Act 46). Sadly, DEP has confirmed what this author feared, i.e., NPDES stormwater construction permits are not covered by the Permit Extension Act. According to DEP, NPDES Stormwater Construction permits are issued pursuant to delegated authority under the federal Clean Water Act. The Permit Extension Act indicated that its reach would not include approvals or permits implemented under a federal law or program.

DEP's guidance goes further. Although the Permit Extension Act allows a request to be filed with DEP requesting verification that a permit is covered by the extension, and provides for a "deemed approval" if there is no response within 30 days, DEP's position is that:

DEP does not interpret this "deemed affirmation" language to either allow expired approvals to be reinstated, or to allow an approval's expiration date to be extended, if that approval is not governed by Act 46. For example, if a request for verification is submitted for an expired NPDES permit, it cannot be "deemed" to be extended because DEP failed to respond within 30 days. This law does not reinstate that permit because NPDES permits are not subject to this law.

DEP has confidently indicated that it will respond to all verification requests anyway, so presumably, there will be no deemed affirmations. DEP's guidance documents include a list of permits covered by Act 46. While certain on-lot sewage permits may be extended, planning module approvals do not appear on the list.

There may be other permits or approvals that would arguably be covered by Act 46 that are not currently on DEP's list. For further information and for assistance with DEP's extension verification process, please call Neil Andrew Stein, Esquire at (610) 941-2469 or nstein@kaplaw.com.