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## Construction Law and Real Estate Update: EPA Imposes New Requirements on Stormwater Discharges From Construction Sites

By Robert D. Anderson and Scott H. Thomas

**Agency action:** On December 1, EPA published in the Federal Register new requirements governing discharges of stormwater from construction sites. The new requirements have two components: (1) mandatory control measures (erosion and sediment control, pollution prevention, soil stabilization) that will apply to all construction sites over one acre in size; and (2) a numeric limit of 280 nephelometric turbidity units (NTUs) that will apply to discharges from sites disturbing more than 20 acres beginning in August 2011, and to sites disturbing more than 10 acres beginning in February 2014. The numeric limit does not apply if the discharge results from a storm event exceeding the local 2-year, 24-hour event that occurs on the same day as the discharge.

The new requirements are technology-based, meaning that they apply at all sites nationwide regardless of the nature of the receiving water or the extent to which sediment contamination is or is not a concern in those waters. EPA had proposed, but did not adopt, provisions that would have exempted arid areas from any numeric discharge limit for turbidity. The new turbidity limit, even though significantly relaxed from the limit that EPA originally proposed (13 NTU), may be difficult to meet in arid areas. Providing effective containment of at least the 2-year, 24-hour event will be vital in cases where runoff is not expected to meet the new 280 NTU limit.

The new rules do not include limits on post-construction stormwater discharges, but EPA has indicated that it intends to develop such limits by November 2012.

**Effective dates:** The new rule is effective on February 1, 2010. The numeric discharge limit for turbidity at sites of 10 acres or more will be phased in over 4 years, as noted above.

Because most construction projects are covered under general Clean Water Act permits, the critical date as a practical matter will be the date on which the new requirements will be incorporated into those general permits. In Arizona, ADEQ rather than EPA is the permitting authority (except on tribal lands). ADEQ therefore will have to incorporate the new requirements into the AZPDES construction general permit (CGP), which currently is set to expire in February 2013. It is not yet clear whether ADEQ will wait until the CGP is reissued to incorporate the new requirements, or will reopen and modify the current permit in advance of its expiration.

For activities on tribal lands in Arizona, the EPA construction general permit governs. EPA plans to incorporate the new requirements into the federal general permit for construction activities when that permit is reissued (the current permit expires on June 30, 2010, but EPA has proposed extending the expiration date to June 30, 2011).

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If you have questions about the new rule, please contact Rob Anderson, 602-916-5455, [randerson@fclaw.com](mailto:randerson@fclaw.com); or Scott Thomas, 602-916-5427, [stthomas@fclaw.com](mailto:stthomas@fclaw.com).

*Robert D. Anderson practices in the areas of environmental, natural resources and water law and focuses on assured water supply, Groundwater Code compliance water quality (including storm water), wetlands, endangered species, and cultural resources. He has advised a wide range of clients on environmental and water issues, including permitting and compliance issues associated with master planned communities, residential developments, industrial companies and natural resources concerns. He earned his B.A. (1983) from Concordia College and his J.D. (1987) from the University of Minnesota.*

*Scott H. Thomas practices environmental law with an emphasis on surface water and ground water quality issues (including NPDES permits, Section 404 dredge and fill permits, surface water quality standards, Arizona aquifer protection permits, and Safe Drinking Water Act issues). He also has experience in Superfund (and its Arizona equivalent, WQARF), solid and hazardous waste, underground storage tank, environmental due diligence, Endangered Species Act, and community right-to-know (EPCRA) matters. His practice focuses primarily on regulatory, compliance, administrative and legislative issues. He earned his B.A. (1983) and his J.D. (1988) from the University of Virginia.*



Robert D. Anderson  
Director  
602.916.5455  
[randerson@fclaw.com](mailto:randerson@fclaw.com)



Scott H. Thomas  
Of Counsel  
602.916.5427  
[stthomas@fclaw.com](mailto:stthomas@fclaw.com)