Stormwater/Solar Energy Project: Pennsylvania Environmental Hearing Board Appeal Filed Challenging Department of Environmental Protection Field Order

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Clermont Solar LLC (“Clermont”) filed an April 8th Notice of Appeal (“Appeal”) before the Pennsylvania Environmental Hearing Board challenging the Pennsylvania Department of Environmental Protection's (“PDEP”) issuance of the Field Order.

Clermont’s Appeal addresses a Field Order issued on March 9th directing it to:

… cease all earth disturbance activities except for that which are necessary to implement/maintain BMPs on-site at the 681-acre Ridgeway Solar Site in Wilcox, Pennsylvania ("Solar Site").

The Appeal describes the Solar Site as a 681-acre solar energy site that is being constructed. Construction is stated to be 80% complete.

PDEP is stated to have issued and renewed a National Pollutant Discharge Elimination System Permit that authorizes Clermont to discharge from earth disturbances at the Solar Site to Smith Run and Fivemile Run, in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in the Permit.

The Permit is further described as requiring that Clermont comply with various requirements, including those related to the control of stormwater. These include those controls that minimize the amount of soil exposed during construction, disturbance of certain slopes, and sediment discharges.

Further, Clermont is required to implement an Erosion and Sedimentation Control Plan which is stated to have been developed and approved by PDEP.

The Appeal states that PDEP issued a Field Order without giving Clermont any prior warning or reasonable opportunity to address what it describes as post-winter conditions. Post-winter conditions are stated to have generated extraordinary volumes of surface water across the Solar Site over a short period of time. As a result, the company states that even properly designed and PDEP-approved erosions and sediment control systems were subjected to unusually high flows and runoff conditions not representative of ordinary site operations.

The 2025-2026 winter season in the area is stated to have consisted of unusually severe winter conditions which resulted in substantial portions of the Solar Site remaining covered by significant snowpack. In

addition, a sharp warm-up and rapid melt of accumulated snow and ice, combined with still-frozen ground that substantially limited infiltration generated extraordinary volumes of surface water across the Solar Site over a short period of time is stated to have occurred.

Clermont argues that it did not receive any prior warning, notice of concern, or opportunity to address post-winter conditions before PDEP issued the Field Order that effectively shut down construction across the Solar Site. Since the issuance of the Field Order Clermont is stated to have performed significant work to address certain sediment-laden water noted by PDEP and another agency, along with actions such as:

- Improve stream crossings and drainage ditches.
- Repair, replace, and reinstall BMPs.
- Address issues at and around three storm water basins.

PDEP is stated to have been contacted regarding completion of the work and lifting of the Field Order.

The Appeal describes certain additional inspections by PDEP and communications requesting lifting the Field Order for either the entire r for portions of the Solar Site to allow construction work to resume. PDEP is stated to have indicated that additional work must be performed, and the Field Order would not be lifted until a third-party monitor verified that the Solar Site met certain undefined requirements, prepared a written report with its findings, and shared this with PDEP.

Various grounds are put forth in support of its argument that PDEP's issuance of the Field Order, subsequent interpretation of the Field Order to prohibit the operation of equipment over the solar array fields and grated areas, graded areas, and repeated refusals to lift the Field Order prohibitions as being unlawful, unreasonable, arbitrary, capricious, and/or an abuse of discretion.

A copy of the Appeal can be found here.