

Current Legal Issues

NAFSMA Annual Meeting

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Keeping the Pressure On.....

- Participating in developing new regulations...

C&D ELG Litigation

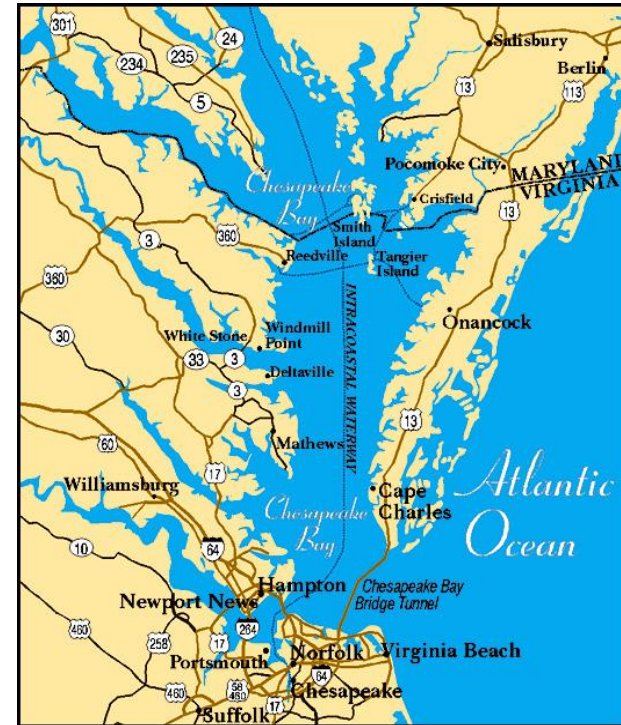
- EPA promulgated final C&D ELGs on December 1, 2009
- Regulations include 280 NTU turbidity numeric limit for certain construction stormwater discharges
 - “passive treatment systems” basis - not clearly defined
- NAHB challenged EPA’s final regulations (7th Circuit)
- 7th Circuit denied NGO intervention (EPA defends)
- SBA and NAHB filed administrative petitions to reconsider

C&D ELG Litigation

- NAHB asked EPA to delay briefing if it was going to reconsider the 280 standard, and was denied
- NAHB filed its opening brief, and DOJ and EPA concluded the 280 standard was a mistake and asked the court to vacate and remand it for a new rulemaking to be concluded by February 15, 2012
- 7th Circuit has not yet ruled

Chesapeake Bay TMDL

- TMDL (nitrogen, phosphorus, and sediments)
- 64,000 sq. mile watershed (in six states and D.C) by December 31, 2010
- Accountability measures if states do not implement the TMDL in accordance with EPA expectations
- New federal regulations for municipal separate storm sewer systems, post-construction runoff, and concentrated animal feeding operations
- “Model for the rest of the country...”



Chesapeake Bay (and Beyond)

- July 2010 “Stormwater Approach” (mirror Post-Construction Rulemaking)
 - Retrofit to ensure discharges do not cause or contribute to WQS violations
 - Retrofit should be designed to preserve or restore site hydrologic conditions necessary to attain WQS
 - Permittees may be required to participate in regional monitoring consortiums
 - Clarify permit terms – “vague phrases such as ‘as feasible’ and ‘as possible’ and ‘*practicable*’ should be avoided...” to avoid “subjective interpretation” by permittees and difficulties for enforcement

Chesapeake Bay (and Beyond)

- Chesapeake Bay TMDL Settlement
 - Propose Post Construction by Sept. 30, 2011
 - EPA will consider “requiring development and implementation of retrofit plans by MS4s to reduce loads from existing stormwater discharges” and “expanding the definition of regulated MS4s.
- Residual designation issues
- ICR - Request for Small Entity Representation

Pesticide Application Rule

- Previous Exempt Activity
- Pesticides Applied In-Over-Near Water
 - Mosquito Control
 - Ditch Maintenance
 - Aquatic Weed Control
- EPA Permits by April 9, 2011
 - States shortly thereafter
- Truck/Helicopters Considered Point Source Requiring NPDES Permit

