

National Association of Home Builders

What Are the Feds Up to?

Environmental Update

Presentation to NAFSMA

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What Are the Feds Up to?

Outline of the Presentation

- EPA's New National Stormwater Rules
 - "Waters of the U.S."
 - Permitting discharges to impaired waters
 - Post-construction discharges
 - Construction & Development Effluent Limitation Guidelines (G&D ELGs)
 - Construction General Permit (CGP)
- Chesapeake Bay TMDL !!!!!

What Are the Feds Up To?

Waters of the U.S.

- EPA and Corps proposed new Guidance in May 2011
- NAHB and others commented that guidance should not be finalized, go to rulemaking
- Small business input provided in meeting on Oct 12
- EPA and Corps expected to proceed to rulemaking
- No timeline provided for the rulemaking
- A major concern is potential for requiring Sec. 404 permits for LID

What Are the Feds Up To?

Permitting to Impaired Waters

- Addressing the *Pinto Creek v. EPA* court case decision (no permit to be issued if it violates water quality)
- Will cover new or increased NPDES discharges to impaired waters with or without a TMDL
- Will examine the appropriate use of offsets for new discharges
- To be proposed in 2012

What Are the Feds Up To?

Post-construction Discharges

- National Academy of Sciences 2008 study on urban stormwater and Chesapeake Bay Foundation and EPA court settlement led to rule
- EPA to develop a performance stormwater discharge standard for development and redevelopment (85-95% rainfall event)
- Perhaps by expanding MS4 program protections
- Evaluate retrofit options to reduce discharges from existing development
- Possible new requirements for Chesapeake Bay region

What Are the Feds Up To?

Post-construction Discharges

- Homebuilders concerns with the rulemaking:
 - Certain sites will be difficult for retention due to onsite limitations
 - Long term operation and maintenance issues of post construction stormwater controls
 - Residential sites have special challenges due to multiple owners
 - Maintenance plans should be developed ahead of the final rule
 - Stormwater utilities or other means of funding must be established prior to implementing the rule

What Are the Feds Up To?

Post-construction Discharges

- More concerns with the rulemaking:
 - Difficulty of meeting retention requirements in urban areas
 - Need recognition of existing state and local programs
 - Education needed for homeowners
 - Maintenance plans need prior to the rule
 - Time needed to change codes and ordinances
 - Need to consider a phase-in of the rule

What Are the Feds Up To?

Post-construction Discharges

- Current status of the rulemaking:
 - EPA planning a report to Congress pursuant to CWA § 402(p)(5)-(6), slated for summer 2011 (not done yet)
 - EPA was to propose rule by Sept. 30, 2011; delayed to end of the year
 - EPA plans to finalize rule by November 19, 2012
- Resources:
 - EPA's website is www.epa.gov/npdes go to "Proposed Stormwater Rulemaking"

What Are the Feds Up To?

C&D ELGs

- Rule proposed November 2008
- Requires permittees to self-monitor for turbidity
- No EPA-approved method field method exists for monitoring for turbidity
- NAHB won a lawsuit over the validity of the numeric limit, EPA agreed to revise the limit
- Initial turbidity limit of 280 NTU almost impossible for many sites to meet – would drive many to use chemicals to meet the turbidity requirement
- Turbidity limit to be revised, new data being requested by EPA (kind of)

What Are the Feds Up To?

Construction General Permit

- Proposed in April 2011
- Covers 4 states and territories, used a model for other state permits as they are renewed
- Placeholder for the revised ELGs numerical turbidity limit for sites 20 acres or more of displaced soils until 2014, then goes to 10 acres or more
- Benchmark monitoring for “action levels” also proposed
- 2008 CGP expires in February 2012

What are the Feds Up To?

The Chesapeake Bay TMDL

- Very intrusive and costly, Tens of Billions of \$ – pollutant reductions need to be nearly doubled beyond existing rules
- Covers a watershed of 64,000 square miles, 17 million people
- States expected to put forth the “Maximum Feasible Effort”
- An “Independent Evaluator” will monitor progress of each state and assess consequences for failure to meet goals
- May 12, 2010 E.O. 13508 set up a Federal Leadership Committee to implement a restoration strategy
- Future growth in the watershed?
- Will set the precedent for other nutrient reduction programs

What Are the Feds Up To?

Offsets for New Growth

- Required in the TMDL, details in Appendix S
- TMDL's pollutant loadings (N, P, and sediment) assessed with 2010 baseline
- New development or increased loadings after 2011 must be compensated for by water quality trading or other means
- Existing structures are not impacted by this requirement (other requirements like stormwater fees, yes)
- Home builders most impacted
 - Thousands of NPDES permits/yr required in each state
 - Home builder pays first, then the homeowner will pay, forever!

What Are the Feds Up To?

EPA's BMP Panels

- States can receive credit under the TMDL only by using “approved” BMPs (performance efficiencies established)
- Three years of BMPs backed up to receive approval (mostly urban BMPs – “Green Streets,” LID retrofits, stream restoration, etc.)
- Potential bottleneck for the introduction of new technologies, no stakeholder outreach
- EPA's Urban Stormwater Coordinator to run the panels and assist MS4s in meeting the TMDL



Courtesy Exelon Corp.

What Are the Feds Up To?

The Conowingo Dam Problem

- Sediments are expected to overtop the Conowingo Dam by 2030
- In September, Tropical Storm Lee scoured out 4 million tons of sediments from behind the dam into Chesapeake Bay (adding 2 yrs of storage capacity)
- Chesapeake Bay TMDL will need to be adjusted to reflect the sediments and nutrients carried into the Bay
- The Corps of Engineers is funding a study to see what can be done to protect the Bay from sediments behind Conowingo
- The TMDL holds states of Maryland, Pennsylvania and New York accountable if Conowingo fails to trap sediment

What Are the Feds Up To?

Push for LID, Green Infrastructure, Smart Growth

- The Chesapeake Bay Program is assessing state stormwater programs to see if they achieve “nutrient neutrality” using LID and/or ESD
- Smart Growth – push all new development into existing urban areas
- Cluster housing, save natural features, infiltrate stormwater, lessen the impervious surfaces footprint of new housing
- Retrofit of existing impervious pavements in urban areas
- Reassessing home septic requirements and septic technologies for the existing systems and for new systems

What Are the Feds Up To?

Likely Impacts on Home Buyers

- New requirements for LID maintenance and performance
 - The requirements and costs for LID to be passed along to the home owner (or the HOA) or the local utility
 - Restrictions on property uses to protect LID
 - Access to the property for verification by inspectors of LID maintenance and performance (if stormwater measures are on the property)
 - Periodic payments by owners of new homes to offset “new growth” pollutants
 - Stormwater fees based on impervious pavements on the property
 - Property easements on new homes near water
- New taxes and other fees to cover the billions of dollars required for states to meet the TMDL

What Are the Feds Up To?

Our Savior - Water Quality (and Quantity) Credit Trading?

- Must occur to lower costs and help farmers participate
- EPA has developed a “Water Quality Trading and Offsets Workgroup” for the TMDL
- Water quality trading has been beneficial for a limited number of builders in a few states
- Much more needs to be done, and soon!
- Lots of hurdles to be overcome to allow homebuilders to participate
- The Ohio River Basin has initiated a huge 8-state water quality trading effort (no builders participate)

What Are the Feds Up To?

Things Will Never be the Same

- The TMDL implementation phase is 2011 – 2025, but the rule's pollutant limits are permanent - pollutant loadings can never increase beyond the 2010 baseline loadings level
- Improving and maintaining the Bay's water quality will now dominate decision-making regarding development and economic growth in communities within the Chesapeake Bay watershed
- Implications for economic growth and population growth in the watershed?
- What is the future for small towns in the watershed?



Thank You

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