



EPA Establishes New Rules for Chesapeake Bay Watershed

01.21.2011

01.21.2011

EPA has finalized a significant new program that will affect existing and future development (residential, commercial and industrial) in every state that is part of the Chesapeake Bay watershed. Home builders, private landowners, owners of existing developments, municipalities and industrial facilities may soon face significant compliance costs as a result.

The agency has established a total maximum daily load ("TMDL"), which is a pollution budget, for discharges of nitrogen, phosphorus and sediment into the Chesapeake Bay. All three pollutants are commonly found in stormwater runoff, agricultural runoff and discharges from wastewater treatment plants. By capping discharges of these pollutants into the Bay and forcing states within the watershed to reduce discharges below the level of the cap, EPA seeks to restore surface water quality throughout the Bay.

In addition to setting caps for pollutant discharges, the program will require the Bay states and private parties to use additional pollution controls (beyond those already in use) to reduce the total discharge of each regulated pollutant to the level of the TMDL. After these reductions have occurred, the rule would prohibit any increases in discharges of these regulated pollutants, regardless of population growth. Thus, in order to have additional development within the Chesapeake Bay watershed, a developer would have to offset the resulting increases in discharges of nitrogen, phosphorus and sediment. Unless the developer could show that the new development is "pollutant neutral," it would have to demonstrate a reduction in pollutant discharges from somewhere else in the watershed. Finally, EPA anticipates that existing developments may have to retrofit stormwater controls at locations where they are not currently in place -- something that could involve considerable expense -- and local governments may have to undertake significant infrastructure upgrades financed through increases in property taxes and utility fees.

Needless to say, the new program could have the effect of stifling development throughout the Chesapeake Bay watershed, and it undoubtedly will lead to increased costs for development projects in the mid-Atlantic region. EPA's notice regarding the final Bay TMDL is published at 76 Fed. Reg. 549 (Jan. 5, 2011).

For more information about this topic, please contact the author or any member of the Williams

Please note:

This newsletter contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel. For more information, please visit our website at www.williamsmullen.com or contact Channing J. Martin, 804.420.6422 or cmartin@williamsmullen.com. For mailing list inquiries or to be removed from this mailing list, please contact Margaux Sprinkel at msprinkel@williamsmullen.com or 804.420.6315.

Related People

- Channing J. Martin – 804.420.6422 – cmartin@williamsmullen.com

Related Services

- Environment & Natural Resources
- Economic Development