



# **LEGISLATIVE UPDATES**

**Chesapeake Bay and Water Resources  
Policy Committee  
November 15, 2013**

**Lisa M. Ochsenhirt  
AquaLaw PLC**

# VIRGINIA 2013 ELECTION

- ◆ **Republicans Lose Control**
- ◆ **Two Years of Divided Government Upcoming**
  - ◆ **Governor: McAuliffe (D)**
  - ◆ **House: Strongly Republican (66 seats)**
  - ◆ **Senate: Undecided**
    - ◆ **Two seats in question**
    - ◆ **Lieutenant Governor-elect Northam (D)**
    - ◆ **Either Senator Obenshain (R) or Senator Herring (D)**

# 2014 GENERAL ASSEMBLY SESSION

- “Long” 60 Day Session

- Convenes Jan. 8; Ends March 8

- Stormwater Issues Expected To Be Primary Water Issues

# VSMP PROGRAM FEES

- **Issue #1: Whether To Eliminate State Water Control Board's Oversight Of Local Fee Schedules**
  - Locality must have approval to increase or decrease fees
  - Amendment to allow a locality to fund VSMP program through such sources deemed appropriate by the local governing body, without oversight
  
- **Issue #2: Whether To Reduce State's 28% Share Of VSMP Fee**

# LOCAL VSMP HEARINGS

## 💧 Statute Requires

- 💧 APA-style “formal” hearing for local actions
- 💧 “Trial-like” process: verbatim record; depositions; subpoena of persons & documents; witness fees and mileage expenses

## 💧 Too Much For Local Land Development Decision

## 💧 Inconsistent With E&S, Which Allows For Less Formal Process

## 💧 Issue: Whether To Conform VSMP “Trial-like” Hearing Procedures to Long-Standing E&S Procedures

# COMMON PLAN OF DEVELOPMENT

- **Lots < 1 Acre, But Part Of Common Plan Of Development, Require Permit**
- **Duplicative, Unnecessarily Burdensome Where Developer Already Provides Stormwater Controls**
- **Issue: Whether To Allow Individual Lots In Same Development An Abbreviated Permit Process**
  - **Permit By Rule**

# AGREEMENT IN LIEU

## 💧 Current Requirement

- 💧 Single family home construction subject to full regulations
- 💧 Big burden on homeowner

## 💧 Issue: Whether to Give VSMP Authority Option to Require Agreement In Lieu

- 💧 For single family homes
- 💧 Similar to E&S Agreement in Lieu

# OTHER ISSUES

## 💧 **BMP Approved Reciprocity**

- 💧 Require VA to continue to allow recognition of certification programs of other states for BMPs
- 💧 Draft DEQ regulations would eliminate reciprocity

## 💧 **Stormwater Construction General Permit**

- 💧 Remove duplicative post-construction stormwater requirements covered by VSMP permit from the Construction GP



# MARYLAND 2014 ELECTION

- **Gubernatorial Election Next Year**
  - Competition for party nominations
- **Candidates Will Likely Debate Controversial Environmental Issues During 2014 GA Session**
  - Election season will add fuel to fire on already contentious issues

# 2014 GENERAL ASSEMBLY SESSION

- 90 day session (as always)
- Convenes Jan. 8; Ends April 7
- **Expected Environmental Issues**
  - Stormwater
  - Local planning and growth issues

# LOCAL STORMWATER FEES

- ◆ **HB 987 (2012) Required Phase I MS4 To Establish Watershed Protection and Restoration Program**
  - ◆ Unless jurisdiction already had system of charges
  - ◆ Must include a fee and a fund
  - ◆ Fund to pay for local stormwater management plans
- ◆ **Many Localities Object**
  - ◆ One did not adopt; using general fund to pay costs
  - ◆ Pre-filed legislation to repeal 2012 law

# ACCOUNTING FOR GROWTH

- 💧 **In WIP, MD Agreed To Establish Program To Account for Future Growth**
  - 💧 State expects to add 478,000 households by 2035
  - 💧 Growth beyond caps must be minimized or offset
- 💧 **State Workgroup Recommendations**
  - 💧 Final Report out August 2013
  - 💧 Next state publishes proposed regulations
- 💧 **If There Is Legislation, Uphill Battle At Committee Level**

# OTHER POTENTIAL ISSUES

- 💧 **BRF Septics**
- 💧 **Zero Waste**
- 💧 **Bottle Deposits**
- 💧 **Local Comprehensive Plans**
- 💧 **Stormwater Testing- Dredging**
- 💧 **SSOs**
- 💧 **Nutrient Management**

**THANK YOU!**

**QUESTIONS?**

**Lisa Ochsenhirt  
lisa@AquaLaw.com  
(804) 716-9021**

**AQUALAW**