



Virginia Environmental Law

2012 General Assembly Actions Consolidate and Provide Credits for Stormwater Management

By: Ann Neil Cosby. Tuesday, March 13th, 2012

While social issues may have grabbed the headlines during 2012 Session of the Virginia General Assembly, some significant changes were also made on the environmental front – particularly with regard to **stormwater** regulation. In fact, once signed into law, these changes will alter the process through which water quality **regulations** are administered in Virginia at the state and local level. These changes will also broaden Virginia's existing nutrient trading program, providing for the buying and selling of nutrient credits at a much greater scale than currently allowed.

Consolidating programs intended to control water degradation, Senate Bill 407 (Hanger)[companion to House Bill 1065 (Sherwood)] integrates elements of the existing Erosion and Sediment Control Act, the Stormwater Act, and **Chesapeake Bay** Preservation Act so that these regulatory programs can be implemented in a consolidated and consistent manner. The new regulatory process is intended to result in greater efficiencies, i.e., "one-stop shopping," for those regulated. The bill eliminates the Chesapeake Bay Local Assistance Board and places its responsibilities with the Virginia Soil and Water Conservation Board. The bill also makes adoption of a local stormwater management program ("VSMP") mandatory for all localities in Virginia (excluding non-MS4 towns), not just those in the Tidewater Area as defined by the Chesapeake Bay Protection Act, or designated as an MS4.

In expanding Virginia's use of nutrient credits, House Bill 176 (Knight) and Senate Bill 77 (Watkins) enlarged Virginia's existing nutrient trading provisions as anticipated in Virginia's Watershed Implementation Plan, and as recommended by an Advisory Committee to the Virginia Secretary of Natural Resources. The Nutrient Trading Act (the "NTA") calls for the **Virginia Department of Conservation and Recreation** ("DCR") to adopt regulations for certifying credits, including those that may be generated from agricultural and urban stormwater BMPs, use or management of manures, managed turf, land use conversion, stream or wetlands projects, and other appropriate methods of nutrient control or removal, and then to allow credits to be used or traded by regulated MS4s, developers, industrial stormwater sources, and confined animal feeding operations, in accordance with the NTA. Once credits have been certified, they will be posted to an online public registry, also to be developed by DCR.

While both legislative actions will mean significant changes to the way stormwater management is regulated in Virginia, these changes have been a long time coming and likely took few by surprise. Whether they will result in the desired efficiencies and overall reductions in water degradation remains to be seen, and as with prior actions "the Devil is likely to be in the details." Keeping our fingers crossed here. What about you?

Tags: **Department of Environmental Quality, environmental law, environmental regulation, stormwater regulations, Virginia, water quality, watershed improvement plan**

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