

# REAL ESTATE & CONSTRUCTION Alert

www.hf-law.com

## New Stormwater Regulations Approved

### What is the status of Virginia's new stormwater regulations?

On October 5th, the Soil and Water Conservation Board ("Board") approved the new stormwater regulations proposed by the Department of Conservation and Recreation ("DCR"). While the approval has been suspended to permit an additional 30 day public comment period, we anticipate Governor Kaine signing the new regulations in December.

### When will the new stormwater regulations take effect? Is there grandfathering available?

July 1, 2010. Grandfathering is available on a limited basis. Generally, a project must receive an affirmative governmental approval (similar to obtaining a vested right) and obtain coverage under the VSMP permit prior to July 1, 2010 to qualify for grandfathering. The specific grandfathering requirements and project specific details will ultimately determine the availability of grandfathering.

### How will stormwater management change under the new regulations?

The new regulations represent a paradigm shift in Virginia's management of stormwater resulting from land disturbing activities. Controlling runoff will no longer be a function of storing pre-development versus post-development runoff. Instead, the focus will be on reducing runoff using a variety of stormwater control measures ("SCMs") in a series to reduce runoff volume and increase runoff quality as it travels from rooftop to a discharge point. The goal is to reduce runoff's contact with pollutants.

### What are the new quality and quantity standards imposed by the new stormwater regulations?

Quality standard: For new development, the phosphorous content of runoff is limited to 0.28 lbs./ac/yr within the Chesapeake Bay Watershed (this includes the greater Richmond area). For redevelopment, existing phosphorous content must be reduced by 20%. However, projects within an Urban Development Area (as designated by a locality on the comprehensive plan) may be able to meet a less

*continued*

Stacie C. Bordick  
Farrah de Leon  
Matthew A. Foote  
Jeffrey P. Geiger  
Barry A. Hackney  
Jason T. Jacoby  
Marshall L. Jones  
Penny G. Koch  
Chandra D. Lantz  
John F. McManus  
Glenn R. Moore  
R. Webb Moore  
Charles W. Payne, Jr.  
Rhoda L. Raymond  
Charles H. Rothenberg  
Nathaniel L. Story  
James W. Theobald  
John W. Vaughan, Jr.  
Jay M. Weinberg

**HIRSCHLER  
FLEISCHER**  
ATTORNEYS AT LAW

The Edgeworth Building  
2100 E. Cary Street  
Richmond, Virginia 23223-7078  
Phone: 804-771-9500  
Fax: 804-644-0957

Mill Race North  
725 Jackson Street, Suite 200  
Fredericksburg, VA 22401-5720  
Phone: 540-604-2100  
Fax: 540-604-2101

*This publication is intended for general information purposes only and does not constitute legal advice.*

*The reader should consult legal counsel to determine how laws apply to specific facts and situations.*

stringent standard set by the locality. Also, redevelopment projects of less than an acre qualify for a less stringent standard.

Quantity standard: Generally summarized as requiring the on-site retention of a one-inch rainfall. However, redevelopment projects of less than five acres or new development projects of less than one acre need only improve upon the pre-development runoff condition.

### **How is compliance with the new quality and quantity standards achieved?**

Compliance with the new standards is determined by using the Runoff Reduction Method. Under the Runoff Reduction Method, SCMs are spread throughout a project to reduce runoff and the phosphorous content of stormwater. DCR has created spreadsheets that determine whether the SCMs used within a project satisfy the new quality and quantity standards. Other means of compliance may be available if approved by the Board.

If the new standards cannot be met on site, off-site improvements may be available to achieve compliance. Under certain circumstances, developers can pay a fee to a locality to construct off-site stormwater control improvements in lieu of constructing such improvements on site. Off-set credits (similar to a wetland mitigation bank) may also be available for purchase. In addition, payments to the Commonwealth may also be available to a developer in certain circumstances.



For additional information about the new stormwater regulations, please contact Jeff Geiger at 771-9557.