

## Alert

### Maryland and Federal Wetlands Permitting Standards to Change

May 6, 2011

Mid-Atlantic developers, property owners, consultants and civil engineers should be aware of some recent regulatory developments that will alter wetlands permitting under federal and state law:

On May 2, 2011, the United States EPA and the U.S. Army Corps of Engineers (the "Corps") released Draft Guidance to clarify how those agencies will "identify waters protected by [the Clean Water Act ("CWA")]". This Draft Guidance document was issued in response to the U.S. Supreme Court's decisions in the Rapanos and SWANCC cases from 2006 and 2001, respectively. The Draft Guidance document supersedes the Joint Memorandum issued by EPA and the Corps on December 2, 2008. It provides guidance regarding those wetlands and waterways that are presumptively protected by the CWA, those that may be protected by the CWA depending upon site-specific characteristics, and those wetlands and waterways that generally are not protected by the CWA. These changes could make certain wetlands impacts subject to federal oversight in addition to or instead of state permitting requirements. **The comment period on the Draft Guidance closes on July 1, 2011.**

On April 11, 2011 the Corps and the Maryland Department of Environment ("MDE") released for public notice a proposal to reissue with modifications the Maryland State Programmatic General Permit (or "MDSPGP") for an additional five-year period. The MDSPGP sets forth the authority under which MDE may issue permits for certain categories of wetlands activities that are deemed to have minimal individual and cumulative adverse impacts on the aquatic environment. The current permit (known as "MDSPGP-3") is set to expire on September 30, 2011. The proposed MDSPGP-4 makes certain modifications that may affect individuals proposing to undertake regulated activities in tidal or nontidal wetlands in Maryland. **The comment period on MDSPGP-4 expires on May 11, 2011.**

If your property or project has wetlands and you do not have state and federal permits in hand, these changes may impact your ability to move forward with current or planned development activities. If you would like to discuss the impacts of these regulatory changes, please contact:

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