

## Alert

### DEADLINE MARCH 22, 2010 to Submit Comments on MDE's Emergency Regulations

#### Attorneys

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On March 12, 2010, the Maryland Department of the Environment (MDE) submitted to the State Legislative Committee on Administration, Executive, and Legislation Review (AELR) draft Emergency Regulations to address the application of new State stormwater management ("SWM") regulations to projects that had not received final approval of SWM plans by the previously established deadline of May 4, 2010 (the "Emergency Regulations"). The new State SWM regulations require the use of Environmental Site Design ("ESD") - e.g., small -scale SWM practices and nonstructural techniques - to treat stormwater onsite to the maximum extent practicable. These regulations would impose significant costs to redesign SWM facilities and possibly reduce density in commercial and residential projects that are midstream in the development process. In response to this concern, MDE proposed the Emergency Regulations, allowing local jurisdictions flexibility in applying the new regulations as follows:

- **Grandfathering:** Local governments may grant waivers to allow projects to be governed by the current 2000 SWM regulations if they receive preliminary project approval by May 4, 2010. The waiver expires on May 4, 2013 if the development has not received final project approval by then, and on May 4, 2017 if construction is not complete. Waivers may only be extended beyond May 4, 2017 if the project is subject to a Development Rights and Responsibilities Agreement, a Tax Increment Financing approval, or an Annexation Agreement.
- **Redevelopment:** Local governments may allow redevelopment projects to use alternative SWM measures including: participation in a stream restoration project, pollution trading, payment of a fee-in-lieu, or a partial waiver of the requirements to the extent that ESD is not practicable.
- **New Development:** For sites with less than 40% existing imperviousness that would be considered new development under the new SWM requirements, local governments can grant a waiver for phased projects with SWM facilities already constructed under the 2000 standards and for certain infill projects.

The Emergency Regulations should be reviewed carefully to determine applicability to a particular project (see below). Because local jurisdictions will

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have significant latitude in applying the Emergency Regulations to local development approval processes, it will be critical that the development community also participate at the local level in formulating the waiver criteria, etc.

If the AELR does not approve the Emergency Regulations, then pending state legislation to address the impact of SWM regulations on the development industry may move forward for action by the legislature. The actions being taken in Annapolis to address the impact of the new SWM regulations are very fluid and we hope to provide you with important dates and notices as they are released.

Comments on the Emergency Regulations should be sent to the AELR c/o Department of Legislative Services, Legislative Services Building, 90 State Circle, Annapolis, MD 21401., or by e-mail to the Hon. Paul G. Pinsky at paul.pinsky@senate.state.md.us and the Hon. Anne Healey at anne.healey@house.state.md.us.

**Emergency Regulations Submitted by MDE**