



Authors



Pamela D. Marks
Principal
(410) 230-1315
pmarks@bdlaw.com



Megan L. Morgan
Associate
(410) 230-1343
mmorgan@bdlaw.com

Legislative Updates

Maryland's annual legislative session ended on April 13, 2015, and with the close of the session came new legislation that affects environmental regulation in Maryland.

Statute of Limitations – Administrative Penalties

New legislation establishes a five year statute of limitations for an action or an administrative penalty brought by the Maryland Department of the Environment (MDE). MDE is required to bring an action within five years of the date that it knew or reasonably should have known of a violation. For ongoing violations, the limitation period begins when the violation ceases.

Importantly, before this legislation there was no clear statute of limitations for MDE to bring an action for an administrative penalty. This will provide clarity and certainty to the regulated community in Maryland.

Synthetic Plastic Microbead Ban

New legislation bans the manufacture of personal care products containing synthetic plastic microbeads beginning December 31, 2017, and the sale of such products beginning December 31, 2018. The manufacture and sale of over the counter drugs containing such microbeads is prohibited beginning December 31, 2018, and December 31, 2019, respectively.

Synthetic plastic microbeads are defined as intentionally added solid plastic particles that are not biodegradable, less than 5 millimeters in size and used in a rinse-off personal care product for exfoliation or cleansing purposes. The legislature described a concern that synthetic plastic microbeads may be unable to be treated by conventional wastewater treatment and would discharge into waterways.

By banning synthetic plastic microbeads Maryland follows in the footsteps of other states that have already enacted such legislation including Illinois, New Jersey, Colorado, Indiana and Maine. Similar legislation is pending in over 15 additional states and on a federal level.

Stormwater Management Funding

Former Maryland law required 10 Maryland jurisdictions that are subject to a National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Separate Storm Sewer System (MS4) to adopt local laws establishing a stormwater remediation fee and watershed protection and restoration fund by July 1, 2013.

ABOUT B&D

Beveridge & Diamond's 100 lawyers in seven U.S. offices focus on environmental and natural resource law, litigation and dispute resolution. We help clients around the world resolve critical environmental and sustainability issues, relating to their products and facilities.

Baltimore Office

201 North Charles Street, Suite 2210
Baltimore, MD 21201
(410) 230-1300

Learn more at www.bdlaw.com.

New legislation repealed and amended prior legislation making key changes including:

- The requirement for jurisdictions to collect a stormwater remediation fee is repealed. Instead, jurisdictions are authorized to collect such a fee if desired.
- Local jurisdictions may now charge a fee to the State if the jurisdiction also appropriates money into its own local watershed protection and restoration fund based on their respective use of stormwater management services.
- An annual financial assurance plan from each jurisdiction is now mandated. The plan must identify all local actions required for the jurisdiction to comply with its Phase I MS4 permit, funding sources that will support those efforts, and a five-year projection of costs and revenues for permit compliance. If the plan is insufficient State funding may be withheld from the jurisdiction.

Counties will be deciding whether to repeal stormwater remediation fees. Currently, Carroll and Frederick Counties implement the permits without revenue. Harford County passed legislation to repeal its stormwater remediation fee, which will take effect in fiscal year 2016.

Hydraulic Fracturing

New legislation requires MDE to adopt regulations for hydraulic fracturing by October 1, 2016. Permits for hydraulic fracturing may be issued beginning October 1, 2017.

Maryland Commission on Climate Change

A 2014 Executive Order by former-governor Martin O'Malley increased the scope and responsibilities of the State's Commission on Climate Change within MDE, which has the task of developing a plan to achieve an 80 percent reduction in greenhouse gas emissions by 2015.

New legislation codified this Executive Order, with additional provisions:

- The University of Maryland Center for Environmental Science (UMCES) must update sea level rise projections at least once every five years.
- The Commission must prioritize an assessment of the impact that climate change has on agriculture in the State.
- Several agencies and UMCES must include greenhouse gas emissions reduction data for the prior calendar year in their annual reports.

Regulatory Update

Notice of Proposed Action: Phosphorus Management Tool

On April 3, 2015, the Department of Agriculture published proposed regulations that, if enacted as written, would establish a 7-year transition period from the current Phosphorus Site Index to the recently developed Phosphorus Management Tool (PMT).

The proposed regulations include the following:

- Annual reporting requirements for those subject to the PMT.
- Establishment of a PMT Transition Advisory Committee which is required to undertake certain analysis about the transition period in conjunction with the Department of Agriculture.
- Tiered transition system that requires those with higher existing phosphorus levels to start the transition to the PMT sooner than those with lower existing phosphorus levels.

The State has determined that the proposed regulations primarily would affect farms with high phosphorus levels. These farms would be required to reduce or eliminate the application of additional phosphorus to fields. If farms are currently using animal manure that contains both phosphorus and nitrogen, they would be required to switch to inorganic commercial fertilizer. The excess manure would need to be transported to other farms that could appropriately utilize the manure. Thus, the regulations would create a market for manure and would affect businesses that transport and apply manure, and those that sell, transport and apply commercial fertilizers.



A report by the Business Economic and Community Network (BEACON) at Salisbury University commissioned by the Department of Agriculture estimates the implementation of the PMT on the Eastern Shore would result in \$100 million in statewide economic benefits. However, these benefits are value enhancements and potential cost savings and are not financial resources that can be used to defray farmers' PMT implementation costs.

The public comment period for this rule runs through May 3, 2015.

Beveridge & Diamond's 100 lawyers in seven U.S. offices focus on environmental and natural resource law, litigation and dispute resolution, helping clients around the world resolve critical environmental and sustainability issues, relating to their products and facilities. For more information about Maryland issues discussed in the article please contact the authors.