



WEINBERG LAND USE FORUM

NEWS

SPRING 2010

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This publication may describe some of the legal matters that the attorneys of Hirschler Fleischer have worked on in the past. Of course, case results depend upon a variety of factors unique to each case and case results do not guarantee or predict a similar result in any future case undertaken by a Hirschler Fleischer attorney.

Virginia Historic Rehabilitation Tax Credits: Don't Leave Money on the Table

BY: KATHARINE A. SCKHLOVEN, ESQ.

Virginia has one of the best and most flexible historic rehabilitation tax credit programs in the nation. The National Park Service's Statistical Report and Analysis for Fiscal Year 2009 showed that dollar for dollar, Virginia had the highest amount of qualified rehabilitation expenses for historic projects (\$471 million) in 2009 and the second highest number of historic rehabilitation projects (103, behind Missouri with 149 projects) in the nation. Virginia was third nationally on a dollar for dollar basis (behind Missouri and Ohio) in awarding state tax credits for rehabilitation projects. Virginia's historic tax incentive program plays a vital role in preserving Virginia's history and historical structures. If you are a developer that works on rehab properties located in historic districts or if you or your clients could use Virginia tax credits to offset a Virginia income tax liability, you should become familiar with Virginia's historic rehabilitation tax credit program.

Virginia Statistics

Virginia's Historic Rehabilitation Tax Credit Program began in 1997. Since that time there have been a total of 1,747 projects completed accounting for approximately \$2.4 billion in qualified rehabilitation expenses. This equates to approximately \$599 million in Virginia state tax credits awarded.¹ These numbers will likely increase because the deadline to file Part III of the Historic Tax Credit Application (Request for Certification of Completed Work) is not until December 31, 2010 for 2009 projects. Based only on projects in which the developer stated it would not have undertaken the project but for the tax credit incentive, the Center for Urban Development at the VCU Center for Public Policy estimated that Virginia's tax credit program has been responsible for creating 12,887 new jobs and has had an economic impact on the state equal to \$1.9 billion.² The estimated additional state tax revenue resulting from these rehabilitation projects is \$55 million.

Mechanics of the Program

Receiving credits under the Virginia Historic Rehabilitation Tax Credit Program involves a three part application process. Part 1 of the process involves applying to confirm that the property to be rehabilitated is a qualified historic structure, meaning that either the property itself is listed on the Virginia Landmarks Register or the National Register of Historic Places, or is considered a contributing structure to a certified historic district. If your project meets this requirement, you can submit Part 2 of the application, a description of the rehabilita-

¹ Data is taken from "An Economic Analysis of Virginia's Historic Rehabilitation Tax Credit Program: 2010 Update" prepared by the Virginia Center for Urban Development at the VCU Center for Public Policy dated February 2010.

² The percentage of projects included to determine the economic impact numbers was 65%. This percentage was arrived at based on the number of developers/property owners that stated they would not have completed the historic rehabilitation project if the tax credit incentive was not in place.

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RAIN, RAIN GO AWAY...

Coming Back Another Day (Soon!)

BY: JEFFREY P. GEIGER, ESQ.

While the rush to enact Virginia's new stormwater regulations has been curtailed, the Environmental Protection Agency ("EPA") is moving swiftly on the Chesapeake Bay Total Maximum Daily Load ("TMDL") program and new national stormwater standards for construction and development activity.

Virginia's Stormwater Regulations – Gone But Not Forgotten.

After generating much controversy last year, Virginia's new stormwater regulations have been put on hold until after the EPA completes its Chesapeake Bay TMDL program.

During the General Assembly, the House of Delegates and the Senate passed legislation suspending the stormwater regulations proposed by Virginia's Department of Conservation and Recreation ("DCR"). This suspension will be in effect until late summer/fall of 2011, but no later than December 1, 2011. During this period of time, DCR will revise the stormwater regulations to correspond with Virginia's pollutant allocations under EPA's Chesapeake Bay TMDL program.

The legislation passed by the General Assembly is now before Governor McDonnell for signature. The Governor has previously expressed support for suspending DCR's proposed stormwater regulations and is expected to sign this legislation.

EPA's Chesapeake Bay TMDL Program – Biggest Loser Edition

Virginia's proposed stormwater regulations "dried-up" at the end of

last year when the EPA announced that Virginia would have to remove a smaller amount of pollutants from its waters than originally anticipated. The EPA's announcement came as it commenced its effort under the Clean Water Act to reduce pollutants in the Chesapeake Bay – the Chesapeake Bay TMDL program. This Chesapeake Bay TMDL program will have a significant impact on Virginia's development industry. Whether it will be more or less of an impact than Virginia's now-on-hold stormwater regulations is unknown at this time.

The Chesapeake Bay TMDL program creates a "pollution diet" for the six states within in the Chesapeake Bay's watershed. This "pollution diet" will assign to each of the six states a "goal-weight" for their pollution contribution to the Chesapeake Bay. This "goal-weight" will consist of caps on the amount of nitrogen, phosphorous, and sediment that may be contributed to the Chesapeake Bay by each state's waters (creeks, streams, tributaries, rivers, etc.). The "goal-weight" for the six states will be announced by the EPA in December, 2010. In the meantime, the EPA will be revising its initial estimate of each state's "goal-weight" – the announcement that dried-up Virginia's stormwater regulations – and will be taking input from the states and the public.

A major component of the states' input on the "goal-weight" will be their development of individual Watershed Implementation Plans ("WIP"). These WIPs will be the "dietary regimen" each state will follow to meet its "goal-weight." Most likely, these "dietary regimens" will impose

on local governments or localized areas specific caps on nitrogen, phosphorous, and sediment that each may contribute to a state's waters. It is anticipated that the local governments or localized areas will in-turn adopt ways of limiting nitrogen, phosphorous, and sediment runoff from the lands in their respective areas. If each of these "local dietary regimens" are met, then a state should be able to achieve its "goal-weight."

Virginia has started the process of developing its WIP. The Department of Environmental Quality ("DEQ") is undertaking this effort and DEQ envisions using Virginia's tributaries strategy program, along with other programs like the stormwater regulations and the nutrient trading program, to create Virginia's "dietary regimen." Some localities are also beginning to prepare for meeting their "local dietary regimen." The City of Richmond has enacted a general stormwater fee to fund stormwater infrastructure and Henrico County is also looking at enacting a similar stormwater fee. Other localities may look to individual property owners to fund the needed infrastructure.

Preliminary WIPs must be submitted to the EPA by June 1, 2010. The EPA will then review these preliminary WIPs and will also seek comments from the public this fall. From there, the EPA will finalize each state's "goal-weight" and the states will then finalize their individual WIPs. Starting in 2012, the states will have to submit progress reports to the EPA every two years. These reports will indicate how well the states are progressing toward their "goal-weight." If a state(s) "falls

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tion work to be completed at the property. Part 2 should be submitted prior to beginning any of the rehabilitation work.³ Part 3 of the application requests certification of the actual qualified rehabilitation expenses incurred and credits allocated for the rehabilitation project. If the credit amount is over \$100,000, a certified public accountant must certify the total expense amount claimed. The Virginia Historic Rehabilitation Tax Credit is equal to 25% of the amount of qualified rehabilitation expenses.

Flexibility

In its initial form, the Virginia Historic Rehabilitation Tax Credit Program allowed the direct transfer or sale of historic tax credits. Today, direct transfers are not an option. However, Virginia Historic Rehabilitation Tax Credits may be allocated among members of limited liability companies or partners of partnerships in any manner agreed to by the parties and this allocation does not need to follow the allocation required for federal tax items.

³ You may submit a Part 2 application during or after the rehabilitation work has been completed, but such work may not meet the standards required by the program. It is preferred by the Department of Historic Resources that your plans and specifications be reviewed and approved before work begins. Note that Part 2 applications for federal credits should be submitted prior to beginning actual work if the work will be completed in phases.

Hirschler Fleischer Tax Credit Practice Group:

David F. Belkowitz • S. Brian Farmer • Laura Lee Garrett
David S. Lionberger • Katharine A. Schkloven
Anita G. Vaughn • W. Michael Walker

An investor becomes eligible to receive Historic Rehabilitation Tax Credits generated by a project by becoming a minority owner (usually a 1% owner) in the limited liability company or other entity that owns the project. At this time, 100% of the Virginia Historic Rehabilitation Tax Credits can be allocated to this investor, even though the investor only has a small equity stake in the project. If properly documented and structured, the money from the state tax credit investor is considered a capital contribution to the entity, and the developer does not owe any taxes on the money coming into the entity because it was not a sale that produced income to the developer. This means that 100% of each dollar received from the state tax credit investor can be used by the developer. The developer may use such capital contributions to pay down construction loans or for other working capital purposes, or distributions to the developer's principals. The cash invested is typically tied to the amount of credits received by the investor.

Next Steps

The Virginia Historic Tax Credit Program represents an opportunity for developers working on historic properties to obtain additional funding for their projects. It also represents a flexible way to obtain Virginia tax credits for investors.

The tax credit practice group at Hirschler Fleischer has substantial experience advising on historic rehabilitation tax credit issues and remains actively involved in historic rehabilitation tax credit projects for our clients, providing comprehensive and practical advice. We represent both developers and investor groups in connection with the federal and state historic rehabilitation tax credit projects. Should you have any questions about the federal or state historic rehabilitation tax credit programs, please contact any of the attorneys in our group.

Pending ZONING CASES

THE COUNTY OF
Louisa

Charlie Payne is representing several property owners within the Thaila Shore subdivision regarding a request that the county abandon a public road within Thaila Shores under 33.1-151 of the state code.

THE CITY OF
Petersburg

Jim Theobald is representing Axis Development in amending its mixed-use, planned development which is in both the City and Prince George County.

THE COUNTY OF
Stafford

Charlie Payne represents the team of Lane Construction & Kimley Horn regarding a private public transportation proposal under Virginia's PPTA authority to construct or improve twenty (20) designated roads under Stafford County's 2008 Transportation bond referendum. Final submissions for competing proposals expired March 11, 2010.

amendment for client Fox Chase Apts., LLC to develop 86 high end town homes in Stafford County. The application is anticipated to be filed this April.

Charlie Payne is involved in a rezoning and proffer condition

Charlie Payne is involved in a rezoning request regarding 73 acres owned by American Life League from A-1 to B-2 Commercial-Office. The application is anticipated to be filed this April.

Summary OF REAL ESTATE LEGISLATION

2010 Virginia General Assembly

BY: MATTHEW A. FOOTE, ESQ.

Below is a brief summary of select real estate legislation passed by the Virginia General Assembly in the 2010 Regular Session, along with corresponding Virginia Code section(s) that will be added or amended. The text of each bill is available on the General Assembly website at <http://leg1.state.va.us/cgi-bin/legp504.exe?101+lst+PAS>.

I. Taxes; Liens; Assessments; Tax Credits

Land preservation tax credit; non-profit organizations holding an easement are ineligible to receive.

§ 58.1-512 (HB 141): Provides that only those nonprofit organizations that hold a conservation easement acquired pursuant to the Virginia Conservation Easement Act are ineligible to receive land preservation tax credits for donations of qualifying real property.

Service districts annual tax. § 15.2-2403 (HB 200): Requires that the annual tax levied upon property in a service district shall only be levied upon the specific classification of real estate that the local governing body deems the governmental services to benefit.

Affordable housing units; assessments. § 58.1-3295 (HB 233): Provides that assessments for certain affordable housing units be done according to the income approach, based on the property's current use and restrictions. This bill is a recommendation of the Virginia Housing Commission, and is effective for assessments for tax years



beginning on or after January 1, 2011.

Real property tax assessment. §§ 58.1-3258.1, 58.1-3259, 58.1-3295, 58.1-3331, 58.1-3374, 58.1-3379 (HB 430): Provides (i) that the fair market value of certain affordable housing be determined using the income approach, based on the property's current use and restrictions; (ii) additional requirements for real property appraisers; (iii) that a locality's real property sales assessment ratio higher than 130 percent is prima facie proof that the locality has failed to assess at 100 percent of fair market value; (iv) taxpayers access to certain information related to assessments; and (v) additional requirements related to boards of equalization; and (vi) that the local assessing officer provide notice of any request to increase an assessment for commercial, multifamily residential, or industrial property assessments

that are already being appealed.

Liens for Water and sewer charges.

§ 15.2-2118 (HB 707): Adds the Counties of Caroline and New Kent to those localities that may provide that charges imposed for water or sewers shall be a lien on the real estate served by such waterline or sewer.

II. Land Use and Zoning

Board of Zoning Appeals; fee for filing appeal by person aggrieved by decision. §§ 15.2-2311, 15.2-2314 (HB 1063): Provides that written notice of a zoning violation or a written order of the zoning administrator shall include the applicable appeal fee, which shall not exceed the costs of advertising the appeal for public hearing and reasonable processing costs. Additionally, the BZA shall not be named as a party in an appeal of a decision of the BZA.

Subdivision ordinance; dedication of public improvements. § 15.2-2241 (SB 318): Expands the manner by which a developer may provide financial assurances to a locality prior to a locality accepting the dedication of public improvements.

Vested rights. § 15.2-2307 (HB 552): Includes the right to replace failed septic systems under vested rights protection. Also, if the local government has issued a permit, other than a building permit, that authorized construction of an improvement to real property and the improvement was thereafter constructed in accordance with such permit, the ordinance may provide that the improvements are nonconforming, but not illegal.

Development rights; permitted to be attached in receiving areas to be equal or greater than rights. § 15.2-2316.2 (HB 882): Allows localities to establish a density bonus that would permit certain property owners to transfer more property rights than the existing density would otherwise allow.

Cash proffers; acceptance by localities. (HB 374): Delays collection or acceptance of a cash proffer by a locality until the completion of the final inspection of the subject property and prior to the time of the issuance of any certificate of occupancy. This measure applies retroactively to proffers agreed to prior to the July 1, 2010 effective date, but expires July 1, 2014.

Comprehensive plan amendment. § 15.2-2229 (HB 51): Grants authority to local government bodies to prepare amendments to the comprehensive plan rather than directing the planning commission to do so, and to proceed to submit a proposed amendment to a public

hearing if planning commission fails to provide a recommendation.

III. Condominium and Owners' Associations

Flag Display; Virginia Condominium Act and the Virginia Property Owners' Association Act. §§ 55-79.75:2, 55-513.1 (SB 151): Provides that an association shall not prohibit or otherwise adopt or enforce any policy restricting an owner from displaying the flag of the United States whenever such display is in compliance with the federal Flag Code, subject to reasonable restrictions.



IV. Landlord/Tenant

Landlord and tenant laws and obligations. §§ 6.1-330.54, 8.01-128, 34-5, 55-226.2, 55-246.1, 55-248.4, 55-248.7:2, 55-248.9:1, 55-248.15:1, 55-248.15:2, 55-248.38:3 (HB 407): Clarifies that the judgment rate of interest includes any and all amounts covered by the judgment. The bill, among other things, also (i) adds definitions of "commencement date" and "effective date" of the rental agreement to the Virginia Residential Landlord Tenant Act codifying case law; (ii) revises the definition of "security deposit" under the Virginia Residential Landlord Tenant Act; (iii) allows the landlord to withhold a portion of the security deposit until final settlement of utility bills; and

(iv) changes the times that trigger the payment of interest by the landlord on a security deposit.

V. Real Estate Transactions

Fair Housing Board. §§ 54.1-2343, 54.1-2344 (HB 192): Establishes that the Fair Housing Board shall promulgate regulations regarding educational materials concerning the Fair Housing Law, and persons in the business of selling or renting dwelling units without a real estate broker shall submit an affidavit to the Board that they have read and understood the law. This is a recommendation of the Virginia Housing Commission.

Interpleader of real estate escrows; suits shall go to district court in event of foreclosure. §§ 16.1-77, 54.1-2108.1 (HB 231): Establishes that suits in interpleader of real estate escrows shall go to General District Court, and protects escrow funds in the event of a real estate foreclosure. This bill is recommended by the Virginia Housing Commission.

Virginia Residential Property Disclosure Act; wastewater systems. § 55-519 (HB 667): Adds a seller's representation to a prospective purchaser of residential property that the owner makes no representations with respect to the presence of any wastewater system, and that purchaser is responsible for due diligence regarding such wastewater systems.

VII. Licensing

Board for Contractors; raises threshold for Class C contractor's license. §§ 54.1-1100, 54.1-1103 (HB 250): Raises the threshold for which a person must have a Class C contractor's license from less than \$7,500 to less than \$10,000. As a result, the Class B threshold is also raised from \$7,500 or more to \$10,000 or more.

Jurisdictional UPDATES

THE TOWN OF Ashland

The Town's Comprehensive Plan update process continues. The pace of the update has been slowed due to the need for the Planning Department to devote time to development activity in and around the Town. If you have an interest in land in the Town of Ashland, you

should be aware of how the Comprehensive Plan mapping could affect the future development potential of your property. Following adoption of the update, the Planning Department anticipates the adoption of Zoning Ordinance revisions to accomplish some of the adopted goals.

THE COUNTY OF Chesterfield

Chesterfield County continues to pursue a County-wide amendment of its Comprehensive Plan. The steering committee of citizens appointed to consider the plan is currently recommending a policy suggesting that development nodes serve as the basis for future development. The steering committee continues to meet through the summer. Public work sessions will be held in various districts in September/October. The Schedule contemplates the Plan going to the Planning Commission sometime in November with Board of Supervisors considering it sometime in early 2011.

Chesterfield is hurriedly amending its subdivision ordinance as a result of the recent ruling by the Supreme Court of Virginia which found that definitions related to agricultural lot limitations were not consistent as between the zoning and subdivision ordinances. The County is attempting to amend the ordinance to require five-acre minimum sized parcels in the Agricultural district County-wide. Public hearings have been double advertised to accomplish same. Those hearings are presently scheduled to occur on April 20 and April 28.

THE COUNTY OF Hanover

The County recently amended the Zoning Ordinance to add a new residential classification, the R-M district. Both the Planning Department's Staff and HBAR believe that the new district presents an opportunity to increase the possibility of locating a broader range of housing types in Hanover County. (The new residential district must have some promise, as you won't often see the Planning Department and HBAR agree on the merits of a Zoning Ordinance amendment.)

The district permits development at densities between four and fifteen units per acre. Certain open space and recreation area requirements are included, depending on a developer's desired density.

HBAR feels that the R-M district creates an opportunity to build more affordable housing in Hanover County. It could also increase the possibility of locating more multi-family housing in Hanover County.

The amendment is seen as an indication that Hanover will consider a broader range of housing to support economic growth. Developers of lower price or affordable housing, and multi-family developers who have considered Hanover County as discouraging such development in the past, may want to take another look at the possibility of developing in Hanover County.

THE COUNTY OF Henrico

Innsbrook Area Study: The Planning Department conducted a land use study for the Innsbrook area in order to provide recommendations regarding future development in that area. The study area contains 1,186 acres and 9,550 square feet of office and commercial space. The area contains a variety of future land use designations in the 2026 Comprehensive Plan and due to its location, size, and position as a major economic generator for the County, has the potential to accommodate growth through infill development. The area has the potential to be redeveloped with a mixture of uses that take advantage

of existing infrastructure, uses, and population base. This land use study will evaluate the appropriate mixture of uses and ultimate development potential of the Innsbrook area.

North Gayton Road Extension: The County is in the process of acquiring right-of-way for the proposed extension and has authorized the condemnation actions against a number of landowners. **John Walk** is representing some of the affected property owners regarding the value of the take.

THE CITY OF Richmond

Roy Benbow of the Department of Community Development reports that City Council recently approved the addition of two new zoning districts to the City's Zoning Ordinance, intended primarily to govern in-fill development in the City.

building height, taking into consideration development patterns in the surrounding area.

The R-8 zoning district provides development standards for construction and use of new one and two-family residences in the City. The district is being considered for use in governing future development in Manchester and Church Hill, but can also be implemented in other areas of the City. The R-8 district includes provisions for minimum and maximum building setbacks and

The B-7 district is intended to govern mixed-use development in in-fill areas. It is intended to be used for rezoning of industrially-zoned areas to permit a variety of uses. The B-7 district is being considered to facilitate development in the Manchester area, but can be implemented in other areas of the City. The B-7 district will permit multi-family development together with non-residential uses – something not currently allowed by right in certain industrially-zoned areas.

Pending ZONING CASES

THE COUNTY OF
Caroline

Charlie Payne and **John Walk** are representing Clarks Cut II, LLC, regarding its defense of litigation of a special exception permit granted to it by Caroline County for purposes of developing a gravel extraction company within an agricultural zoned district.

THE COUNTY OF
New Kent

Chuck Rothenberg and **Matt Foote** successfully amended the PUD Ordinance and proffers for New Kent Winery in order to allow the developer additional flexibility in proceeding with the development in accordance with dramatically changed market conditions.

THE COUNTY OF
Chesterfield

Jim Theobald has filed a request on behalf of JH Martin & Sons Contracting, Inc. to rezone approximately 52 acres on the east side of I-95 just north of Colonial Heights to a C-5 retail designation. Retail and industrial uses are planned.

a possible stadium to an undeveloped 11 acre site near Ukrop Park.

Jim Theobald obtained C-2 retail zoning at Route 10 and Omo Road. The Rebkee Company is developing a CVS on the site.

Jim Theobald was successful in obtaining subdivision approval on approximately 61 acres on the north side of Route 288 just north of Lucks Lane for Riverstone Properties. The subdivision had previously been denied on two occasions.

Jeff Geiger is representing the Richmond Kickers Youth Soccer Club, Inc. in its effort to expand Ukrop Park, a state-of-the-art athletic complex near Rt. 10 and Chippenham Parkway. The Kickers would like to add two additional fields, a 30,000 square foot multi-purpose building, and

Jim Theobald at long last, was able to amend the zoning at Brandermill on behalf of the Boathouse Restaurant at Sunday Park, the Brandermill Homeowners Association and The Brandermill Church. Parking, special events and other issues had long been problematic for the neighborhood and **Jim** was able to bring the matter to a beneficial conclusion for all.

THE CITY OF
Fredericksburg

Charlie Payne represents the Estate of Harvey Petitt regarding its application to request a special exception permit from the City of Fredericksburg, Virginia, for purposes of allowing a fast food restaurant (KFC) in a commercial transitional zoning district.

Charlie Payne is representing Marion Hicks with his application for a special use permit to development 117 town homes in a commercial highway zoning district. The application will be filed this April.

THE COUNTY OF
Hanover

Jim Theobald obtained a Special Exception to permit an indoor rifle and pistol range as an additional permitted use on property owned by Hopkins Properties II, LLC. The site consists of approximately 25.5 acres located on U.S. Route 1 which includes Green Top Sporting Goods. Last year **Jim** obtained B-3 zoning on the site.

Jim Theobald is representing T.M. Johnson, Inc. in amending the zoning of property located at Hendree Lane near its intersection with McClellan Road. The concept plan for a residential development is being amended.

THE COUNTY OF
Henrico

Jim Theobald was successful in his representation of Gumenick Properties to rezone approximately six acres at the intersection of Patterson Avenue and Maybeury Drive, adjacent to the Tuckahoe YMCA and Maybeury Elementary School. The site was rezoned to an R-5AC district. A 30-home community is planned.

for The Villas at Hunton Park to enable Ryan Homes, the developer, to construct additional building types within the condominium community.

Jim Theobald obtained a Conditional Use permit for Saint Gertrude High School to allow satellite athletic fields on property it is purchasing north of Parham Road, along Scott Road, behind Park Central.

Jim Theobald amended the zoning on approximately 1.6 acres on Broad Street next to Short Pump Town Center to permit a Car Pool Car Wash and Detail Shop.

Jim Theobald represented Attack Properties in amending the zoning

Jim Theobald was successful in rezoning two lots adjacent to Pembroke Office Park on Fordson Road. The owners, Dr. John G. Cametas and J. Stefan Cametas, will develop the land as a continuation of the office park.

THE CITY OF
Richmond

Jim Theobald continues to represent USP Echo Harbour LLC in its special use permit request for five acres located on the river next to the Great Shiplock Park. A mixed-use development to include luxury condominiums, a hotel, public river amenities, an upscale restaurant with outdoor riverfront dining, banquet event facilities, a full service health club/spa, between 27,000 and 118,000 square feet of office space, rowing team facilities, and light retail space is proposed.

THE COUNTY OF
Spotsylvania

Charlie Payne represents 630/208 Associates, LLC, in its rezoning application from A-1 to Resort Commercial to development a 200 unit recreation boat storage facility near Lake Anna.

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Rain, Rain Go Away...

FROM PAGE 2

off the boat," the EPA may take steps to get the state(s) back on the boat and ensure the state remains on track to meet its "goal-weight."

EPA's Effluent Guidelines for Construction and Development – Stormwater Nationalized.

In addition to its Chesapeake Bay effort, the EPA has also finalized national performance and monitoring standards for pollution runoff from construction and development activities. While Virginia's forthcoming "pollution diet" will likely impose more strict requirements than these new national standards, they will still have an impact on Virginia's development industry, especially developments that disturb 10 or more acres at a time.

These new national performance and

monitoring standards for pollution runoff from construction and development activities became effective on February 1, 2010. After this date, all stormwater permits issued by the EPA, Virginia, and other states must incorporate the new standards.

Beginning on August 1, 2011 all sites that disturb 20 or more acres of land at one time are required to comply with a new turbidity limitation. This turbidity limitation is a numerical representation of the amount of "stuff" (sediment, pollutants, and other inorganic and organic matter) floating in water that obscures its clarity – makes it look cloudy or dirty. The new turbidity limitation is 280 nephelometric turbidity units. These sites must sample stormwater discharges and comply with this numeric limitation for turbidity. Starting on February 2, 2014, this turbidity limitation will apply

to all construction sites disturbing 10 or more acres of land at one time.

Construction sites disturbing 1 or more acres will have to implement a range of erosion and sediment controls and pollution prevention measures. Generally, these requirements are similar to Virginia's existing stormwater requirements. However, discharges from certain activities are prohibited unless managed appropriately (ex: concrete washout activities; wastewater from the washout of paint, oils, etc.; and vehicle and equipment pollutants). This new standard also requires that discharges from basins or impoundments on a construction site must withdraw water from the surface, unless such withdrawal is not feasible.

For more information on the EPA's and Virginia's stormwater regulations, please feel free to contact Jeff Geiger at 771-9557.