

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 464 (Delegate Rudolph)
Environmental Matters

Agriculture - Total Maximum Daily Load - Regulations

This bill prohibits the Maryland Department of Agriculture, the Maryland Department of the Environment (MDE), and the Department of Natural Resources from adopting a regulation that is intended to help the State meet agricultural sector requirements of the federal Chesapeake Bay Total Maximum Daily Load (TMDL) unless specified neighboring jurisdictions have achieved or exceeded specified pollution goals that the State has achieved.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: Potential significant effect on expenditures and revenues to the extent the bill prompts the (1) State to implement more costly pollution reduction programs in order to meet TMDL goals; and/or (2) federal government to withhold federal funds or establish new requirements to ensure pollution reductions occur. However, any impact cannot be reliably estimated at this time.

Local Effect: Potential significant effect on local finances and operations to the extent the bill prompts the (1) State to implement more costly pollution reduction strategies in order to meet TMDL goals; and/or (2) federal government to withhold federal funds or establish new requirements to ensure pollution reductions occur. However, any impact cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: In December 2010, the U.S. Environmental Protection Agency (EPA) established the first baywide TMDL that (1) sets the maximum amount of pollution the bay can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements. **Exhibit 1** illustrates Maryland's pollution reduction goals in the TMDL. All pollution reduction measures must be in place by 2025, with at least 60% of the actions complete by 2017.

Exhibit 1 Maryland's Pollution Reduction Goals in the Bay TMDL (Million Pounds per Year)

<u>Pollutant</u>	<u>2010 Loads</u>	<u>Bay TMDL Target Load</u>	<u>Percent Reduction</u>
Nitrogen	52.76	41.17	22.0%
Phosphorus	3.30	2.81	14.9%
Sediment	1,376	1,350	1.9%

TMDL: Total Maximum Daily Load

Source: Maryland Department of the Environment; U.S. Environmental Protection Agency

In 2010, each bay jurisdiction submitted a Phase I Watershed Implementation Plan (WIP) that details how the jurisdiction will achieve its individual pollution reduction goals under the TMDL. The Phase I WIP focuses on the following three approaches for bridging the remaining loading gap: (1) developing new technology and approaches before 2017; (2) increasing the scope of implementation of existing strategies such as upgrading wastewater treatment plants and increasing the number and efficiency of stormwater runoff controls; and (3) improving regulatory requirements. The Phase I WIP establishes that all nutrient impacts from future growth must be offset if the TMDL is to be met.

In late January 2012, MDE released a draft Phase II WIP for public comment, which provides implementation strategies for the five major basins in Maryland (the Potomac River basin, Eastern Shore, Western Shore, the Patuxent River basin, and Maryland's portion of the Susquehanna River basin). The draft Phase II WIP allocates the final target loads into several source sector categories, including wastewater, agriculture, stormwater, and forests. **Exhibit 2** summarizes the final target allocations for nitrogen and phosphorus for the agricultural sector.

Exhibit 2
Maryland's Agricultural Reduction Goals in the Draft Phase II WIP
(Million Pounds per Year)

<u>Pollutant</u>	<u>2010 Loads</u>	<u>Bay TMDL Target Load</u>	<u>Percent Reduction</u>
Nitrogen	19.95	15.22	23.7%
Phosphorus	1.64	1.45	11.5%

Source: Maryland Department of the Environment

To the extent the bill prevents the State from making progress toward the TMDL goals, EPA may take action to ensure pollution reductions occur, including increasing oversight of State-issued pollution permits, requiring additional pollution reductions, prohibiting new or expanded pollution discharges, redirecting federal grants, and revising water quality standards to better protect local and downstream waters. MDE advises that the bill could make the State vulnerable to expensive litigation that may arise from legal challenges over its failure to meet its obligations under the TMDL.

Small Business Effect: Small agricultural businesses benefit to the extent the bill prevents the adoption of costly new regulatory requirements; however, to the extent the bill prompts federal intervention, small agricultural businesses may be required to comply with the same or even more costly regulatory requirements. Other small businesses could also be affected to the extent the bill prompts federal intervention.

Additional Information

Prior Introductions: None.

Cross File: SB 330 (Senator Glassman, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Agriculture, Department of Natural Resources, Maryland Department of the Environment, Department of Legislative Services

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mc/lgc

Analysis by: Amanda Mock

Direct Inquiries to:
(410) 946-5510
(301) 970-5510