

# MARYLAND

## *Enforceable Provisions Applicable to Nonpoint Source Water Pollution*

### DISCHARGE PROHIBITIONS

#### Water Pollution Control Law

Maryland's water pollution control law includes some provisions that may be used to take enforcement action against nonpoint source discharges of pollutants; and the state's Department of the Environment may require permits for certain nonpoint source discharges. In addition, soil or sediment pollution is prohibited, except for agricultural activities conducted in accordance with agricultural soil conservation and water quality plans.

- "Except as provided in this subtitle and Subtitle 4 of Title 4 [relating to soil or sediment emissions] of this article and the rules and regulations adopted under those subtitles, a person may not discharge any pollutant into the waters of this State."<sup>1</sup> "Discharge" means: (1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or (2) The placing of a pollutant in a location where the pollutant is likely to pollute."<sup>2</sup> "Pollutant" means...(2) Any other liquid, gaseous, solid or other substance that will pollute any waters of this State."<sup>3</sup>

- The Maryland Department of the Environment may require nonpoint source dischargers to obtain permits under some circumstances. "A person shall hold a discharge permit issued by the Department before the person may construct, install, modify, extend, alter, or operate any of the following if its operation could cause or increase the discharge of pollutants into the waters of this State:...Any other outlet or establishment."<sup>4</sup> "By rule or regulation, the Department may require a discharge permit for any other activity."<sup>5</sup>

Enforcement of these provisions is by administrative corrective action orders, injunctions, civil penalties not exceeding \$10,000 per day (judicially) or \$1,000 per day (administratively), or criminal prosecution.<sup>6</sup>

- Except as authorized under the discharge permit provisions described above, or on land managed under an agricultural soil conservation and water quality plan approved by the local soil conservation district, "it is unlawful for any person to add, introduce, leak, spill, or otherwise emit soil or sediment into waters of the State or to place soil or sediment in a condition or location where it is likely to be washed into waters of the State by runoff of precipitation or by any other flowing waters."<sup>7</sup>

Enforcement may be by injunctive relief,<sup>8</sup> or corrective action orders.<sup>9</sup> Civil penalties are available up to \$25,000 per day; or criminal penalties of up to \$50,000 and/or one year imprisonment.<sup>10</sup> A person engaged in agricultural land management practices without an approved soil conservation and water quality plan is not liable for penalties for a discharge if the person complies with a corrective action order.<sup>11</sup>

## Other Discharge Limitations

- The Secretary of the Environment has authority to investigate and bring injunctive actions to abate nuisances, which may include drainage, waste disposal, and other activities affecting public health.<sup>12</sup>

## Fish/Fisheries Laws

- "Whenever there occurs in the waters of the State any condition indicative of damage to aquatic resources, including, but not limited to, mortality of fish and other aquatic life, the Department shall investigate the incident, determine the nature and extent of the damage, and establish the cause and source of the occurrence. The Department shall act on these findings and require repair of any damage done and restoration of water resources to a degree necessary to protect the best interest of the people of the State."<sup>13</sup> Any person responsible for the discharge is "personally and/or severally responsible" for abatement and for restoration of the natural resources.<sup>14</sup>

## OPERATIONAL REQUIREMENTS

### Forestry Requirements

- The Department of Natural Resources "shall administer forest conservation practices on privately owned forest land and manage publicly owned forest lands."<sup>15</sup> The Department *may* promulgate rules and regulations, including minimum forestry practices, and enforce them.<sup>16</sup> These rules may be enforced by district forestry boards.<sup>17</sup> State law also provides for licensing of professional foresters.<sup>18</sup>

- Under the state's Nontidal Wetlands program, "forestry activities required to have an erosion and sediment control plan that are not exempted under subsection (a) of this section shall incorporate nontidal wetlands best management practices..."<sup>19</sup> "The following agricultural and forestry activities are exempt from the approval and mitigation requirements of this section: (1) Agricultural activities undertaken in accordance with public drainage regulations; (2) Agricultural and forestry activities, including the repair and maintenance of farm ponds, drainage ditches, channels, subsurface drains, causeways, bridges, or water control structures, provided that they do not drain, dredge, fill, or convert nontidal wetlands on which agricultural and forestry activities are not presently conducted; (3) Agricultural and forestry activities on areas that have laid fallow as part of a conventional rotational cycle or due to a civil action involving ownership of the property; (4) Agricultural and forestry activities on areas that have been set aside or taken out of production under a formal State or federal program; (5) Forestry activities not requiring an erosion and sediment control plan; (6) Construction or maintenance of forest roads and skid trails in accordance with best management practices..." However, "This subtitle does not apply to agricultural, forestry, or regulated activities located within the Chesapeake Bay critical area" as these activities are separately regulated under that bay protection statute.<sup>20</sup> The regulations include provisions that "... a person conducting a forestry activity shall implement best management practices to protect nontidal wetlands through a sediment and erosion control plan ..." <sup>21</sup> "Best management practices for forestry activities in nontidal wetlands shall be designed to achieve the following goals: (1) Control soil loss and

sediment deposition in nontidal wetlands; (2) Minimize water quality degradation caused by sediment..."<sup>22</sup>

- Under the Chesapeake Bay Critical Area Protection Program, "At a minimum, a program sufficient to meet the goals...includes: ...(10) Provisions requiring that all harvesting of timber in the Chesapeake Bay Critical Area be in accordance with plans approved by the district forestry board"<sup>23</sup> (Operation of the Critical Area Program itself is discussed at greater length below under "Development and Other Earth-Disturbing Activities.").

## **Agriculture Requirements**

- Agricultural land managed under a soil conservation and water quality plan approved by the local soil conservation district is not liable for emission of soil or sediment into waters of the State or placement of soil or sediment in a condition or location where it is likely to be washed into waters of the State by runoff of precipitation or by any other flowing waters.<sup>24</sup> A person engaged in agricultural land management practices without an approved soil conservation and water quality plan is not liable for penalties for a discharge if the person complies with a corrective action order.<sup>25</sup>

- A law passed in 1998 requires farmers that use commercial fertilizers to prepare nitrogen and phosphorous management plans by December 31, 2001 and to implement them by December 31, 2002. It requires farmers that use manures and sludges on their fields to have a nitrogen management plan in place and to implement it on the same schedule. Farmers using manure and sludge must also prepare management plans addressing phosphorous by July 1, 2004, and implement them by July 1, 2005. The requirements apply to all agricultural operations with an annual income of at least \$2,500, and livestock operations with 8 or more animal units. Farmers who fail to develop a plan may be fined up to \$250; those who fail to implement a plan by the required date receive a warning for a first offense and an administrative penalty of up to \$100 for each subsequent violation, but not to exceed \$2,000. Farmers applying commercial fertilizer inconsistently with nutrient management plans are subject to a penalty of up to \$1,000 for a first violation, and up to \$2,000 for subsequent violations, but not to exceed a total of \$10,000.<sup>26</sup>

- "The General Assembly...finds that agricultural drainage projects, if not properly designed, operated, and maintained, have the potential to contribute nonpoint source pollutants to the waters of the State." The Secretary of Agriculture and the Secretary of Natural Resources "shall jointly promulgate by regulation ... criteria for the design, construction, operation, and maintenance of agricultural drainage projects which will assure, to the maximum extent practicable, the prevention of pollution of the waters of the State." "[B]efore initiating an agricultural drainage project, a public drainage association shall obtain from the Secretary approval of construction, operation, and maintenance plans for the project." "An agricultural drainage project shall be constructed, operated, and maintained in accordance with the approved plans."<sup>27</sup> Either Secretary may issue corrective action orders, enforceable by injunction, and violators are liable for double damages for projects not done in accordance with approved plans.<sup>28</sup>

- Nontidal wetlands requirements are applicable to agriculture. If not exempt from regulation (see forestry above), then an agricultural operation must employ BMPs under a soil conservation district-approved soil conservation and water quality plan to protect nontidal wetlands.<sup>29</sup> "Best management practices for agricultural activities in nontidal wetlands shall be designed to achieve the following goals: (1) Control soil loss and minimize sediment deposition in nontidal wetlands; (2) Minimize water quality degradation..."<sup>30</sup> "This subtitle does not apply to agricultural, forestry, or regulated activities located within the Chesapeake Bay critical area."<sup>31</sup>

- The Secretary of Agriculture "shall [a]dopt rules and regulations governing the storage, sale, distribution, exchange, use, and disposal of any pesticide and its container"<sup>32</sup> Applicators "shall obtain an annual certificate indicating competence in one or more established categories from the Secretary."<sup>33</sup> "When using or recommending pesticides, a person shall: ... Observe all precautions in the handling, use, storage, and disposal of pesticides and their containers so that: (a) Pesticides do not move from the intended site of application, (b) Nontarget areas or organisms, including humans, do not suffer injury, and (c) Unreasonable adverse effects on the environment do not occur or are minimized..."<sup>34</sup> Violations are misdemeanors punishable by fines not exceeding \$1,000, or imprisonment not exceeding 60 days, or both.<sup>35</sup> "The Department may issue a civil penalty or suspend, revoke, or deny any license, certificate, or permit" for violations of the law or regulations,<sup>36</sup> or impose a civil penalty of "not more than \$2,500 for a first violation and not more than \$5,000 for each subsequent violation. The total penalties imposed on a person for violations that result from the same set of facts and circumstances may not exceed \$25,000."<sup>37</sup>

- Under the Chesapeake Bay Critical Area Protection Program "At a minimum, a program sufficient to meet the goals ... includes: ... Establishment of buffer areas along shorelines within which agriculture will be permitted only if best management practices are used, provided that structures or any other use of land which is necessary for adjacent agriculture shall also be permitted in any buffer area."<sup>38</sup>

## **Development and Other Earth-Disturbing Activities**

Apart from any programs that may be authorized by general land use regulation such as zoning, state law provides the following authorities.

- Each local jurisdiction is responsible for developing and implementing a program, subject to review and approval by the Chesapeake Bay Critical Area Commission. A program "shall consist of those elements which are necessary or appropriate: (1) to minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands."<sup>39</sup> Under the Chesapeake Bay Critical Area Protection Program "At a minimum, a program sufficient to meet the goals ... includes: ... Provisions to limit the amount of land covered by buildings, roads, parking lots, or other impervious surfaces, and to require or encourage cluster development."<sup>40</sup> Project approval may not be granted unless the project is consistent with and complies with the program.<sup>41</sup> Injunctive relief is available for enforcement.<sup>42</sup>

- The state nontidal wetlands program provides that the Department of Natural Resources shall "Adopt standards for planning, regulating, restoring, creating, and enhancing nontidal wetlands"<sup>43</sup> and that the Department may "delegate all or part of its authority under this subtitle to any county that enacts a nontidal wetland protection program ... that meets at least the minimum standards adopted by the Department."<sup>44</sup> "[A] person may not conduct a regulated activity without first obtaining a permit from the Department."<sup>45</sup> A permit may not be issued unless the Department finds that the applicant has demonstrated that the regulated activity "will minimize alteration or impairment of the nontidal wetland, including existing topography, vegetation, fish and wildlife resources, and hydrological conditions; [and w]ill not cause or contribute to a degradation of groundwaters or surface waters ..."<sup>46</sup> Enforcement is via permit revocation, stop work orders, civil penalties of up to \$10,000 per day, injunction, and misdemeanor fines of up to \$10,000 for a first offense, and \$25,000 for subsequent offenses.<sup>47</sup>

- "To protect the natural resources of the State, the Secretary of the Environment, in consultation with the Secretary of Natural Resources shall adopt criteria and procedures for the counties and the local soil conservation districts to implement soil erosion control programs. These procedures may provide for departmental review and approval of major grading, sediment, and erosion control plans."<sup>48</sup> "Regardless of planning, zoning, or subdivision controls, a county or municipality may not issue a permit for grading or construction of any building, other than those matters exempted by the provisions of this section, unless the grading or construction conforms with plans approved as provided in this subtitle."<sup>49</sup> "A grading or building permit may not be issued until the developer (1) submits a grading and sediment control plan approved by the appropriate soil conservation district, and (2) certifies that all land clearing, construction, and development will be done under the plan."<sup>50</sup> "A person may not begin or perform any construction unless the person: (i) Obtains an approved sediment control plan; (ii) Implements the measures contained in the approved sediment control plan; (iii) Conducts the construction as specified in the sequence of construction contained in the approved sediment control plan; (iv) Maintains the provisions of the approved sediment control plan; and (v) Implements any sediment control measures reasonably necessary to control sediment runoff."<sup>51</sup> "The provisions of this subtitle do not apply to agricultural land management practices, construction of agricultural structures, or, except in Calvert County, to construction of single-family residences or their accessory buildings that disturb an area of less than one-half acre and occur on lots of two acres or more."<sup>52</sup> Enforcement includes stop work orders, corrective action orders, injunctions, civil penalties of up to \$1,000 per violation, not exceeding \$20,000 for any action, and misdemeanor fines of up to \$5,000 and/or one year imprisonment.<sup>53</sup>

- The state also has an enforceable forest conservation program with respect to land development. "A unit of local government having planning and zoning authority shall develop a local forest conservation program, consistent with the intent, requirements and standards of this subtitle."<sup>54</sup> "Before the approval of the final subdivision plan, or the issuance of the grading or sediment control permit by the State or local authority, the applicant shall have an approved forest conservation plan..."<sup>55</sup> The forest conservation subtitle applies "to any public or private subdivision plan or application for a grading or sediment control permit on areas 40,000 square feet or greater;" it does not apply to construction of highways, forest cutting in areas governed

by the Chesapeake Bay Critical Area Protection Law, and agricultural activity that does not result in a change in land use category.<sup>56</sup> Enforcement includes a penalty of 30 cents per square foot of the area found to be in noncompliance,<sup>57</sup> plan revocation,<sup>58</sup> a stop work order by the state or local authority, injunctive relief, and civil penalty of up to \$1,000 per day.<sup>59</sup>

## Endnotes

- <sup>1</sup> Md. Code Ann., Envir., section 9-322
- <sup>2</sup> Md. Code Ann., Envir., § 9-101(b).
- <sup>3</sup> Md. Code Ann., Envir., § 9-101(g).
- <sup>4</sup> Md. Code Ann., Envir., § 9-323(a)(3).
- <sup>5</sup> Md. Code Ann., Envir., § 9-323(b).
- <sup>6</sup> Md. Code Ann., Envir. §§ 9-334, 9-335, 9-338, 9-339, 9-342, 9-343.
- <sup>7</sup> Md. Code Ann., Envir. § 4-413(a).
- <sup>8</sup> Md. Code Ann., Envir. §§ 4-405, 4-415, 4-416.
- <sup>9</sup> Md. Code Ann., Envir., § 4-412(a), § 4-415.
- <sup>10</sup> Md. Code Ann., Envir. § 4-417.
- <sup>11</sup> Md. Code Ann., Envir. § 4-413(b).
- <sup>12</sup> Md. Code Ann., Envir. §§ 10-101 to 10-105.
- <sup>13</sup> Md. Code Ann., Envir., § 4-405(c).
- <sup>14</sup> Md. Code Ann., Envir., § 4-405(c).
- <sup>15</sup> Md. Code Ann., Nat. Res. § 5-603.
- <sup>16</sup> Md. Code Ann., Nat. Res. § 5-604.
- <sup>17</sup> Md. Code Ann., Nat. Res. § 5-606.
- <sup>18</sup> Md. Code Ann., Business Occupations and Professions § 7-101.
- <sup>19</sup> Md. Code Ann., Nat. Res., § 8-1205 (Nontidal Wetlands).
- <sup>20</sup> Md. Code Ann., Nat. Res. § 8-1203(a)(2).
- <sup>21</sup> COMAR § 26.23.05.02(A) (Nontidal Wetlands: Forestry Activities).
- <sup>22</sup> COMAR § 26.23.05.02(C) (Nontidal Wetlands: Forestry Activities).
- <sup>23</sup> Md. Code Ann., Nat. Res., § 8-1808(c).
- <sup>24</sup> Md. Code Ann., Envir. § 4-413(a).
- <sup>25</sup> Md. Code Ann., Envir. § 4-413(b).
- <sup>26</sup> Md. Sen. Bill 178/House Bill 599.
- <sup>27</sup> Md. Code Ann., Agriculture, § 8-603(b)-(e).
- <sup>28</sup> Md. Code Ann., Agriculture § 8-603(f)-(h).
- <sup>29</sup> Md. Code Ann., Nat. Res. § 8-1205.
- <sup>30</sup> COMAR § 26.23.05.01(D) (Nontidal Wetlands: Agricultural Activities).
- <sup>31</sup> Md. Code Ann., Nat. Res. § 8-1203(a)(2).
- <sup>32</sup> Md. Code Ann., Agriculture, § 5-204(1).
- <sup>33</sup> Md. Code Ann., Agriculture, § 5-207(a).
- <sup>34</sup> COMAR § 15.05.01.02(B)(3).
- <sup>35</sup> Md. Code Ann., Agriculture, § 5-211(a).
- <sup>36</sup> COMAR § 15.05.01.18(A).
- <sup>37</sup> COMAR § 15.05.01.20(A).
- <sup>38</sup> Md. Code Ann., Nat., Res., § 8-1808(c)(6).
- <sup>39</sup> Md. Code Ann., Nat. Res. § 8-1808(b).
- <sup>40</sup> Md. Code Ann., Nat. Res., § 8-1808(c)(5).
- <sup>41</sup> Md. Code Ann., Nat. Res. § 8-1811.
- <sup>42</sup> Md. Code Ann., Nat. Res. § 8-1815.
- <sup>43</sup> Md. Code Ann., Nat. Res., §§ 8-1203(b)(7).
- <sup>44</sup> Md. Code Ann., Nat. Res., § 8-1204.

45. Md. Code Ann., Nat. Res., § 8-1206(b)(1).
46. Md. Code Ann., Nat. Res., § 8-1207(a)(2),(3).
47. Md. Code Ann., Nat. Res. § 8-1210.
48. Md. Code Ann., Envir., § 4-101.
49. Md. Code Ann., Envir., § 4-102.
50. Md. Code Ann., Envir., § 4-103(a).
51. Md. Code Ann., Envir. § 4-105(a)(3).
52. Md. Code Ann., Envir., § 4-102.
53. Md. Code Ann., Envir. §§ 4-103, 4-110, 4-113, 4-116.
54. Md. Code Ann., Nat. Res., § 5-1603(a)(1).
55. Md. Code Ann., Nat. Res., § 5-1608(b).
56. Md. Code Ann., Nat. Res., § 5-1602.
57. Md. Code Ann., Nat. Res., § 5-1608(c).
58. Md. Code Ann., Nat. Res., § 5-1612(b).
59. Md. Code Ann., Nat. Res., § 5-1612(c), (d).