


Today! 1:00 PM
August 17, 2011

Broadcasting Live from
Ag Progress Days
Rock Springs, PA

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Penn State Extension

The Clean Water Act and What It Means for Pennsylvania’s Producers

Date Wednesday, AUG 17, 2011
Time 1:00 to 2:00 PM
Place AG PROGRESS DAYS and by webinar
Address Agricultural Sciences Exhibits Building Theatre and <http://meeting.psu.edu/agenvpartnership>

To Participate
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What the Clean Water Act Means for PA Producers
What is the Clean Water Act and what will it mean for YOU as an agricultural producer in Pennsylvania? This special presentation will provide an overview of the developing legal framework for the regulation of agricultural operations within the Chesapeake Bay Basin and elsewhere in Pennsylvania.

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The Clean Water Act and What It Means for Pennsylvania's Producers



Overview of Presentation

- **Background of Chesapeake Bay**
- **Overview of Basic Legal Framework**
- **Current Chesapeake Bay Legal Developments**



Background

- **Chesapeake Bay**
 - Largest estuary in the United States
 - 64,000 square mile watershed that includes: PA, DE, MD, WV, VA, NY, and DC
 - Complex ecosystem that provides a valuable resource for plants, animals, and humans



Background

- **Chesapeake Bay Restoration**
 - **First estuary in the nation targeted for restoration in a comprehensive manner**
 - **Nutrient pollution is one of the causes of the Bay's poor health.**
 - **Created by excess nitrogen, phosphorous, and sediment that enter the Bay**
 - **Sources of nutrient pollution include agriculture, sewage treatment plants, stormwater runoff, and air pollution.**



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Basic Legal Framework

- **Federal Statutes**
- **Executive Orders**
- **Regulations**
- **Case Law**
- **State Authority**



Federal Statutes

- **Provide legal foundation for most actions**
- **Serve as basis for delegation of authority**
- **Can be altered through legislative amendment or successful court challenge**



Executive Orders

- **Utilized to manage operations of the federal government**
- **Can be changed by the current or successor administration**



Regulations

- **Regulatory Agencies**
 - Issue regulations pursuant to statutory authority or Executive Orders
- **Regulations**
 - Normally promulgated through notice and comment process
 - Can be amended or challenged similar to statutes



Case Law

- **Litigation can challenge the validity of a statute or regulation.**
- **Court ruling can determine how statutory or regulatory language is interpreted.**



State Authority

- **U.S. Constitution: federal law “shall be the supreme law of the land”**
 - **Express Preemption**
 - **Implied Preemption**
 - **Conflict Preemption**
- **Federal law can require or “encourage” state action.**



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Shaping Today's Policy

- **Clean Water Act**
- **Chesapeake Bay Program**
- **Chesapeake Bay Total Maximum Daily Loads**



Clean Water Act

- **Federal Water Pollution Control Act**
 - **Main source of statutory authority**
 - **Basic premise – Except as in compliance with the Clean Water Act, prohibits the discharge of any pollutant from any point source into navigable waters**



Clean Water Act

- “Discharge ”
- “Pollutant”
- “Point source”
 - Includes Concentrated Animal Feeding Operations (CAFOs)
 - Does not include agricultural stormwater discharges
- “Navigable waters”



Clean Water Act

- **National Pollutant Discharge Elimination System (NPDES) Permits**
 - **Allows a point source to discharge pollutants within the limits specified by the NPDES permit**
 - **Establishes the requirements needed to obtain a NPDES permit**
 - **Administered by authorized states**



NPDES Permits

- EPA has authorized Pennsylvania to administer NPDES permits to point sources.
- NPDES Permits requirements in Pennsylvania are based on Pennsylvania's Clean Stream Law and Nutrient Management Act, as well as the federal Clean Water Act.



Clean Water Act

- **Section 117: established the Chesapeake Bay Program and Chesapeake Bay watershed policy**



Chesapeake Bay Program

- **Directed by Chesapeake Executive Council in accordance with Chesapeake Bay Agreements**
- **Chesapeake Bay Program partners sign agreements to set restoration policies concerning the Bay.**



Chesapeake Bay Program

- **Chesapeake Bay 2000 Agreement**
 - **Most recent general agreement**
 - **Reaffirmed previous agreements and set five goals to be used as a guide for restoration**



Executive Order 13,508 Chesapeake Bay Protection and Restoration

- **Issued in May 2009**
- **Results of Executive Order:**
 - **Federal Strategy – EPA will implement Chesapeake Bay Total Maximum Daily Loads**
 - **Action Plan**



Fowler v. EPA

- **Filed January 2009, Settled May 2010**
- **Environmental Groups (Plaintiffs) claimed that EPA failed to implement sufficient measures to achieve the goal of reducing pollution levels in the Chesapeake Bay.**
- **Binding settlement required EPA to take specific actions to reduce pollution within the Bay**
 - **Establishment of Bay TMDLs**



Chesapeake Bay TMDLs

- **EPA issued Final Bay TMDLs in December 2010.**
 - **Set pollution allocations**
- **Plan to have all pollution control procedures in place by 2025**
- **Requires watershed jurisdictions to submit Watershed Implementation Plans (WIPs) for EPA's approval**



WIPs

- **WIPs generally describe how a watershed jurisdiction plans to meet the Bay TMDL pollution allocations.**
- **Pennsylvania submitted final Phase I WIP to EPA in January 2011.**
- **Future deadlines:**
 - **Draft Phase II WIP due December 1, 2011**
 - **Final Phase II WIP due March 30, 2012**



Am. Farm Bureau Fed'n v. EPA

- **Litigation filed Jan. 10, 2011**
 - **AFBF and other plaintiffs are challenging the lawfulness of EPA's Bay TMDLs.**
 - **Plaintiffs want declaratory and injunctive relief prohibiting EPA from issuing and enforcing Bay TMDLs.**
 - **Several environmental groups have filed Motion to Intervene.**



Am. Farm Bureau Fed'n v. EPA

- **What It Could Mean:**
 - **Vacate Bay TMDLs**
 - **Change what is required for watershed jurisdictions to meet Bay TMDLs**
 - **i.e. alter WIP process**



Summary

- **Where Are We Now:**
 - **Watershed jurisdictions are currently drafting their Phase II WIPs.**
 - **Process could be impacted by:**
 - **Legislation**
 - **Regulation**
 - **Litigation**



Chesapeake Bay Resources

- **Penn State Law Bay Blog**
 - www.pennstatelawbayblog.com
 - Current legal developments
- **Chesapeake Bay Resource Area**
 - www.law.psu.edu/aglaw
 - Comprehensive legal resources
 - Watch for monthly video updates
 - Train-the-trainer PowerPoint presentation

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The Dickinson
School of Law

Agricultural Law Resource and Reference Center
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National Sea Grant Law Center

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