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Hampton Roads Association for Commercial Real Estate

Legislation Passes in Virginia Restricting Phosphorus in Fertilizer, Concept Originates with Members of Hampton Roads Association for Commercial Real Estate (HRACRE), Benefits Chesapeake Bay TMDL “Pollutant Diet”, Final Stormwater Regulations and Real Estate Community and State Waters.

What began as a conversation after an HRACRE Legislative Committee meeting late in the summer of 2010 ended in 2011 as successful Virginia legislation phasing in a ban of phosphorus in most applications of fertilizers throughout the Commonwealth. Two HRACRE members discussed why there wasn't a concerted effort to find *the* most cost effective means of limiting the *most* phosphorus from entering the Bay, not just from new development, but from all developed areas. That led to recognition that application of lawn fertilizers at homes, shopping centers and office parks contributes more phosphorus to the Bay each year than land disturbance from new development. And in other states such as Maryland, the recipe for fertilizer had already been modified by legislation to reduce pollutant loads to the Bay, meaning that fertilizer companies already knew of methods to achieve this important reduction.

Beneficially for Virginia, the timing of this legislation led to not only future pollutant reductions but a number of other significant benefits. The pollutant reduction generated by the legislation, while not only good for all state waters, was also credited to the Commonwealth in computations for the new “pollution diet” required by the EPA's ***TMDL for the Chesapeake Bay*** of 2010, and in the re-formulation of the new ***Stormwater Regulations*** effective September 13, 2011. Previous stormwater regulations adopted by Virginia on January 4, 2010 were suspended on January 14, 2010 due to 25 petitions protesting the extreme complexity and cost of achieving a noble but too stringent phosphorus removal requirement for new public and private development. The overarching problem was that the amount of phosphorus to be removed from the Bay by the pollution diet could not, in an economically viable manner, come solely from future land development, point sources like sewerage treatment and voluntary actions from farmers. The fertilizer legislation, unbeknownst at the time of its conception, helped close that gap and make the requirements for new construction, while challenging, more economical and helped agricultural practices remain voluntary.

The involved parties within the Legislative Committee of HRACRE took the lead in encouraging the Virginia Association for Commercial Real Estate (VACRE) to champion this cause in Richmond during the 2010-2011 legislative Session. As a consequence of the multiple benefits of such a cost-effective approach, a broad coalition of real estate and conservation groups worked together with legislators to craft a law that would be a true win-win for the environment, the development community and conservation organizations. Other organizations included were the: Virginia Association of Home Builders (VAHB), The Chesapeake Bay Foundation (CBF) and the James River Foundation.

This collaboration continued with these four groups, approaching Senator Richard Stuart (SB 1055) and, subsequently Delegate Lee Ware (HB 2463), to introduce legislation in the House and Senate that would prohibit the sale of fertilizer with phosphorus in Virginia for residential lawn use except in limited circumstances. The four groups lobbied hard in support of this legislation during the 2011 Session and opposed legislation (1831) proposed by the agricultural community which would have prohibited the application of such fertilizer by consumers but would not prohibit its sale in Virginia which would have led to all sorts of enforcement problems. The legislation that was ultimately approved took the approach HRACRE/VACRE advocated and included an added exemption for yard waste compost and other organic fertilizers. CBF took the lead on the legislation but partnered with VACRE (coordinating with HRACRE and other member organizations in Northern Virginia and Richmond) and HBAV to obtain its passage and included their real estate colleagues in all strategy and negotiating sessions on the bill and gave both those organizations, along with the James River Association, credit for this work in the press release they issued announcing passage of the bill.

In summary, discussion of this issue early in 2010 and encouragement to work on it came from HRACRE and this played an important role in VACRE's making this legislation a top priority at the 2011 Session. This legislation was born from a conversation between **John Knibb**, member of HRACRE's Legislative Committee, past president of HRACRE and President of Land Development Inc., of Chesapeake; and **Bob Kerr**, current chair of the Legislative Committee at HRACRE and President of Kerr Environmental Services in Virginia Beach. The original discussion about an approach focusing on cost effective, reasonable and truly significant environmental improvement led to requirements on new construction that were reasonable, prudent and achievable and achieved substantial net improvement to the quality of the Commonwealth's waters.

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