



Department of the Environment

**WETLANDS AND WATERWAYS PROGRAM FUND
FISCAL YEAR 2010
July 1, 2009 – June 30, 2010**

Prepared by:

Wetlands and Waterways Program
Water Management Administration

Prepared for the
Maryland General Assembly



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WETLANDS AND WATERWAYS PROGRAM FUND

REQUIREMENT

Subsection 5-203.1(d) of the Environment Article, Annotated Code of Maryland, states, “On or before December 31 of each year, in accordance with § 2–1246 of the State Government Article, the Department shall prepare and submit an annual report to the House Environmental Matters Committee, the House Appropriations Committee, the Senate Education, Health, and Environmental Affairs Committee, and the Senate Budget and Taxation Committee on the Wetlands And Waterways Program Fund, including an accounting of financial receipts deposited into the Fund and expenditures from the Fund”. This report covers the period from July 1, 2009 through June 30, 2010.

INTRODUCTION

Chapter 142 of the 2008 Laws of Maryland (House Bill 1056) established application fees to fund the State’s Wetlands and Waterways Regulatory Program (Program) administered by the Maryland Department of the Environment (MDE). This Program administers three distinct, but inter-related statutes within the Environment Article: Title 5, Subtitle 5 (Waterway Construction); Title 5, Subtitle 9 (Nontidal Wetlands), and Title 16 (Tidal Wetlands and Riparian Rights). Each of these statutes plays a vital role in maintaining the health of the Chesapeake and Atlantic Coastal Bays. The functions and values of the natural resources protected by these statutes include water quality enhancement; fish and wildlife habitat and migration; natural shoreline protection; flood protection; recreational opportunities and aesthetics.

The law establishes application fees for permits and licenses issued by MDE or the Board of Public Works, as well as exemptions from the applications fees for specific activities. The law also establishes a refund process for certain applications that are not processed according to specified time periods. Revenue generated by these fees is deposited into the Wetlands and Waterways Program Fund, a special fund created by the law and dedicated to the administration of MDE’s Wetlands and Waterways Regulatory Program. Specific uses of the Fund include:

- The issuance of authorizations by the Department under §§ 5–503, 5–906, 16–202, 16–302, and 16–307 of the Environment Article, Annotated Code of Maryland;
- The issuance of wetlands licenses by the Board of Public Works under § 16–202 of the Environment Article, Annotated Code of Maryland;
- The management, conservation, protection, and preservation of the State’s wetlands and waterway resources; and
- Program development associated with Title 5 and Title 16 of the Environment Article, Annotated Code of Maryland, as provided by the State budget.

The law also requires the Department to prioritize the use of the Wetlands and Waterways Program Fund to improve the level of service to the regulated community; and identify and implement measures that will reduce delays and duplication in the administration of the wetlands and waterways permit application review process.

BACKGROUND

Between 1991 and the enactment of the law in 2008, the Wetlands and Waterways Program experienced a 40% reduction in personnel, resulting in a decline in the Program's ability to process and evaluate applications in a thorough and timely manner. Furthermore, while the strength of the Program's workforce had declined, the demands placed on it had increased over time. Application fees were identified as a way for MDE to restore the workforce available to serve the public; enhance resource management and conservation capabilities; and strengthen existing levels of constituent service, insuring a more efficient and effective application review process for the regulated community.

During the 2004 legislative interim, the House Environmental Matters Committee and MDE assembled a workgroup comprised of interested stakeholders to develop a plan to fund the Wetlands and Waterways Program in a mutually agreeable manner. The workgroup, which included legislators, realtors, homebuilders, local governments, consultants and environmentalists, developed a strategy designed to improve MDE's customer service and environmental protection efforts. This strategy included the payment of reasonable application fees by the regulated community in exchange for an enhanced level of service, as well as a number of exemptions, including state, local, municipal and quasi-governmental agencies. The law reflects the strategy developed by this workgroup.

By establishing reasonable application fees to augment the Program's general fund appropriation, MDE will be able to restore the Program's workforce and provide a more efficient and effective application review process for the regulated community. Once this restoration has occurred, MDE expects that the Wetlands and Waterways Program will be able to (1) consistently meet its statutory 45-day application completion review; (2) shorten the plan review and approval backlog to less than one week; (3) assure at least one pre-application meeting per project, if requested by the applicant; (4) devote resources to additional streamlining/customer service efforts; (5) provide additional field inspection and follow-up on wetland mitigation projects; and (6) participate in special workgroups that meet on a regular basis and deal with permitting issues, and resource management and restoration in specific counties or municipalities.

FEE STRUCTURE

The major tenet of the regulatory program is avoidance and minimization of impacts associated with a project. Through its permit application review process, MDE attempts to first prevent wetland loss by avoiding impacts, and then, for impacts that are

unavoidable, to reduce impacts by minimizing the impacts associated with activities affecting wetlands. The application fee schedule attempts to further reduce impacts by providing financial incentives to the applicant. As proposed impacts increase, an escalating application fee schedule has been established to insure that each applicant exercises every opportunity to avoid and minimize impacts to the State's wetland and waterway resources. In general, all applications require a minimum application fee of \$750. Major projects (i.e., those that involve more than 5,000 square feet of impact, require a public notice, or otherwise implicate endangered species, historical resources, or other sensitive resources) are assessed an additional fee of \$750 or more based on the coordination requirements of the application, the proposed impact on sensitive resources, or the impact area in acres. The actual fee schedule is presented in the following table.

MINOR PROJECT APPLICATION FEES		
TYPE OF APPLICATION	AREA OF PERMANENT IMPACT	FEE (Dollars)
APPLICATIONS FOR MINOR PROJECTS OR GENERAL PERMITS	<5,000 SQUARE FEET	750
APPLICATIONS FOR MINOR MODIFICATIONS	<5,000 SQUARE FEET	500
MAJOR PROJECT APPLICATION FEES		
TYPE OF APPLICATION	AREA OF PERMANENT IMPACT	FEE (Dollars)
APPLICATIONS FOR MAJOR PROJECTS	< ¼ ACRE	1,500
	≥ ¼ ACRE TO < ½ ACRE	3,000
	≥ ½ ACRE TO < ¾ ACRE	4,500
	≥ ¾ ACRE TO < 1 ACRE	6,000
	≥ 1 ACRE	7,500 / ACRE

The law also identifies the following activities as being exempt from the requirement to pay application fees:

- Regulated activities conducted by the State, a municipal corporation, county, bicounty or multicounty agency under Article 28 or Article 29 of the Code, or a unit of the State, a municipal corporation, or a county;
- Performance of agricultural best management practices contained in a Soil Conservation and Water Quality Plan approved by the appropriate Soil Conservation District;
- Performance of forestry best management practices contained in an erosion and sediment control plan; and
- Stream restoration, vegetative shoreline stabilization, wetland creation, or other project in which the primary effect is to enhance the State's wetland or water resources.

WETLANDS AND WATERWAYS PROGRAM FUND REVENUES

The law establishes the Wetlands and Waterways Program Fund, which is administered by MDE. The Program Fund consists of:

- Application fees collected by the Department;
- Monetary compensation paid to the State in conjunction with a Wetlands License other than that compensation specified in § 16–205(c)(2) of the Environment Article, Annotated Code of Maryland;
- Money appropriated in the State budget to the Fund; and
- Investment earnings, interest, and any other money from any other source accepted for the benefit of the fund.

WETLANDS AND WATERWAYS PROGRAM FUND EXPENDITURES

The law establishes a funding mechanism that complements a general fund appropriation to adequately support the State's Wetlands and Waterways Regulatory Program administered by MDE. This funding strategy enabled MDE to restore the Program's workforce to historical levels necessary to effectively serve the public. This strategy also enhances MDE's resource management and conservation capabilities and strengthens existing levels of constituent service, insuring a more efficient and effective application review process for the regulated community.

When the law was enacted in 2008, it was estimated that the revenue generated by the application fees would fund 34 positions. On June 25, 2008, the Board of Public Works (Board) approved the creation of 15 specially-funded positions. The Board completed the restoration of the Wetlands and Waterways Program envisioned under House Bill 1056 when it approved the creation of an additional 19 specially-funded positions on

January 7, 2009. All 34 positions have been filled and the new employees have been trained and are now serving the regulated community.

CLASSIFICATIONS	POSITIONS			
	HB 1056	Board of Public Works 06/25/08 Agenda	Board of Public Works 01/07/09 Agenda	Remaining Vacancies
Regulatory and Compliance Engineer I	4	3	3	0
Natural Resources Planner III	13	6	7	0
Computer Information Service Specialist II	1	0	1	0
Administrative Officer II	2	0	1	0
Accountant II	0	0	1	0
Office Secretary II	3	0	1	0
Environmental Compliance Specialist I	10	6	4	0
Assistant Attorney General IV	1	0	1	0
TOTALS	34	15	19	0

SUMMARY

The Wetlands and Waterways Program Fund is a special fund created by Chapter 142 of the 2008 Laws of Maryland (House Bill 1056). The Fund began receiving revenue on July 1, 2008, the effective date of the law. The major sources of revenue for the Fund are application fees collected by the Department and monetary compensation paid to the State in conjunction with Tidal Wetlands Licenses. Variable year end fund balances may occur due to a number of factors. Expenditures can be affected by staffing changes (i.e. vacancies and recruitment) and contractual project delays. Factors that can affect revenue include the number of permit applications received during the fiscal year, required coordination with the Department of Natural Resources or the Maryland Historical Trust, a project's proximity to sensitive resources, and the extent of the authorized impacts. Economic conditions continue to adversely affect the application stream. Consequently, the Department is carefully monitoring revenue and expenses. The \$402,058.23 fund balance at the end of the 2010 Fiscal Year will provide an important buffer for expected variations in revenue and expenditures. Finally, as stipulated in the law, the Department will reconvene the 2004 workgroup in 2011 to evaluate the progress made by the Department and reassess the current fee schedule.

The following table provides an accounting of revenues and expenditures in the Fund for the period July 1, 2009 through June 30, 2010.

**STATEMENT OF REVENUES AND EXPENDITURES
WETLANDS AND WATERWAYS PROGRAM FUND
FISCAL YEAR 2010
July 1, 2009- June 30, 2010**

REVENUES	
Fund Balance as of June, 2009	\$ 697,723.35
Fiscal Year 2010 Revenue (Application Fees)	1,438,350.87
Fiscal Year 2010 Earned Interest (Application Fees)	0.00
Fiscal Year 2010 Revenue (Tidal Wetlands License Compensation Fees)	448,923.30
Total Fiscal Year 2010 Revenues	\$2,584,997.52
EXPENDITURES	
Total Fiscal Year 2010 Expenditures	\$2,182,939.29
WETLANDS AND WATERWAYS PROGRAM FUND BALANCE	\$ 402,058.23