



Department of the Environment

WETLANDS AND WATERWAYS PROGRAM FUND FISCAL YEAR 2013

Prepared by:

Wetlands and Waterways Program
Water Management Administration



Millington Wildlife Management Area Programmatic Mitigation Site, Kent County

Prepared for:

The Maryland General Assembly
Annapolis, MD

Thomas V. Mike Miller, Jr., Senate President
Maryland General Assembly

Michael E. Busch, House Speaker
Maryland General Assembly



MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard | Baltimore, MD 21230 | www.mde.state.md.us/recycling
410-537-3314 | 800-633-6101 x3314 | TTY Users: 800-735-2258
Martin O'Malley, Governor | Anthony G. Brown, Lt. Governor | Robert Summers, Ph.D., Secretary



WETLANDS AND WATERWAYS PROGRAM FUND
FISCAL YEAR 2013
July 1, 2012 – June 30, 2013

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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, 2012 through June 30, 2013.

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.

The reasonable application fees established by the law has enabled MDE to augment the Program’s general fund appropriation, restore the Program’s workforce, and provide a more efficient and effective application review process for the regulated community. The restoration of the Program’s workforce has paid real dividends to the regulated community. The Wetlands and Waterways Program has been able to (1) consistently meet its statutory 45-day application completion review; (2) shorten the plan review and approval backlog; (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.

CHAPTER 142 OF THE 2008 LAWS OF MARYLAND

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 established application fees for permits and licenses issued by MDE or the Board of Public Works (Board), as well as exemptions from the applications fees for specific activities. The law also established 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 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 required 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 to reduce delays and duplication in the administration of the wetlands and waterways permit application review process.

Section 2(b) of Chapter 142 of the 2008 Laws of Maryland required MDE to convene a work group on or before January 1, 2011 consisting of interested stakeholders to review and assess whether the Program successfully improved the level of service to the regulated community as a result of the new fees imposed by the legislation. The goals of the Work Group were to:

- Review the number of new positions assigned to the Program;
- Review the Program's progress in improving permit turnaround time frames, eliminating permit application backlogs, and providing any enhanced services to the regulated community as a result of HB 1056;
- Analyze the long-term funding needs of the Program;
- Determine whether the application fees provided by HB 1056 are adequate to support an effective program; and

- Report the findings and recommendation of the Work Group. to the Legislative Policy Committee, the House Environmental Matters Committee, and the Senate Education, Health, and Environmental Affairs Committee, in accordance with § 2-1246 of the State Government by December 1, 2011.

WETLANDS AND WATERWAYS FUNDING WORK GROUP

As required by HB 1056, MDE convened a Work Group consisting of interested stakeholders to review and assess whether the Wetlands and Waterways Program successfully improved the level of service to the regulated community. The membership of the 2004 convened by Delegate Maggie McIntosh, Chairman of the House Environmental Matters Committee, formed the nucleus of the work group assembled by MDE in 2011 to review the implementation of HB 1056. The Department invited 26 stakeholders, representing a broad spectrum of interests, to participate in this 2011 Work Group.

Over a period of 11 weeks, the Wetlands and Waterways Funding Work Group reviewed the Department's accomplishments in the context of the criteria established in the law. The report generated by the Work Group provided general information on the Program, the requirements of HB 1056, and the history of the Work Group. Next, the report discussed the criteria set forth in HB 1056 by which the Work Group evaluated the Program including: establishing new positions; improving application turnaround times; reducing the application backlog; developing enhanced services for the regulated and environmental communities; reviewing the funding needs of Program; and assessing the adequacy of the application fees to support an effective program. Finally, the report presented the Work Group's conclusions and recommendations. The consensus of the Work Group was that MDE successfully met the intent of the law through the following accomplishments:

- Increased staffing levels consistent with the intent of HB 1056 by creating 34 new positions;
- Improved permit turnaround time so that the Wetlands and Waterways Program now meets its published turnaround times over 90 percent of the time;
- Eliminated the permit application backlog; and
- Provided enhanced services to the regulated and environmental communities.

The Work Group also analyzed the funding needs of the Wetlands and Waterways Program and determined that the revenues generated by HB 1056 did not fully support the 34 positions envisioned by the legislation. Furthermore, the Work Group determined that the structure of the fee schedule was problematic and the amount of the fees was not adequate to support an effective program.

Based on the programmatic review required by HB 1056, the Wetlands and Waterways Funding Work Group recommended that the Department pursue legislation amending the fee schedule by adopting a strategy that: (1) reduced the financial burden on residential property owners; and (2) eliminated the additional charge for major projects impacting rare, threatened or endangered species, historical and archeological resources, and natural and recreational trout waters. The Work Group also recommended other improvements, including:

- Changing the definition of a major project;
- Defining “Residential Activity” or “Noncommercial Activity;”
- Specifying that all non-commercial residential activities meet the definition of a minor project;
- Establishing a special category of de minimis, noncommercial, residential activities that are assessed a reduced application fee; and
- Convening a Work Group in 2015 to review and assess the performance of the Wetlands and Waterways Program and the adequacy of any amended application fees to support an effective program.

ENACTMENT OF HOUSE BILL 1411

On May 22, 2012, Governor O’Malley signed House Bill 1411 (HB 1411), entitled Wetlands and Waterways Program Fees, into law. Chapter 722 of the 2012 Laws of Maryland made significant changes to the application fees being charged by MDE for applications for Tidal Wetlands Licenses and Permits and Nontidal Wetlands and Waterways Letters of Authorization and Permits. The modified fee schedule became effective July 1, 2012.

In general, HB 1411: 1) changed the definition of a major project; 2) defined the terms “Residential Activity” and “Noncommercial Activity”; 3) specified that all noncommercial residential activities meet the definition of a minor project; 4) established a special category of noncommercial, residential activities assessed a reduced fee; and 5) established a minimum compensation rate of \$2.50 per linear foot for cables, pipelines, or similar structures crossing State wetlands. Some of the benefits associated with HB 1411 include reducing the financial burden on residential property owners; eliminating the additional charge for major projects impacting rare, threatened or endangered species, historical and archeological resources, and natural and recreational trout waters; and significantly reducing the number of applications that are classified as a “major project.”

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 requiring an applicant to evaluate project designs that will avoid wetland impacts. Based on this evaluation of alternatives, if MDE finds that impacts are unavoidable, the applicant is required to utilize the project design that will minimize the wetland impacts and provide appropriate mitigation for those impacts.

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 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 permanent impact, located in an area identified as potentially impacting a nontidal wetland of special State concern or require a public notice) are assessed an additional fee of \$750 or more based on the impact area in acres. The actual fee schedules are presented in the following tables.

FEE SCHEDULE A WETLANDS AND WATERWAYS PROGRAM APPLICATION FEES FOR MINOR AND MAJOR PROJECTS		
TYPE OF APPLICATION	AREA OF PERMANENT IMPACT	APPLICATION FEE (Dollars)
MINOR PROJECT OR GENERAL PERMIT	<5,000 SQUARE FEET	750
MINOR MODIFICATION	<5,000 SQUARE FEET	250
MAJOR PROJECT	< 1/4 ACRE	1,500
	≥ 1/4 ACRE TO < 1/2 ACRE	3,000
	≥ 1/2 ACRE TO < 3/4 ACRE	4,500
	≥ 3/4 ACRE TO < 1 ACRE	6,000
	≥ 1 ACRE	7,500/ACRE
MAJOR MODIFICATION	≥ 5,000 SQUARE FEET	1,500

FEE SCHEDULE B WETLANDS AND WATERWAYS PROGRAM APPLICATION FEES FOR CERTAIN MINOR PROJECTS ⁽¹⁾		
PERMIT TYPE	PROJECT DESCRIPTION	APPLICATION FEE(Dollars)
Tidal Wetlands	Installation of a boatlift on existing pilings	0
	Installation of an individual boatlift with 2 pilings	300
	Installation of a maximum of 6 pilings	300
	In-kind repair and replacement of structures ⁽²⁾	300
	Installation of a fixed or floating platform, where the total platform area (fixed and floating) does not exceed 200 square feet	300
	Replacement of an existing bulkhead where the replacement bulkhead does not exceed more than 18 inches channelward of the existing structure	500
Nontidal Wetlands and Waterways	Construction of a non-habitable structure that permanently impacts less than 1,000 square feet, such as a driveway, deck, pool, shed or fence	300
	In-kind repair and replacement of existing infrastructure	500

Notes:

- (1) Schedule B fees are not additive, but must be calculated on a complete and entire project. If a project consists of multiple activities, the higher application fee is applicable.
- (2) If the existing structure is functional and there is no increase in the original length, width, height, or channelward encroachment, then the routine maintenance, repair, or replacement of a highway structure, pier, boathouse, structure on a pier, bulkhead, revetment, tidal impoundment dike, water control structure, above ground transmission facility, agricultural drainage ditch or highway drainage ditch is exempt from the application fee. A property owner that is uncertain about the regulatory requirements can contact MDE and schedule a pre-application meeting for guidance. If a property owner is uncomfortable proceeding with a project without an authorization from the Department, then the property owner can file an application and pay a \$300 application fee.

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 of the Code or Division II of the Public Utilities Article, 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 prepared by a registered forester and approved by the appropriate soil conservation district;
- 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;
- Aquaculture activities for which the Department of Natural Resources has issued a permit under § 4-11A-02 of the Natural Resources Article;
- Installation of a boatlift, hoist, or personal watercraft lift on existing pilings; and
- If the existing structure is functional and there is no increase in the original length, width, height, or channelward encroachment, the routine maintenance, repair, or replacement of a pier, boathouse, structure on a pier, bulkhead, revetment, tidal impound dike, water control structure, aboveground transmission facility, agricultural drainage ditch, or highway drainage ditch.

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 original law was enacted in 2008, it was estimated that the revenue generated by the application fees would fund 34 positions. With support from the Board, 34 positions were created and filled, and the employees are now serving the regulated community.

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. The main factor affecting revenue is the number of permit applications received during the fiscal year. Economic conditions continue to adversely affect the application stream. Consequently, the Department is carefully monitoring revenue and expenses. Finally, as stipulated in the law, the Department reconvened the 2004 workgroup in September 2011 to evaluate the progress made by the Department and reassess the original fee schedule. The recommendations of the workgroup resulted in legislation that was enacted by the General Assembly during the 2012 legislative session and signed by the Governor on May 22, 2012.

The following tables provide an accounting of revenues and expenditures in the Fund for the period July 1, 2012 through June 30, 2013.

**STATEMENT OF REVENUES AND EXPENDITURES
WETLANDS AND WATERWAYS PROGRAM FUND
FISCAL YEAR 2013
July 1, 2012 - June 30, 2013**

REVENUES	
Adjusted Fund Balance as of June, 2012	\$ 27,585.06
Fiscal Year 2013 Revenue (Application Fees)	1,049,437.84
Fiscal Year 2013 Revenue (Tidal Wetlands Licenses Compensation)	1,561,997.97
Fiscal Year 2013 Revenue (Marine Contractor Registration)	12,600.00
Fiscal Year 2013 Revenue (Nontidal Wetlands Permits Compensation)	127,638.03
Fiscal Year 2013 Accrued Revenues	161,110.03
Total Fiscal Year 2013 Revenues	\$2,940,368.93
EXPENDITURES	
Total Fiscal Year 2013 Expenditures	\$2,821,001.14
WETLANDS and WATERWAYS PROGRAM FUND	\$ 119,367.79