



# REPORT OF THE WETLANDS AND WATERWAYS PROGRAM FUNDING WORK GROUP

*Prepared for the  
Maryland General Assembly*



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# **REPORT OF THE WETLANDS AND WATERWAYS PROGRAM FUNDING WORK GROUP**

## **I. REQUIREMENT**

Section 2(b) of Chapter 142 of the 2008 Laws of Maryland (“HB 1056”) requires the Maryland Department of the Environment (“Department” or “MDE”) to convene a work group consisting of interested stakeholders to review and assess whether the Department’s Wetlands and Waterways Program (“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 are 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.

The Work Group’s report is to be submitted 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.

This report first provides general information on the Program, the requirements of HB 1056, and the history of the Work Group. Next, this report discusses 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, this report presents the Work Group’s conclusions and recommendations.

## **II. BACKGROUND**

The Wetlands and Waterways Program administers a statewide program for the management, conservation, and protection of Maryland’s tidal wetlands, and nontidal wetlands and waterways, including the 100-year nontidal floodplain. The Program plays an important role in maintaining the health and function of the Chesapeake and Coastal Bays and their tributaries. The functions and values of the natural resources protected by the Program include fish and wildlife habitat and migration; water quality enhancement; natural shoreline protection; flood protection; recreational opportunities; and aesthetics. For wetlands, in particular, a statutory goal has been established to achieve “no net loss” of wetland acreage and function and to strive for a net gain in wetlands over time. This goal is achieved through the Program’s permit application review process, which

focuses on the avoidance and minimization of impacts associated with development and mitigation for all unavoidable wetland losses authorized by the Department.

**A. THE PROGRAM'S REDUCTION IN PERSONNEL SINCE 1991**

Between 1991 and 2008, the Program experienced a 40 percent reduction in personnel. In 2008, the Program consisted of 43 full-time employees, including four federally-funded contractual employees, and administered an annual budget of approximately \$6.0 million (\$3.1 million in general funds, \$1.1 million in special funds, \$1.6 million in federal funds, and \$0.2 million in reimbursable funds). The Program processed more than 3,000 permits annually.

This personnel reduction resulted in a decline in the Program's ability to process and evaluate applications in a thorough and timely manner. While the strength of the Program's workforce declined, the demands placed on it also increased during this same period. Regulatory changes, increases in the number of permit applications received annually, increasing public awareness, and other factors resulted in a wetlands permitting process that averaged eight months for major tidal wetland projects and 12 months for major nontidal wetland projects. In addition, the application backlog grew to nearly 5,800 permit applications. The following table highlights the reduction in workforce associated with wetland permitting activities during this period.

**Table 1: Workforce Reduction (1991-2008)**

<b>POSITION</b>	<b>1991 WORKFORCE</b>	<b>2008 WORKFORCE</b>	<b>PERCENT DECLINE</b>
Program Director	2	1	0
Deputy Director	0	1	
Division Chiefs	4	2	50
Section Chiefs	9	6	33
Engineers	15	6	60
Tidal Reviewers	6	5	17
Nontidal Reviewers	10	9	10
Mitigation Reviewers	4	2	50
Planners	0	2	0
Permit Service Center	3	3	0
Computer Programmers	3	1	67
Clerical Support	9	4	56
Water Quality Certification	5	0	100
<b>TOTALS</b>	<b>70</b>	<b>42</b>	<b>40</b>

**B. HOUSE BILL 1056**

HB 1056 was enacted by the Maryland General Assembly during the 2008 Legislative Session and was signed by Governor O’Malley on April 24, 2008. This Act established application fees for permits and licenses issued by MDE or the Board of Public Works (“BPW”), as well as exemptions from application fees for specific activities and applicants. Specifically, Title 5, Subtitle 203.1 of the Environment Article established application fees for minor and major projects/modifications, and impact fees for major projects/modifications based on the acreage of wetlands impact. Major projects are projects that:

- Propose to permanently impact 5,000 square feet or more of wetlands;
- Are located in an area identified as potentially impacting threatened or endangered species or species in need;
- Are located in an area identified as potentially impacting historical or archaeological resources;
- Are located in an area identified as potentially impacting a nontidal wetland of special state concerns;
- Are located adjacent to Use III or Use IV waters; or
- Require issuance of a public notice by the Department.

Md. Code Ann., Envir. § 5-203.1(a)(2).

Minor projects are projects that:

- Propose to permanently impact less than 5,000 square feet of wetlands or waterways; and
- Do not meet the definition of a major project.

Md. Code Ann., Envir. § 5-203.1(a)(3).

Table 2 illustrates the application fees established by HB 1056.

**Table 2: Application Fees Established by HB 1056**

<b>APPLICATION TYPE</b>	<b>IMPACT</b>	<b>FEE</b>
Minor Project	< 5,000 Square Feet	\$750
General Permit		\$750
Minor Modification	< 5,000 Square Feet	\$500
Major Project/Modification	< 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

HB 1056 also established the following exemptions to the application fees for:

- Activities conducted by the State, a municipal corporation, county, bicounty, or multicounty agency;
- Performance of agricultural best management practices contained in an approved soil conservation and water quality plan;
- Performance of forestry best management practices contained in an approved erosion and sediment control plan prepared by a registered forester; and
- Stream restoration, vegetative shoreline stabilization, wetland creation, or other projects in which the primary effect is to enhance the state's wetland or water resources.

Md. Code Ann., Envir. § 5-203.1(b)(2).

Revenue generated by the application and impact fees is deposited into the Wetlands and Waterways Program Fund, a special fund created by the Act and dedicated to the administration of the Program. The Department shall use the Program Fund for activities related to:

- The issuance of authorizations by the Department or the BPW;
- The management, conservation, protection, and preservation of the State's wetlands and waterway resources; and
- Program development.

Md. Code Ann., Envir. § 5-203.1(c)(5). The Department is required to prioritize the use of the Program Fund to improve the level of service to the regulated community and to identify and implement measures that will reduce delays and duplication in the administration of the wetlands and waterways permit process. Md. Code Ann., Envir. § 5-203.1(e).

The funding strategy established by HB 1056, which combines general funds and special funds, was designed to improve the management, conservation, and protection of critical wetland and waterway resources, while providing a more efficient and effective permit application review process for the citizens of Maryland. The fees established by the Act were designed to augment, rather than supplant, existing general fund appropriations for the Program.

### **C. WETLANDS AND WATERWAYS FUNDING WORK GROUP**

In the summer of 2004, Delegate Maggie McIntosh, the Chairman of the House Environmental Matters Committee, convened the first funding work group comprised of interested stakeholders to develop a plan to fund the Program in a manner agreeable to the Department and the environmental and regulated communities. The membership of the 2004 work group 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. (See Attachment #1.)

Four Work Group meetings were conducted over a period of 11 weeks covering a myriad of issues associated with the implementation of HB 1056. The Work Group's schedule is presented below in Table 3, including the topics discussed at each meeting.

**Table 3: Work Group Meeting Schedule**

<b>DATE</b>	<b>TIME</b>	<b>LOCATION</b>	<b>DISCUSSION TOPICS</b>
08/30/11	MEETING #1 CANCELLED DUE TO HURRICANE IRENE RECOVERY EFFORTS		
09/20/11	1:30 PM To 4:30 PM	Education, Health & Environmental Affairs Committee Room Miller Senate Office Building 2 West Wing, 11 Bladen Street Annapolis, MD 21401	Meeting #2 <ul style="list-style-type: none"> <li>• Review Legislation and Accomplishments</li> <li>• Review Fee Schedule, Implementation Challenges and Solutions</li> <li>• Discuss Potential Amendments to Improve Fee Schedule</li> </ul>
10/11/11	1:30 PM To 3:30 PM		Meeting #3 <ul style="list-style-type: none"> <li>• Review FY2010 Fiscal Information, HB 1056 Revenue Assumptions, Fee Schedule and Exemptions</li> </ul>
11/01/11	1:30 PM To 3:30 PM		Meeting #4 <ul style="list-style-type: none"> <li>• Review Draft Bill and Discuss Other Funding Strategies</li> </ul>
11/15/11	1:00 PM To 3:00 PM		Meeting #5 <ul style="list-style-type: none"> <li>• Review and Approve Draft Report of Findings and Recommendations</li> </ul>

**III. PROGRAM ASSESSMENT REQUIREMENTS OF HB 1056**

The goal of HB 1056 was to restore the workforce of the Wetlands and Waterways Program in order to enhance its resource management and conservation capabilities and strengthen existing levels of constituent service, ensuring a more efficient and effective application review process for both the environmental and regulated communities. The review criteria established by HB 1056 to measure the Program’s success in achieving the goal of the legislation and the Program’s success at achieving each criterion are discussed in detail below.

**A. NUMBER OF NEW POSITIONS ASSIGNED TO THE PROGRAM**

Because of the decline in workforce between 1991 and 2008, one component of HB 1056 was to restore 34 positions to the Wetlands and Waterways Program. Twenty-three of these 34 positions are tied directly to the Program. The classifications for these positions were based on the number of applications received, the backlog of applications needing review, and additional duties assigned to various sections. Ten of the positions are assigned to the Compliance Program, which is responsible for inspection, compliance, and enforcement of tidal and nontidal wetland authorizations. The remaining position is assigned to the Office of the Attorney General.

Since the enactment of HB 1056, the Department has restored the 34 positions envisioned by HB 1056. The special fund revenue generated by the permit application fees enabled MDE to request that the BPW create 34 new positions. The BPW created 15 positions on June 25, 2008 and 19 positions on January 7, 2009. The status of these positions and a description of their duties and responsibilities are presented in Table 4 below.

**Table 4: 34 New Positions Established By HB 1056**

CLASSIFICATIONS	NUMBER OF POSITIONS	CREATION DATE	STATUS (AS OF MAY 1, 2011)
Regulatory and Compliance Engineer I <sup>1</sup>	3	06/25/2008	Employees hired and trained.
Natural Resources Planner III <sup>2</sup>	6	06/25/2008	Employees hired and trained.
Environmental Compliance Specialist I <sup>3</sup>	6	06/25/2008	Employees hired and trained.
Regulatory and Compliance Engineer I <sup>1</sup>	3	01/07/2009	Employees hired and trained.
Natural Resources Planner III <sup>2</sup>	7	01/07/2009	Employees hired and trained.
Environmental Compliance Specialist I <sup>3</sup>	4	01/07/2009	Employees hired and trained.
Accountant	1	01/07/2009	Employee hired and trained.
Administrative Officer	1	01/07/2009	Employee hired and trained.
Assistant Attorney General	1	01/07/2009	Employee hired and trained.
Computer Information Services Specialist II	1	01/07/2009	Employee hired and trained.
Office Secretary	1	01/07/2009	Employee hired and trained.
<p><sup>1</sup> Regulatory and Compliance Engineers conduct pre-application meetings; review hydrologic and hydraulic studies and other engineering reports; and review and evaluate applications, using special computer models.</p> <p><sup>2</sup> Natural Resource Planners delineate tidal and nontidal wetlands; verify wetland delineations performed by consultants; conduct pre-application meetings; and review and evaluate applications.</p> <p><sup>3</sup> Environmental Compliance Inspectors ensure that the resource management and environmental protection goals of MDE's authorizations are achieved through inspection, compliance and enforcement activities.</p>			

**B. PROGRESS IN IMPROVING PERMIT TURNAROUND TIME FRAMES**

As a result of the newly imposed fees under HB 1056, higher client expectations surrounding the application-to-authorization process arose. This, in turn, created a need to develop an enhanced project management model for the Wetlands and Waterways Program. To meet these expectations, the Program developed major milestones for the application-to-authorization process in order to improve the Department's ability to process an application in a timely fashion. The Program built measurable milestones in its database to record the authorization process. In addition, new Standard Operating Procedures were created for each position in the Program, defining the business process required and the functional methodologies necessary to accomplish each procedure. The Program also created reports to track and monitor permit review performance by reviewer, media, and individual permit application. The Program monitors its daily routine, and revises daily work processes to accommodate these new business requirements, timetables, and applicant satisfaction.

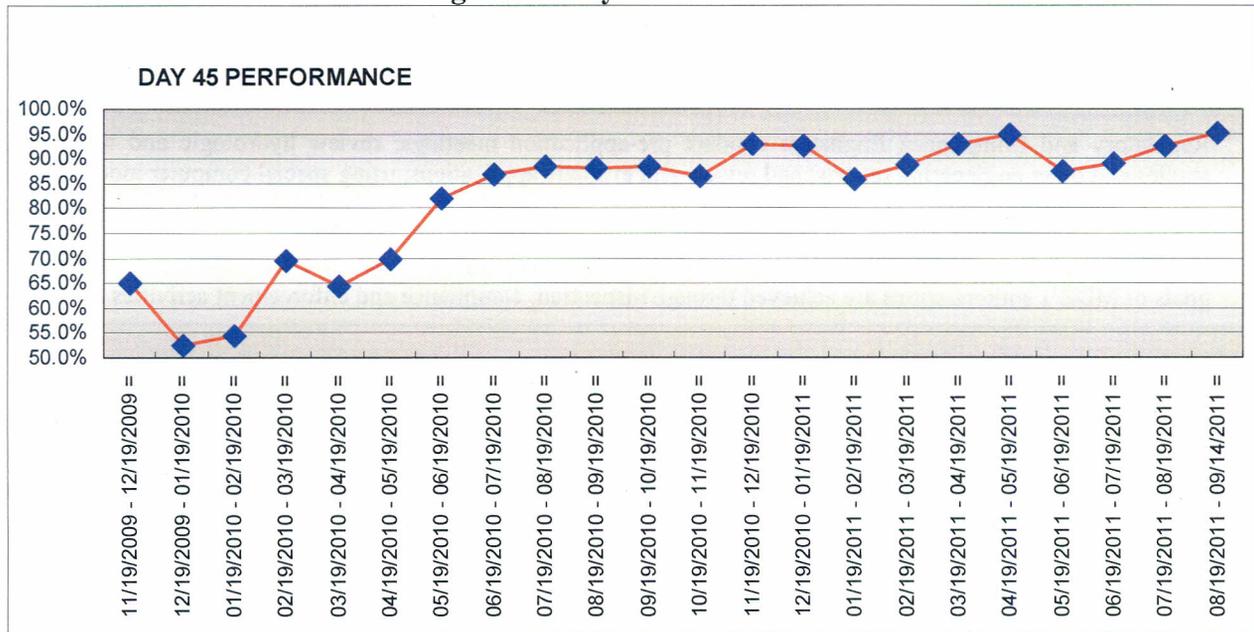
**1. 45-Day Application Review Deadline**

Section 5-906(d) of the Environment Article requires the Department to notify an applicant whether a nontidal wetlands application is complete and the delineation is correct within 45 days from receipt of the application. If the Department fails to notify the applicant about the application or delineation within 45 days, the delineation is treated by the Department as correct and the application is treated as complete. Md. Code Ann., Envir. §5-906(d). Beginning on

October 1, 2010, SB 382 (Chapter 286 of the 2010 Laws of Maryland) instituted a similar 45-day application review deadline for minor tidal wetlands license applications. Md. Code Ann., Envir. § 16-202(c). The Department is required to notify the applicant whether a tidal wetlands license application is complete and whether the delineation is correct within 45 days from receipt of the application. Md. Code Ann., Envir. §16-202(c). In both instances, the Department may seek an extension of time when extenuating circumstances prevent consideration of the application.

The Department’s ability to track the performance of these statutory requirements became available on October 19, 2009 (see Enterprise Environmental Management System) and performance reports became available the following month. Current performance reports show that MDE has consistently met the 45-day application review deadline 90 percent of the time. Furthermore, as demonstrated by Figure 1 below, the Department’s performance continues to improve over time.

**Figure 1: Day 45 Performance**



**2. Application Processing Improvements**

A goal of the Wetlands and Waterways Program is to consistently meet MDE’s published turnaround times for wetlands and waterways permit applications, illustrated in Table 5. To accomplish this goal, the Program pursued internal policies to reduce processing times, because more than 75 percent of the permit applications processed by the Program do not require an independent review by the U.S. Army Corps of Engineers (“USACE”). After an applicant successfully completes the State’s permit application review process, the Program issues both the State authorization and the federal Maryland State Programmatic General Permit (“MDSPGP”). Consequently, analyzing the Program’s internal business plan and instituting new processing procedures was determined to be the most efficient way to improve permit processing times. The Department’s strategy to accomplish this relies on the: (1) design and implementation of a

new computer database and management system; (2) establishment and implementation of revised processing standards; and (3) elimination of the permit application backlog.

**a. TEMPO Database System**

Historically, both the Program and the USACE used the same federal database, known as RAMS (Regulatory Analysis and Management System) to manage, track, and report on regulatory activities. The decision to use a common database in 1991 facilitated efficient and effective communication between the agencies for more than 15 years. In October 2007, however, the USACE abandoned RAMS for a new federal database known as ORMS (OMBIL Regulatory Module System). Unfortunately, homeland security issues made it impossible for MDE to access and use ORMS for its regulatory program. As a result, a Departmental effort began to move the Program’s data into the TEMPO (Tools for Environmental Management and Protection Organizations) database system.

TEMPO is a Department-level comprehensive system of tools and procedures that takes a unified approach to data collection and reporting. The Oracle-based relational database management system provides management access to integrated regulatory data that encompasses permitting, licensing, compliance, enforcement, emergency response, and fiscal functionality. TEMPO is designed to give the Department a consistent and standardized view of its complex business environments, facilitating decision making while simplifying the experience of end users. Design of the wetlands and waterways module began on June 30, 2008. The database went live on October 19, 2009, transitioning data from the RAMS database into the TEMPO database.

**b. Standard Processing Times**

Section 1-607(a)(2) of the Environment Article, requires the Department to establish standard turnaround times for all types of permit applications. The published turnaround times for the Wetlands and Waterways Program for calendar year 2011 are shown in the table below.

**Table 5: 2011 Wetlands and Waterways Program Standard Permit Turnaround Times**

TYPE OF AUTHORIZATION	TURNAROUND TIMES
Nontidal Wetlands and Waterways Permits	10 months for minor projects
	12 months for major projects
Tidal Wetland Licenses and Permits	90 days for minor projects
	8 months for major projects
	11 months for major projects with a hearing

**c. Standard Operating Procedures**

Standard Operating Procedures (“SOP”) have been developed and documented for the entire permit application review process – from receipt of an application to issuance of an authorization. The SOPs are position specific, including step-by-step instructions for each position in the Program involved in the permit application review process. In addition, the SOPs

include specific TEMPO functional tasks to document the permit application review process. The Program also developed a project management schedule that is integrated into the TEMPO system to improve the management of its internal business process. For example, TEMPO provides the Program with the ability to generate proactive reports so that management and reviewers may better coordinate and strategize project approaches. Since the implementation of the SOPs, the Program has met the standards established by the Department for its published turnaround times.

Table 6 illustrates the application turnaround time for authorizations issued from October 19, 2009 to September 19, 2011. These applications represent all active applications pending before the Program, including applications received prior to the restoration of the Program's workforce as a result of HB 1056.

**Table 6: Application Turnaround Time for Authorizations  
Issued From 10/19/2009 Thru 9/19/2011**

<b>APPLICATION TYPE</b>	<b>APPLICATIONS PROCESSED WITHIN PUBLISHED TURNAROUND TIME</b>
All Nontidal Wetlands	82.8%
Nontidal Minor	85.3%
Nontidal Major	80.1%
All Tidal Wetlands	81.0%
Tidal Minor	70.6%
Tidal Major	70.9%
<b>ALL APPLICATIONS</b>	<b>81.9%</b>

Table 7 illustrates the application turnaround time for applications received and issued from October 19, 2009 to September 19, 2011. Unlike in Table 6, which includes all pending applications before the Program, Table 7 provides a subset of the applications. These applications represent the applications received and issued after the restoration of the Program's workforce as a result of HB 1056, as well as the development of the Program's new TEMPO database.

**Table 7: Application Turnaround Time for Applications  
Received and Issued From 10/19/2009 Thru 9/19/2011**

<b>APPLICATION TYPE</b>	<b>APPLICATIONS PROCESSED WITHIN PUBLISHED TURNAROUND TIME</b>
All Nontidal Wetlands	97.0%
Nontidal Minor	97.2%
Nontidal Major	96.9%
All Tidal Wetlands	90.4%
Tidal Minor	93.4%
Tidal Major	88.7%
<b>ALL APPLICATIONS</b>	<b>93.4%</b>

Table 8 provides the application turnaround time for applications received and issued from October 1, 2010 to September 19, 2011. Beginning on October 1, 2010 for tidal minor projects, § 16-202(c) of the Environment Article required the Department to notify an applicant whether the application is complete and the delineation is correct within 45 days from receipt of the application. Once the application is determined to be complete, the Department must make a decision on the application within 45 days, or 75 days if extenuating circumstances exist.

**Table 8: Application Turnaround Time for Applications Received and Issued From October 1, 2010 Thru September 19, 2011**

<b>APPLICATION TYPE</b>	<b>APPLICATIONS PROCESSED WITHIN PUBLISHED TURNAROUND TIME</b>
All Nontidal Wetlands	99.9%
Nontidal Minor	99.8
Nontidal Major	100%
All Tidal Wetlands	98.7%
Tidal Minor	97.8%
Tidal Major	99.3%
<b>ALL APPLICATIONS</b>	<b>99.2%</b>

**d. New State Procedures for Application Processing**

Another step the Wetlands and Waterways Program took to improve turnaround times was to implement new processing standards for all applications received by the Program beginning August 1, 2011. The new procedures for application review and communication with applicants were designed to further improve and expedite the permit application review process. These procedures clarify the steps in the review process, promptly communicate the need for specific additional information to applicants, and add certainty to the permit process by adhering to the Department’s published permit turnaround times. The Program’s ability to meet these turnaround times for permit decisions depends on an applicant’s submission of a carefully prepared application and the timely delivery of any additional information MDE determines is necessary to complete the application review and render a decision. A critical component to MDE’s success in rendering a timely permit decision is the applicant providing additional information to MDE when requested.

The application processing standards were presented to the regulated community at a Stakeholder’s meeting on March 22, 2011. The controversial component of the Program’s proposed procedures was that the Program would no longer provide for an indefinite period of time for applicants to respond to requests for additional information, but would deny an application when an applicant does not respond to a request for additional information or submits insufficient or nonresponsive information. While the Program was applauded for developing procedures to efficiently process applications and bring certainty to the review process, many participants expressed concern that they were going to be penalized for delays outside of their control. Based on comments received during the March 22 Stakeholder’s meeting, the Program made a number of adjustments to the application processing standards, while continuing to

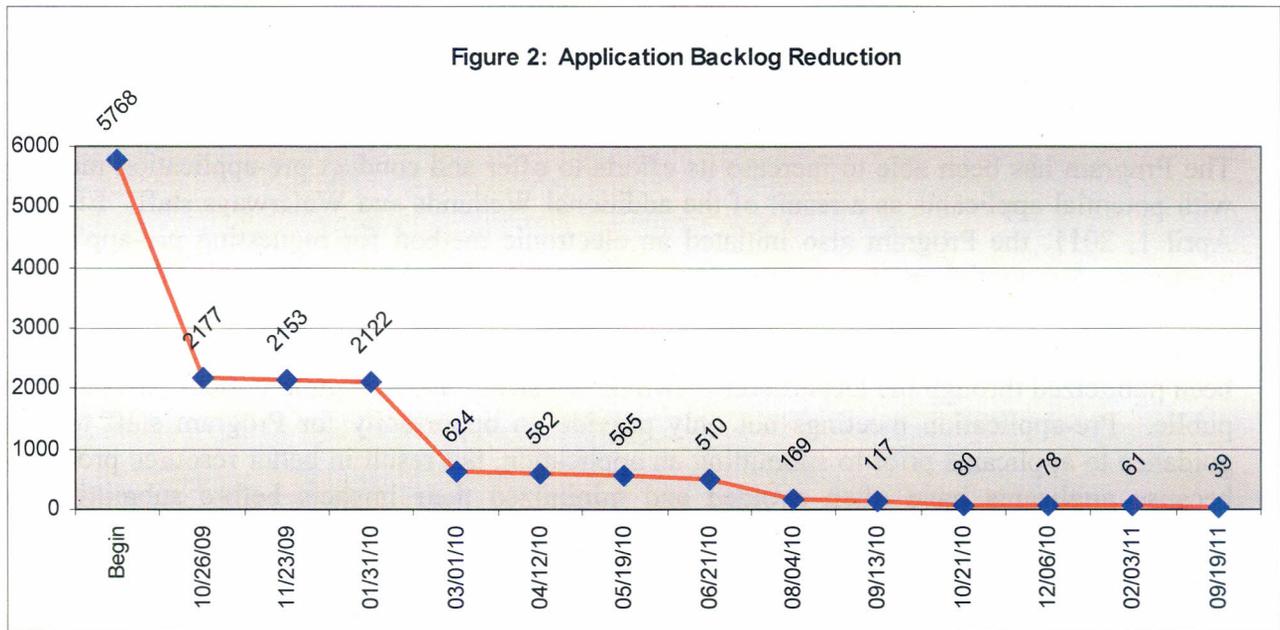
pursue its goal of improving the efficiency of the regulatory process and meeting its published turnaround times. The revised procedures, described below, were presented to the regulated community on June 29, 2011, prior to their implementation on August 1, 2011.

All applicants for a wetlands and waterways authorization currently receive a “45-day letter” notifying the applicant that the proposed activity is either authorized to proceed, or that the additional information described in the letter is needed to complete the application and enable MDE to render a decision. Before August 1, 2011, MDE’s practice was to allow the applicant an indefinite period of time to provide this additional information to MDE, resulting in thousands of pending applications upon which MDE could take no action because MDE was waiting for information from the applicant. The Department’s new application review process provides the applicant with one opportunity to supplement an application with additional information. This change in procedure, which is applicable to all applications received on or after August 1, 2011, places a deadline by which the applicant must provide the additional information requested in the “45-day letter” to MDE. Because each “45-day letter” will include a deadline for the submission of additional requested information, it is important for the applicant to maintain a dialogue with MDE’s project manager assigned to their proposed project.

If an applicant fails to provide the additional requested information or if the information provided within the requested time frame is insufficient, MDE will deny the permit application due to insufficient information upon which to make a favorable decision. The applicant may re-apply as allowed under State law. Resubmission of a permit application is considered a new application and fees will be due and payable upon resubmission of the application. As is currently done, if the Department fails to request additional information in the “45-day letter,” the application is considered complete and the review will continue. It is important to note that, if an application meets certain criteria for requiring additional time for review, such as a scientific study requested by MDE, resolution of legal or local governmental matters or other factors beyond the control of the applicant or the Department, this new application review procedure will not apply. The Department will notify the applicant if the application meets these criteria.

### **C. PROGRESS IN REDUCING THE APPLICATION BACKLOG**

For the purpose of documenting the Program’s backlog reduction effort facilitated by the enactment of HB 1056, the backlog was defined as any application received by the Program prior to March 1, 2008. Based on this definition, the Department’s backlog was calculated to be 5,768 applications. With the increase in staff discussed previously, the Program projected that it would achieve a 30 percent reduction in the application backlog by December 2009 and completely eliminate the backlog by October 2010. The Program achieved a 63 percent reduction by November 30, 2009 and the elimination of the backlog was virtually complete by October 1, 2010. The remaining permit applications were updated by the applicants, reviving the application review process. As of November 15, 2011, 39 applications remained and were in various stages of the review process. The graph below illustrates the success of the backlog reduction effort.



**D. PROGRESS IN PROVIDING ENHANCED SERVICES TO THE REGULATED AND ENVIRONMENTAL COMMUNITIES**

HB 1056 enabled MDE to restore the workforce available to serve the public. The restoration of the workforce not only enhanced the resource management and conservation capabilities of the Wetlands and Waterways Program, but also strengthened existing levels of constituent service, ensuring a more efficient and effective application review process for the regulated community. Since the enactment of HB 1056, the Program has pursued the following enhancements, focusing on both environmental protection and timely permit processing.

**1. Pre-Application Meetings**

The Wetlands and Waterways Program promotes pre-application meetings in order to provide the regulated community with early guidance on resource protection, including avoidance and minimization techniques, and the regulatory process for a particular proposed project. The meetings provide an excellent opportunity for the applicant to find out what information is necessary to submit a complete application. These meetings are particularly important where, under the new application processing standards that went into effect on August 1, 2011, applicants have only one opportunity to provide the Program with additional necessary information to complete an application. Experience shows that the submission of a complete application results in an expeditious review of a project, while an incomplete application often results in processing delays.

Meeting with a project manager, who is familiar with the project area and knowledgeable about the regulatory process, prior to submitting an application, helps potential applicants identify informational requirements and potential pitfalls in the application review process. A pre-application meeting highlights review procedures and provides guidance on the information necessary to advance the project, including the need for detailed engineering studies, natural

resource assessments, and mitigation requirements. In addition, a pre-application meeting helps determine if an activity is a major or minor project and provides an opportunity to estimate the application processing costs, including impact fees, if required.

The Program has been able to increase its efforts to offer and conduct pre-application meetings with potential applicants as a result of the additional Wetlands and Waterways staff. Effective April 1, 2011, the Program also initiated an electronic method for requesting pre-application meetings. A potential applicant may submit a Pre-Application Meeting Request Form, which is available on-line, to [WetlandsPreApplication@mde.state.md.us](mailto:WetlandsPreApplication@mde.state.md.us). The email box is monitored daily to ensure prompt customer service. This effort to conduct pre-application meetings has been publicized through the Department's eMDE newsletter and in regular notices sent out to the public. Pre-application meetings not only provide an opportunity for Program staff to offer guidance to applicants prior to submitting an application, but result in better resource protection because applicants have often avoided and minimized their impacts before submitting the application to the Program and improved turnaround times because applicants submit a substantially complete application to the Program.

## **2. Wetlands and Waterways Application Checklist**

The Wetlands and Waterways Program developed an application checklist of information necessary for a complete application. The checklist covers each of the regulatory programs administered by the Program, including tidal wetlands, nontidal wetlands, and waterway construction. The checklist has been incorporated into the Program's permit applications, is posted on the Program's homepage, and is provided to potential applicants at pre-application meetings. In those rare instances that the Program mails an application, the Program includes the checklist.

## **3. Revised Joint Permit Application**

Meetings between the Wetlands and Waterways Program and the USACE were conducted to develop a new Joint Permit Application (JPA), including improved instructions and sample plans. The final draft of the revised JPA is currently being reviewed by the USACE for consistency with the recently issued MDSPGP-4. The target implementation date for the revised JPA is February 2012. This revised JPA will help applicants by streamlining the application process and making it easier for applicants to provide the information required by the Program for the Program to make its decision.

## **4. Application Site Visits**

Due to the restoration of the Program's workforce, the Program is now able to visit nearly every site during the initial 45-day review period. These site visits allow Project Managers the opportunity to interact with the applicant or the applicant's consultant on site, and translate into better resource protection and a more efficient review process.

## 5. Additional Streamlining and Customer Service Opportunities

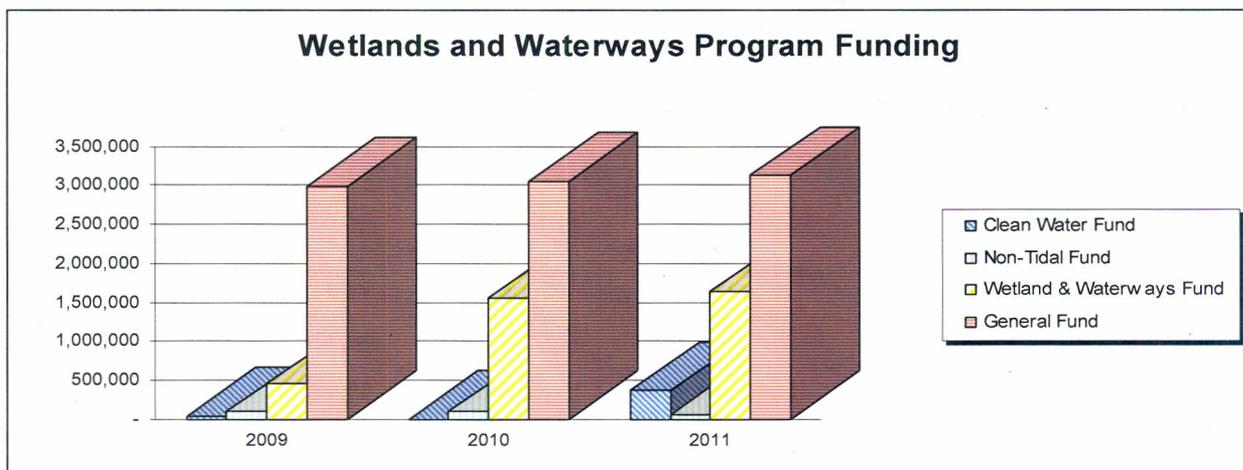
Additional performance improvement measures that may be implemented by the Wetlands and Waterways Program include:

- Creation of a Customer Service Ombudsman;
- Development of guidance papers on technical matters such as the development of an alternative analysis, and updated Wetland “Fact Sheets;” and
- Consideration of technology improvements available to streamline the permit application and tracking process, such as online application submission through the web.

### E. FUNDING NEEDS OF THE PROGRAM

The Preamble to HB 1056 states that “it is the intent of the General Assembly that the most equitable way to fund the full and effective administration of a statewide Wetlands and Waterways Program in the Department is through reasonable application fees and General Fund appropriations.” Consequently, HB 1056 established reasonable application fees that, together with a continuing general fund appropriation, were designed to support the Program administered by MDE. The fee schedule established by HB 1056 assumed that the generated revenues would be used to augment and not supplant the Program’s general fund appropriation in order to maintain the State’s commitment to the management and conservation of its wetland and waterway resources. Revenue generated by these fees is deposited into the Wetlands and Waterways Program Fund, a dedicated fund created by HB 1056 for the administration of the State’s Wetlands and Waterways Program. The following graph illustrates the current funding sources for the Program.

**Figure 2: Sources of Wetlands and Waterways Program Funding (FY09-FY11)**



## 1. Wetlands and Waterways Program Fund Revenues

Relying on the number of applications received during the 2006 calendar year in the fiscal note for HB 1056, MDE estimated that the revenue generated by the fee schedule established in HB 1056 would be approximately \$2,608,136. The graph above and the table below illustrate that the revenue generated by the fee schedule has never achieved that funding level and is, in fact, well below the Department's 2008 projections due to a dramatic drop in applications received by the Program as a result of the economic downturn. As a temporary measure, MDE has used an additional revenue source – the Clean Water Fund – to supplement the Program expenditures; the use of the Clean Water Fund, however, is not sustainable.

**Table 9: Wetlands and Waterways Program Fund Revenue Attainment (FY09-FY11)**

REVENUE SOURCE	FISCAL YEAR		
	2009	2010	2011
Application Fees	\$935,835	\$1,438,351	\$1,477,880
Tidal Wetlands License Compensation Fees	469,053	465,399	462,845
Earned Interest	15,795	0.00	0.00
<b>TOTAL</b>	<b>\$1,420,683</b>	<b>\$1,903,750</b>	<b>\$1,947,113</b>

## 2. Wetlands and Waterways Program Fund Expenditure Projections

In order to project the Program's expenditures for the next five years, the formula used by the Department of Legislative Services to estimate expenditures associated with HB 1056 was applied to the positions funded through the Wetlands and Waterways Program Fund. These expenditure projections, as shown in the table below, reflect the salary and fringe benefits associated with the 34 employees supported by the Program Fund, as well as ongoing operating expenses such as communications, travel, automobile operations, supplies and materials.

**Table 10: Wetlands and Waterways Program Fund Expenditure Projections (FY12-FY16)**

OPERATING EXPENSES	FISCAL YEAR				
	2012	2013	2014	2015	2016
Salaries, Wages, and Fringe Benefits	\$2,609,994	\$2,724,833	\$2,844,725	\$2,969,894	\$3,100,569
Communications	14,305	14,448	14,593	14,738	14,886
Travel	10,121	10,222	10,324	10,428	10,532
Automobile Operations	43,616	44,052	44,493	44,938	45,387
New/Replacement Vehicles	NA	20,275	20,477	20,682	20,889
Supplies and Materials	7,577	7,653	7,729	7,807	7,885
Replacement Computers/Equipment	NA	16,665	16,832	17,000	NA
Indirect Costs	330,868	349,660	364,570	380,132	394,258
<b>TOTAL</b>	<b>\$3,016,481</b>	<b>\$3,187,808</b>	<b>\$3,323,743</b>	<b>\$3,465,618</b>	<b>\$3,594,405</b>

Based on the revenue generated by the application fees in Fiscal Year 2011 and the projected expenditures for Fiscal Year 2012, the Wetlands and Waterways Program Fund will have a shortfall of \$1,069,368. This analysis reveals that the current fee schedule will not adequately support the funding needs of the Wetlands and Waterways Program.

#### **F. ADEQUACY OF APPLICATION FEES TO SUPPORT AN EFFECTIVE PROGRAM**

As part of its continuous improvement efforts, the Wetlands and Waterways Program worked closely with the regulated community to fine-tune the implementation of HB 1056 after its enactment. The adjustments to the application fees adopted as a result of these efforts were geared towards improving the Program's efficiency and Maryland's economy, while also aiding in MDE's mission to protect the environment and public health. These adjustments affected a number of activities including oyster aquaculture, the installation of boat lifts on existing pilings, routine maintenance, repair and in-kind replacement of structures, and maintenance dredging.

The Program identified several additional challenges regarding the implementation of HB 1056 and presented these to the Work Group for discussion. These challenges include:

- The prescriptive nature of the fee schedule, which makes it difficult to address special circumstances;
- The additional charge for major projects impacting rare, threatened or endangered species, historical and archeological resources, and natural and recreational trout waters after an applicant has submitted the initial application fee;
- The inability of the fee schedule to address the complexity of a project; and
- The loss of revenue from exemptions.

Two Work Group members also provided comments concerning challenges from the Program's implementation of HB 1056 and suggestions for improvements. The Maryland Marine Contractors Association submitted a letter to the Wetlands and Waterways Funding Work Group on September 20, 2011 listing the following ideas for consideration:

- Consider a percentage based fee on the estimated project total on a sliding scale;
- Institute a premium fee for expedited permit processing;
- Create a web based subscription tracking service for permits;
- Eliminate fee exemptions for living shorelines;
- Step up enforcement on unregistered / licensed contractors;
- Improve efficiencies in permit processing; and
- Improve return on permit applicant's investment.

On October 11, 2011, the Chesapeake Bay Foundation (CBF) submitted an email expressing concern that the focus of the Work Group was to identify ways to process permits faster, which could potentially increase impacts to natural resources. CBF advocated that MDE should use its restored workforce to improve its permit application review process, strengthen its mitigation program, and increase the number of compliance inspections. Because HB 1056 was strongly supported by both the environmental and the regulated communities and because resource protection and management is an important part of the Department's mission, guidance to and

training of all employees should emphasize that resource protection and timely permit review and issuance are of equal importance.

#### **IV. CONCLUSION AND RECOMMENDATIONS**

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. 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 consensus of the Work Group is 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 do 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 recommends that the Department pursue legislation amending the current fee schedule by adopting a strategy that: (1) reduces the financial burden on residential property owners; and (2) eliminates the additional charge for major projects impacting rare, threatened or endangered species, historical and archeological resources, and natural and recreational trout waters. The amendments must address the funding shortfalls identified by the Work Group, and may also include:

- 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.