



Maryland
Department of
the Environment

Maryland's Nontidal Wetland Regulatory Program

November 13, 2020

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Wetlands and Waterways Program



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- **First initiative in 1984 Bay Agreement Focused on Education, Mapping, Handbooks**
 - **Chesapeake Bay Agreement commitment 1987 to Protect Nontidal Wetlands**
 - **During this Time Nontidal Wetlands Regulated Only through WQC**
 - **Many Impacts under NW 26 - headwaters**



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- **Task Force to Develop Comprehensive Policy**
 - **Need identified to address continued wetland losses and inefficient regulatory program. Met for 6 months in 1988; led by Department**

Other State agencies

Mining

Local Governments

Forestry

Businesses

Environmental

Agriculture



Problems Identified

- Gap in protection: isolated wetlands unregulated by state or federal agencies; wetlands outside 100-year floodplain unregulated by State. Included estimated unregulated losses.**
- Inadequate attention given to habitat and other functions in comparison to water quality**
- No guidance on mitigation**
- Lengthy permit delays and lack of staff**



Resource Concerns

Losses from Agriculture, Forestry, Mining, Linear Projects, Stormwater Management

Administrative Concerns

Lack of Coordination Between Agencies; Conflicting Comments e.g. water quality vs. habitat

Delays in Permit Processing and Inconsistency

Lack of Mitigation Standards

Lack of Staff



Policy options considered:

- **Strengthen existing programs with improved State/federal coordination**
- **Create new State regulatory program**
 - **State defined standards with mandatory local implementation**
 - **State defined management program with optional local implementation**
 - **State defined management standards with State implementation**
 - **State assumption of 404 program**



Improvement of Existing Programs

Advantages:

- **Well established and familiar to potential applicants**
- **Less effort required to modify existing programs**
- **Programs included State waterways/floodplain permits, CZM, WQC**
- **Fewer additional staff needed than to implement new program**



Improvements to Existing Programs

Disadvantages

- **Limitations on State authority to certain size streams and drainage areas and floodplains-excluded isolated wetlands**
- **For WQC and CZM, limited to federal jurisdiction**



Create New State Regulatory Program

Advantages:

- **Can Be Designed to Address Unresolved Issues:**
 - **Isolated wetlands - Potentially Eliminate Additional Work for Determining “Jurisdictional Wetland”**
 - **Additional Consideration for Habitat**
 - **Specific Requirements for Mitigation**



State Law – Local Implementation

Advantages:

- **More thorough review early in process through local land use requirements**
- **Local review and potentially better enforcement**
- **State standards and oversight to reduce pressure on local decision making**
- **Fewer personnel to be hired by State**



State Law – Local Implementation

Disadvantages:

- **Lack of Local Interest and Expertise**
- **Additional Burden to Local Governments**
- **Challenges in State/County Coordination**
- **Decisions Susceptible to Local Pressure-Lack of Consistent Implementation Across Counties**
- **Costs of State Enforcement/Oversight May be Same in State-implemented Program**



State Law-State Implementation

Advantages

- **No Alteration of Existing Programs**
- **Wetland Jurisdiction and Activities Can Be Appropriately Design to Protect Resource**



State Law-State Implementation (Assumption)

Disadvantages:

- **Lengthy Process for Assumption**
- **Did Not Eliminate Federal Involvement and Elevation**
- **Funding Commitment**
- **Mirror of Federal Program Would Not Address Concerns**



State Law-State Implementation (Federal General Permit)

Advantages

- **Less Effort than Assumption**
- **Can Cover Majority of Small Permit Activities, Comparable to Nationwide Permits**
- **Fewer Applications For Corps to Review – More Efficient Processing**
- **May Allow for Reinstatement of Denied Nationwide Permits**



State Law-State Implementation (General Permit)

Disadvantages

- **Potential Major Effort to Convince Legislators and Public of Need**
- **Education and Outreach for New Program**
- **Substantial Staff Increase**



Policy Options Document Included:

Discussion of Various Wetland Functions

**Other State/Federal Programs and Examples of
Local Wetland Programs**



Recommendation Based on Comments:

New State Law with Optional Local Government Implementation under State Standards

Seek General Permit from Corps and Reduce Duplication

Regulate Additional Activities and Wetlands

Include Deadlines for Responding to Applicants

Match Federal Definition

Field-Based Wetland Identification Determination, but State Maintains Guidance Maps

Onsite Avoidance and Minimization and Protection of Endangered Species



Recommendation Based on Comments cont.

At Time of Report, No Consensus on Agricultural and Forestry

Addressed in Statute with Best Management Practices

**Change in Land Use from Agricultural or Forestry
Requires Permit**



New State Law Adopted in 1989

- **Statutory Goal for No Net loss of Acreage and Function through Regulatory Program; Net Resource Gain through Other Efforts**
- **Expanded range of regulated activities beyond placing fill: Excavation, Altering Water levels, Destruction of Removal of Vegetation;**
- **Also Regulated isolated Wetlands and 25- or 100-foot Buffer.**
- **Expedited Review for Minor Projects < 5000 square feet**



BMPs under Other Plans for Agricultural and Forestry

**Detailed Regulations Finalized for 1991
Implementation**

**Received Programmatic General Permit from Corps,
most NWP's Suspended**

**MD was under hiring freeze; filled vacancies with
other State personnel**



Established Program as Single Agency for Submitting Application - Program Screened application and Sent to Other Agencies

Detailed Mitigation Regulations. Separate Mitigation Section with Dedicated Staff

Eventually Incorporated with WQC and Coastal Zone Consistency

Expedited Review for Minor impacts

Monthly Interagency Review Meetings

Regular Meetings with Local Governments upon Request

Field Offices for Local Assistance

Originally Funded with General Funds, then Added Application/impact Fees



Questions?

Thank You for Your Interest!

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