

Nontidal Wetlands *Protection Programs*



Maryland Department of the Environment

The Nontidal Wetlands Protection Program is the culmination of efforts by representatives from state agencies, local governments, business associations, environmental groups and the general public. The support and interest of these groups and individuals has led to the development of an effective management tool for protecting our nontidal wetlands.



How did the Nontidal Wetlands Protection Program come about ?

The State of Maryland, along with the federal government, Pennsylvania, Virginia and the District of Columbia adopted the Chesapeake Bay Agreement in 1987. These area governments made a commitment to work with the federal government and each other to protect and preserve the area's nontidal wetlands.

As a result of the agreement, a subcommittee was formed that developed a comprehensive policy for the Chesapeake Bay basin. The workgroup, chaired by the Department of Natural Resources, Water Resources Administration, produced the Chesapeake Bay Wetlands Policy. It set a goal of a "net resource gain" in wetlands acreage and function over present conditions.

Also, as a result of Maryland's commitment to the bay agreement, a Nontidal Wetlands Task Force was assembled at Governor William Donald Schaefer's request to evaluate options to protect nontidal wetlands in Maryland. The Water Resources Administration provided the principal staff support to the task force.

After six months of concentrated effort, a report was developed and released for further review. The report contained a section entitled "Elements for Possible Inclusion In A Nontidal Wetlands Statute". This document became the basis for the Nontidal Wetlands Protection Act. In his sponsorship of the protection act, Gov. Schaefer provided his full support, characterizing it as the most important piece of environmental legislation for the session. It was passed by the Maryland Legislature in April 1989.

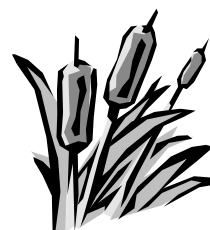
In 1995, the Department of Natural Resources, Water Resources Administration re-organized and has merged with the Maryland Department of the Environment (MDE), Water and Science Administration (WMA).

What is the Nontidal Wetlands Protection Program ?

MDE has been required by the protection act to establish a statewide program for the **conservation, enhancement, regulation, creation and monitoring** of nontidal wetlands in Maryland. The stated goal is no overall net loss of nontidal wetlands acreage and function. Since January 1, 1991, all activities in nontidal wetlands require a nontidal wetlands permit or a letter of exemption, unless exempted by regulation.

Which activities are exempt from permit requirements ?

If an activity is an expempted activity, a permit application need not be submitted. Agricultural and forestry activities will not require permits but need to incorporate best management practices into soil conservation and water quality plans and erosion and sediment control plans respectively. These plans will be reviewed and approved by local Soil Conservation Districts. Also, agricultural activities will be required to mitigate for n o n t i d a l w e t l a n d i m p a c t s .
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Other activities that are exempt from permit requirements:

- Mowing of existing rights-of-way
- Soil investigations
- Perc tests for sewage disposal fields
- Survey markers or survey monuments
- Maintenance of various serviceable structures or fill

Which activities are regulated and require letters of exemption ?

If an activity qualifies for a letter of exemption, it is exempt from permit and mitigation requirements, however, certain best management practices (bmp's) will need to be followed. These bmp's will be specified within the Letter of Exemption.

Upon receipt of an application for an activity in nontidal wetlands, the Nontidal Wetlands & Waterways Division will notify the applicant within 45 days as to whether the application is complete. Within the next 21 days, the applicant will be advised whether the activity qualifies for a Letter of Exemption. The following are examples of activities that may qualify for a Letter of Exemption:

- Activities in isolated nontidal wetlands of less than one acre and having no significant plant or wildlife value
- Activities that impact less than 5,000 square feet of nontidal wetlands and buffer with no significant plant or wildlife value
- Repair of various serviceable structures or fills
- Regulated activities impacting less than two acres of farmed nontidal wetlands with 15 or more days of inundation during the growing season except within nontidal wetlands of Special State Concern or their expanded buffer



Which activities are regulated and will require permits ?

If an activity requires a permit, an application will need to be submitted and mitigation is required. Activities that require permits include excavating, filling, changing drainage patterns, disturbing the water level or water table, grading and removing vegetation in a nontidal wetland or within a 25-foot buffer. The buffer has been expanded to 100 feet for nontidal wetlands of Special State Concern. All these areas have been designated by regulation and are mapped on the nontidal wetlands guidance maps.

The criteria used for evaluating permit applications and making final permit decisions includes:

- Is the activity water dependent and does it require access to a nontidal wetland as a central element of its basic function?
- Do practicable alternatives exist?
- Does the activity avoid and minimize impacts to nontidal wetlands ?

- Does the activity cause or contribute to degradation of groundwater or surface water ?
- Is the activity consistent with any applicable comprehensive watershed management plan that has been approved by MDE ?

Upon receipt of an application for a permit, the Nontidal Wetlands & Waterways Division will notify the applicant within 45 days as to whether the application is complete. After determining that an application is complete, the Nontidal Wetlands & Waterways Division will issue a public notice. A public hearing may be requested and, if so, it must be held within 45 days of the expiration date specified on the public notice. MDE must then make the decision to grant, deny, or condition the permit within 60 days of a determination that the application is complete, or within 45 days of a public hearing, if one is held. Once the decision has been made, an appeal may be made to the Wetlands & Waterways Program.