

**Routine Program Change  
To  
Commonwealth of Virginia Coastal Management Program**

**Request for Concurrence  
January 2010**

Wetlands  
Code of Virginia Title 28.2, Chapter 13

Submitted by: The Commonwealth of Virginia  
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## **Introduction**

The following constitutes a request by the Commonwealth of Virginia for the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to concur in a Routine Program Change to the Commonwealth of Virginia's Coastal Management Program (CMP).

The Commonwealth of Virginia has revised the Commonwealth's enforceable policies in Code of Virginia Title 28.2, Chapter 13 (§ 28.2-1300 et seq.) known as the Wetlands Program.

In accordance with the requirements for Routine Program Changes as set forth in Coastal Zone Management Act (CZMA) §306(e), 15 C.F.R. §923.84, and the guidelines contained in OCRM's 1996 Program Change Guidance, the Commonwealth of Virginia has prepared the following analysis. The analysis:(A) explains why the proffered changes to the CMP are Routine Program Changes and not Amendments as described in 15 C.F.R. §923.80(d); and (B) identifies the enforceable policies to be added to the management program, describes the nature of each program change, and examines the impact the changes have on the existing management program.

## **Analysis**

The Commonwealth submits the changes to Code of Virginia §28.2-1300 et seq. as a Routine Program Change. The statutory sections governing the Wetlands Program were originally approved as part of the CMP in 1986, and enforcement provisions were partially updated through a Routine Program Change (RPI 93-1) in 1993. This submission updates the program to reflect minor statutory changes to the program in and after 1992.

### *(A) Routine Program Change*

Pursuant to CZMA §306(e) and 15 C.F.R. §923.84, this analysis notifies OCRM of the Routine Program Change and explains why the program change will not result in an Amendment. Under 15 C.F.R. §923.80(d), amendments are defined as substantial changes in one or more of the five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries;
- (4) authorities and organization
- (5) coordination, public involvement and national interest.

OCRM's Program Change guidance states that a substantial change is a high threshold based on a case-by-case determination. Such determination is made by reviewing

indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or make major changes in the way a state CMP manages coastal uses or resources. OCRM's Program Change guidance also states that an explanation why a proposed change will not result in an Amendment should describe the elements of the State CMP that are affected.

The statutory provisions being submitted are primarily recodifications giving new section numbers to the statutory provisions already approved by NOAA as part of the original program in 1986. The statute was originally found at former Va. Code 62.1-13.1 *et seq.* In 1992, the Virginia General Assembly recodified the wetlands statute at Va. Code 28.2-1300 *et seq.*, reorganizing the prior sections for easier use, greater precision and clarity.

In addition to reorganization, there have been other minor updates to the program including authorizing representatives of the Commissioner of the Virginia Marine Resources Commission ("Commission") and local wetlands board chairman to sign documents, authorizing the Town of Dumfries in Prince William County to enact a wetlands zoning ordinance, authorizing wetlands boards to appoint alternate members, permitting board members to hold membership on a board established to hear cases involving ordinances adopted pursuant to the Chesapeake Bay Preservation Act, authorizing the Commission to develop administrative procedures to expedite permits, allowing permittees to satisfy compensatory mitigation requirements by the purchase and use of credits from wetlands mitigation banks, and requiring the Commission to notify parties of decisions within 48 hours of the hearing. Other changes reflect minor stylistic changes in language and the deletion of clauses in sections that pertain to administrative processes that are currently governed by other sections of the Code of Virginia.

The changes do not substantially affect the uses subject to management under the CMP, special management areas, boundaries of the coastal zone, authorities and organization, or coordination, public involvement and national interest. Hence Virginia requests concurrence in this routine Program Change.

*(B) Effect of Changes on Program*

1992 Changes: The Wetlands Program statutes were, at the time of approval of Virginia's CMP located in Va. Code § 62.1-13.1 *et seq.* In 1992, the legislature recodified these to Va. Code §28.2-1300 *et seq.* New cross-references were supplied, and minor changes were made to the description of administrative processes.

1994 Changes: The legislature allowed the Commissioner and the chairs of local wetlands boards to designate "authorized representatives" to sign documents on their behalf.

1996 Change: The legislature expressly provided in 28.2-1308 that permittees could use credits from wetland mitigation banks to satisfy all or part of any compensatory mitigation required by their permits under this section. This provision made explicit the practice that had already begun under the existing program.

1997 Change: The legislature provided that the Commission could, in conjunction with local wetlands boards, develop expedited procedures for issuing general wetlands permits for use in emergency situations where there is a threat to public or private property or to public health and safety. 28.2-1307. The Commission already had authority to prescribe its own processes for permit issuance.

1999 Change: The legislature further expanded provisions allowing the use of credits from wetland mitigation banks, so that such credits could be generated by the permittee rather than “purchased” and also recognized that state guidance, laws, and regulations now affect the banks that exist and so required that if banks are used they be in compliance with these requirements.

2004 Change: The legislature provided for the designation of “alternates” to sit on local wetland boards and for notification to the boards of foreseen absences by members.

2005 Change: The legislature provided that in addition to other boards that local wetlands board member may sit on, they may also sit on local boards charged with administering the Chesapeake Bay Preservation Act and regulations, a similar board to those already allowed.

Statutes affected by changes are identified in the attached table, which provides a description and analysis of each statutory change submitted. In each case the effect of these changes is not substantial.