

“GENERAL WETLANDS PERMIT FOR EMERGENCY SITUATIONS”

REGULATION 4 VAC 20-345-10 ET. SEQ.

PREAMBLE

This regulation describes the qualifications, procedures and manner of applying for a general wetlands permit to address catastrophic erosional situations which are attributable to a specific storm event or natural calamity.

This regulation is promulgated pursuant to the authority contained in §§28.2-103 and 28.2-1307 of the Code of Virginia. The effective date of this Regulation is March 1, 1998.

4 VAC 20-345-10. PURPOSE.

The purpose of this regulation is to provide an expedited process for the issuance of general wetlands permits to allow applicants to stabilize non-vegetated shorelines during emergency situations following a determination that there is a threat to public or private property or to the health and safety of the public.

4 VAC 20-345-20. DEFINITIONS.

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Chairman” means the Chairman of a local wetland board.

“GENERAL WETLANDS PERMIT FOR EMERGENCY SITUATIONS”

REGULATION 4 VAC 20-345-10 ET. SEQ.

“Commission” means the Marine Resources Commission.

“Commissioner” means the Commissioner of Marine Resources.

“Emergency” means that a significant man-made structure is in clear and imminent danger from continued erosion or storm damage due to severe wave action or storm surge and the existing condition is a direct result of catastrophic erosion or other rapid or unusual loss of land attributable to a specific storm event or natural calamity.

“Structure” means a man-made permanent construction installed in or on the property (e.g. dwellings, garages, commercial buildings or septic systems).

“Wetland Board” or “Board” means a local wetland board created pursuant to §28.2-1303 of the Code of Virginia.

4VAC 20-345-30. DISCUSSION.

A. At present, the only emergency authorization is that provided in §28.2-1302(3)(8) of the Code of Virginia. That section of the local zoning ordinance provides statutory

“GENERAL WETLANDS PERMIT FOR EMERGENCY SITUATIONS”REGULATION 4 VAC 20-345-10 ET. SEQ.

authorization for “emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health.” This authorization has rarely been invoked. Even if it were, it would not likely address the type of shoreline erosion situations that might arise as a result of a significant coastal storm event. This regulation is designed to establish the criteria and qualifications for an emergency wetlands general permit. It also sets forth the procedures and conditions for applying and the processing of an emergency wetlands permit.

- B. A principal objective of this general wetlands permit is a streamlined application and public interest review process whereby waterfront property owners can obtain authorization to install a shoreline protection structure or reinstall or repair previously authorized shoreline protection structures. If applying to replace a shoreline structure that was destroyed by a storm event (e.g. bulkhead or revetment), the previous structure must have been intact and serviceable prior to the storm event.
- C. Erosion must be ongoing and a determination made that failure to act in an expeditious manner will threaten either the applicant’s property or adjoining properties, or has the potential to adversely impact the public health, safety or welfare. In general, this will require that a dwelling or some other structure be located within 50 feet of the mean high water shoreline. The waterfront property owner must apply for the general wetland permit within thirty (30) days of the significant storm event or emergency cited.

“GENERAL WETLANDS PERMIT FOR EMERGENCY SITUATIONS”

REGULATION 4 VAC 20-345-10 ET. SEQ.

D. The general wetland permit is valid only in those localities which have elected to adopt and locally administer the tidal wetland zoning ordinance. In addition, the provisions of the State general wetland permit shall not conflict with any other Federal permits (nationwide or regional) or authorizations that govern emergency activities in tidal wetlands. The general wetland permit may not be used to authorize any new groin or jetty structure.

E. This general permit shall not apply in areas where a coastal primary sand dune or beach permit would also be required for a given project pursuant to Chapter 14 of Title 28.2 of the Code of Virginia.

4 VAC 20-345-40. PROCEDURES.

A. The Commissioner or his designee, Chief, Habitat Management Division, will oversee administration of the provisions of the general wetlands permit.

B. An approved Local-State-Federal Permit Application form, or the abbreviated General Permit #4 Application form, must be completed and filed in accordance with the instructions contained therein. This application may be submitted directly to the Chairman or Board in those localities that have adopted and are locally administering the local wetland zoning ordinance.

“GENERAL WETLANDS PERMIT FOR EMERGENCY SITUATIONS”

REGULATION 4 VAC 20-345-10 ET. SEQ.

C. The Board Chairman, or Vice-Chairman in his absence, is empowered to issue the general wetland permit upon a finding by the local wetland board that:

- (1) An emergency exists and vegetated wetlands are not involved. This shall be verified by a subsequent site inspection of the property.
- (2) The environmental impacts associated with issuance of the general wetland permit are minimal and fall below a pre-determined threshold or level of resource impacted. This level of impact will be an average of one square foot per running foot of shoreline.
- (3) The activities authorized under the general wetland permit will have minimal impact on any adjoining property owner. In the event potential impacts are deemed to exceed this minimum, written concurrence by the adjoining property owner will be required.
- (4) The proposed structure, and its placement, meet standard regulatory guidelines and would, in the opinion of the Chairman, likely be authorized or approved by the other State and Federal regulatory agencies.

“GENERAL WETLANDS PERMIT FOR EMERGENCY SITUATIONS”

REGULATION 4 VAC 20-345-10 ET. SEQ.

- (5) The proposed stabilization, materials and the encroachment sought, are the minimum necessary to address the situation.

- D. If the Chairman determines that issuance of the general wetland permit is in the public interest, the requirement for advertisement and public hearing will be satisfied.

- E. Within forty-eight hours of his determination, the Chairman shall notify the Commissioner of his finding and intent to issue the general wetland permit.

- F. The Commissioner shall review all decisions of the Chairman. If within five days of receiving the Chairman’s notification, the Commissioner believes that the decision does not conform with the standards prescribed in §28.2-1308 of the Code of Virginia, the guidelines promulgated pursuant to §28.2-1301, or the purpose and intent of this regulation, he may request that the decision be reviewed by the full board at one of their regularly scheduled public hearings.

- G. The general permit will be valid for a maximum period of 90 days from date of issuance. Failure to commence the project within that time will necessitate submittal of a new application and reevaluation.

“GENERAL WETLANDS PERMIT FOR EMERGENCY SITUATIONS”

REGULATION 4 VAC 20-345-10 ET. SEQ.

H. In the event the waterfront property owner fails to qualify for the general wetland permit, he/she may submit the standard joint Local-State-Federal Application form and proceed through the normal public interest review process.

I. A nonrefundable fee may be assessed for each general wetlands permit issued. The permit issuing fee shall be set by the applicable governing body with due regard for the services rendered.

J. The general wetland permit shall be in writing and must accurately describe the project, including appropriate drawings with sufficient tie-down reference points to enable follow-up compliance checks, and be signed by the Chairman.

K. The general wetland permit may not be used to authorize any new groin or jetty structures.

"GENERAL WETLANDS PERMIT FOR EMERGENCY SITUATIONS"

REGULATION VAC 20-345-10 ET. SEQ.

This is to certify that this general permit was approved by the Commission at its regularly scheduled meeting on February 24, 1998 and is recorded in the official minutes of that meeting.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

By: William A. Pruitt

Commissioner

William A. Pruitt

Subscribed and sworn before me on this 26th day of February, 1998

My Commission expires: June 30, 2001

Dignia S. Chappell

Notary Public