Editor's note: The following questions were submitted by the Middlesex Wetlands Board. The answers were supplied by Mr. Robert W. Grabb, Deputy Chief, VRHC Habitat Management Division after consultation with the VRHC staff of Environmental Engineers.

**QUESTION:**
Do any of the other counties use a "Posted" Wetlands Permit on the project site? How effective are they?

**ANSWER:**
Northumberland County issues an orange placard similar to a building permit, and Virginia Beach issues a cardboard placard for posting.

**QUESTION:**
Do any of the other counties charge additional fees for revised drawings, extension of permits, second site inspection, etc.?

**ANSWER:**
If the Boards have to take a project back to public hearing because of the nature of the modification or request, believe some pass on cost of reapplying. To our knowledge, none assess an additional "processing" fee as is contemplated by section 62.1-13.5 (4) (c).

**QUESTION:**
When do you determine that a modification has become too great and a new permit should be required?

**ANSWER:**
Modifications to existing permits connote minor changes or alterations. Believe that "significant" or "substantial" changes necessitate full public interest review, but these are judgement calls.

**QUESTION:**
When are contractors held responsible for after-the-fact violations. Are fees applicable to them as well?

**ANSWER:**
Believe violations, issues of non-compliance, or restoration costs are the sole responsibility of the property owner. Certainly he/she has adequate legal recourse to seek compensation or restitution from a third party (i.e. agent or contractor) if he deems that necessary. Cannot imagine Board pursuing contractors for their actions unless they occurred on State or Municipal property.
The Habitat Management Advisory Committee of the Marine Resources Commission posed some legal questions to Mr. Fred Fisher, Assistant Attorney General, concerning issues of importance to Wetlands Boards. The following are his responses.

Dr. Carvel Blair, Chairman
Habitat Management Advisory Committee

You posed three questions concerning the situation where a city or county attorney represents an individual at a wetlands board hearing concerning a violation of the Wetlands or Coastal Primary Sand Dune Protection Acts, or a request for a permit under either act. My answers would be the same in either case. This letter reflects my opinion only, and is not to be considered an opinion of the Attorney General.

1. Q. Is the attorney involved in a conflict of interest as defined in Virginia Law?

   A. There could be a problem under the State and Local Government Conflict of Interests Act, 2.1-639.1 et seq., depending on the specific fact situation. In the case of a local government officer, such as a Commonwealth's Attorney, or a local government employee, such as a city or county attorney, any overlap between such attorney's private representation of a client and his public duties could raise significant concerns under 639.4, subsections 1, 5 and 6. Furthermore, where a local government officer or employee represents a private client, any representation on behalf of the wetlands board would probably be restricted by 639.11(A)(1). Where the attorney representing the wetlands board is a private attorney, not a government official or employee, he would represent a private contractor, and as such would not be covered by the Conflict of Interests Act.

2. Q. Is there an issue of legal ethics?

   A. There could be a question of legal ethics if the county or city attorney, or the Commonwealth's Attorney, was directed by the board of supervisors or city council to provide the legal services needed by the wetlands board pursuant to 62.1-13.8. That section provides that "the governing body of the county, city or town creating a wetlands board shall supply ... such reasonable secretarial, clerical, legal and consulting services as may be needed by the board. The local governing body is authorized to expend the necessary public funds." In counties with a population of less than 15,000 the board of supervisors may arrange with the Commonwealth's Attorney to represent the wetlands board. In larger counties, and in smaller counties which have a county attorney, the county attorney may be directed to advise the wetlands board.

   If an attorney undertook to represent the wetlands board, and then appeared before the board representing a private client, that would be contrary to Disciplinary Rule DR 5-105 of the Virginia Code of Professional Responsibility. Legal Ethics Opinion #843 of the Virginia State Bar's Standing Committee on Legal Ethics addresses the question for a county attorney, but I think it would apply to any attorney in a similar situation. That opinion was issued October 9, 1986 and published in the Virginia Bar News of November 1987 as follows:

   **CONFLICT OF INTEREST-COUNTY ATTORNEY**
   
   It is improper for a county attorney charged with a duty to represent the interests of the county subdivision committee to represent the interests of a developer in a subdivision application before the county subdivision committee. If the county and the developer are agreeable, and if the county retains independent counsel for the subdivision committee, then after full disclosure and consent, the attorney may represent the developer. Absent retention of independent counsel by the county subdivision committee, the committee feels that representation of the developer by the attorney would be improper. [DR 5-105(C) and (D); LEO #394]

   Questions concerning legal ethics are resolved by the Virginia State Bar.

3. Q. To whom should a wetlands board turn for legal counsel if the city or county attorney has been retained by the person appearing before the board?

   A. The wetlands board should request its board of supervisors or city council to provide the necessary legal services pursuant to 62.1-13.8. It should also ask that the designated attorney agree up front not to take any cases involving the wetlands board as long as he was responsible for providing legal services to the board.

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LETTERS TO THE EDITOR

The following letter was submitted by Mr. Thomas V. Couch, Coastal Zone Administrator for the City of Virginia Beach.

This is written in response to the referenced publication Volume II, No. 3 dated December 1987. On page 5 of the publication is Norfolk's violation procedure outlined. Beginning with Steps II B, C and III, it is indicated that on-site investigation is conducted by staff. Chapter 62.1-13.16:1 (A) of the State Code related to reporting, site inspections and notice to comply appears to address on-site investigation as it reads in part: "Board Chairman may ... direct such on-site inspections". "Prior to conducting such inspection, notice shall be provided to the resident owner, occupier or operator. Such resident owner, occupier or operator shall be given an opportunity to accompany the site inspector." Norfolk's procedure appears to conflict with this section of the code. Section V (A.) states "staff issues a notice to cease work". One would assume this a form of a stop work order. Chapter 62.1-13.16:1 (B) reserves the authority to issue stop work orders for the Chairman of the board. Paragraph (C) of this chapter allows the chairman to delegate to a designee the authority to issue stop work orders; however, such designee shall not be those who are enforcement officers.

Rather than go over each item of Norfolk's violation procedure in this letter, I would suggest with all due respect, that Norfolk's procedure may not be compatible with the State Code or some of the critical requirement of the State Code are unclear in Norfolk's outline. It further seems that if this is correct, the readership should be advised clearly of the appropriate process.

Editor's note:
The editors discussed Mr. Couch's letter with Mr. Lee Rosenberg, Asst. manager of Norfolk's Environmental Services division. Mr. Rosenberg complimented Mr. Couch on his critical review of the Norfolk procedures and agreed that those procedures were out-of-date due to the recent changes in the law enacted by the General Assembly. Norfolk is presently adapting their procedures to conform with the new changes and the Wetlands Board Bulletin will publish the procedures when they become available. Any boards that have developed similar procedures can submit them to the Bulletin so that they can be shared with the other wetlands boards. The editors wish to remind readers that such procedures are guidelines only and should be reviewed by their own city or county attorney.

Special thanks to Mr. Couch for bringing this to our attention.

Additional notes from the Editor:
For those looking for some more values associated with wetlands vegetation, the following are some recipes from Eating from the Wild (Steward and Kronoff, Ballentine Books, 1975).

Common Reed Grass (Phragmites australis)
Phragmites Greens (a vegetable or potherb)
2 cups young, unfolded Phragmites leaves per person

Collect, wash, and add the greens to a small amount of boiling water. Cover and cook over low heat for 10 minutes. Serve plain or with butter and salt and pepper. These leaves can be also added to a fish or meat stew.

Phragmites Gruel (an autumn camp recipe) - The editor's favorite
1/2 cup seeds of Phragmites, 2 cups boiling water

Collect the heads of a dozen or so Phragmites plants. Remove the seeds by hand but do not bother to hull them, for they are tiny. Crush the seeds between stones and then add to the boiling water. Cover and cook slowly until a thin, red-colored gruel is formed. Cool a bit and eat this nutritious, whole grain cereal. Maple syrup and milk go well with this.
THIS ISSUE'S QUOTE

By and large, our present problem is one of attitudes and implements. We are remodeling the Alhambra with a steamshovel, and we are proud of our yardage. We shall hardly relinquish the shovel, which after all has many good points, but we are in need of gentler and more objective criteria for its successful use. (Aldo Leopold, 1949, A Sand County Almanac, Oxford University Press).

Readers are asked to submit responsible questions concerning wetland ecology to Editor, Wetlands Board Bulletin, Virginia Institute of Marine Science, Wetlands Program, Gloucester Point, VA 23062.

The editors reserve the right to edit letters for clarity and space.