

Maryland Department of the Environment

Fiscal Year 2016 Operating Budget Presentation Response to the Department of Legislative Services

This response addresses the Legislative Analyst's issues noted for discussion and the recommended actions. The department does not agree with the recommended actions and is prepared to discuss the issues as requested.

Performance Analysis: Managing for Results

1. The Department of Legislative Services (DLS) recommends that MDE comment on a reasonable inspection rate against which its activities may be compared.

Department Response: There is not a direct correlation between the inspection coverage rate metric and inspection staffing levels, as MDE inspectors conduct many types of inspections of varying duration and complexity. Due to the frequent variations in staffing levels, site numbers, and priorities, MDE does not establish future coverage rate targets.

This performance measure by itself does not provide a full picture of how construction sites are regulated by the Department, and ways by which the compliance rates at construction sites are reinforced. For example, State Highway Administration (SHA) projects are closely inspected by SHA staff and/or third-party inspectors hired by construction contractors. The General Permit for Stormwater Associated with Construction Activity requires those disturbing an acre or more to perform frequent inspections, keep logs of these inspections, and present the log books of these inspections to inspectors when they arrive at these sites. Thus, while the MDE inspector may visit the site less often than every two weeks, there are records of the self-inspections conducted that the inspector reviews upon his/her site visit.

2. DLS recommends that MDE comment on how extending the turnaround time for permits improves customer service.

Department Response: The purpose of having standard turnaround times is to provide predictability to applicants seeking MDE permit approvals. Revising the timeframes on an annual basis, based on current staffing levels, helps MDE communicate accurate timeframes to the applicants.

"Standard Turnaround Time" refers to the time between MDE's receipt of a complete permit application and MDE's issuance or denial of the permit, excluding delays caused by factors beyond MDE's control. In most permitting programs, each application has unique characteristics that influence its processing time. The standard time represents the time in which 90 percent of applications can be processed. Many applications will require less time; a few will require more time due to unusual circumstances.

3. DLS recommends that MDE comment on where there is the greatest exposure of groundwater to municipal landfill contamination.

Department Response: Most landfills with groundwater contamination were built prior to the establishment of technical requirements, such as liners, leachate collection systems, and landfill caps, which came into effect in the late 1980's. As a precautionary measure, all landfills are required to have groundwater monitoring wells in place, and the landfill owners/operators must report the results

of the monitoring to MDE for review. The monitoring program has been in place for many years and is very effective. Since groundwater moves slowly, MDE, through its review of these monitoring reports, will notice contamination before it moves to any surface water, groundwater, or drinking water that could pose a risk to public health or the environment.

Issues

1. Clean Power Rule Costs Mitigated By Regional Greenhouse Gas Initiative Involvement DLS recommends that MDE comment on the economic benefits of RGGI as they relate to the potential for compliance with the Clean Power Proposed Rule.

Department Response: Analysis of the economic benefits of RGGI as they relate to the Clean Power Plan Rule is premature. EPA has received more than 1.6 million comments on its proposed Clean Power Plan rule. Many states and other stakeholders have requested revisions to the methodologies and inputs used by EPA to calculate the individual 2030 state emission rate targets. The final rule, which will not be adopted before mid-summer, is likely to reflect significant revisions to state emission rate targets and other important components of the proposed rule. Changes to state emission rate targets will, in turn, impact economic analyses and inform the state decision-making processes on selection of compliance pathways.

2. Marcellus Shale Fracking Status

DLS recommends that MDE comment on the types of comments it has received for the Marcellus Shale hydraulic fracturing regulations.

Department Response: The public comment period closed on February 9, 2015 and MDE is in the process of reviewing comments from more than 150 respondents. The comments reviewed to date are falling into the following categories: Opposed to Hydraulic Fracturing Due to Public Health Issues; Opposed to Hydraulic Fracturing Due to Environmental Issues; Local Economic and Land Use Concerns; and Support Hydraulic Fracturing and Believe the Proposal is Too Stringent. Some of the specific comments follow:

- Hydraulic fracturing should be prohibited because of the risks to public health.
- The proposed setbacks would be inadequate to protect the environment and surrounding land uses.
- New York has prohibited hydraulic fracturing because of its evaluation of the environmental risks and Maryland should follow suit.
- Hydraulic fracturing would adversely impact tourism and recreational activities, leading to negative economic impacts on Western Maryland.
- The proposed setbacks are excessive and would prevent gas development in much of Western Maryland. Hydraulic fracturing would not be economically feasible under the proposed requirements.

3. Required Construction Site Inspections Not Occurring

DLS recommends that \$3,179,957 in general fund appropriation be reduced and authorization be provided in the Budget Reconciliation and Financing Act of 2015 to allow MDE to use Chesapeake and Atlantic Coastal Bays 2010 Trust Fund money for sediment and erosion control inspections and associated activities.

Department Response: MDE does not agree with the proposed general fund reduction for sediment and erosion control inspections and activities. MDE prioritizes inspections based on citizen complaints and the size of the construction site, and inspects as many sites as resources allow. Requiring MDE to receive an allocation from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund would not necessarily provide a stable funding source for these activities, and could jeopardize

the Compliance Program if there is insufficient revenue in the Fund. MDE will defer to DBM on this item as part of HB 72 or SB 57 negotiations, as the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund is a multi-agency fund that is not managed by MDE.

Recommended Actions

1. Add the following language:

Provided that 6 regular positions shall be abolished by July 1, 2015.

Explanation: The Maryland Department of the Environment's share of the fiscal 2016 2% across-the-board reduction is \$698,000 in general funds. This action abolishes 6 general fund positions in order to create \$660,048 in ongoing general fund savings, which is roughly commensurate with the 2% across-the-board reduction. The estimated savings are based on an average general fund position salary and fringe benefit cost of \$110,008 and 220 funded positions in the fiscal 2016 allowance.

Department Response: MDE does not agree with this recommended action. Abolishing positions is one of several approaches that can be used to meet the 2% general fund reduction, but it is not the approach MDE plans to take, especially with the pending loss of PINs through the Voluntary Separation Program. This recommendation circumvents MDE's ability to develop a workable reduction proposal.

As noted in the DLS analysis, MDE is understaffed in many programs; abolishing positions will only exacerbate the staffing issue. MDE is in the process of identifying reductions to meet our targets in both FY 15 and 16 and will be working with DBM and the Governor's Office on their review of our proposals.

2. Add the following language to the general fund appropriation:

, provided that this appropriation shall be reduced by \$3,179,957 contingent upon the enactment of HB 72 or SB 57 containing a provision authorizing the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund to be used for salaries associated with the statewide inspection, enforcement, compliance assistance, and permit issuance in the Water Management Administration – Compliance subprogram, including, but not limited, to the following regulatory areas: industrial and municipal wastewater discharges, construction activities involving sediment control, stormwater management, wetlands, and waterways.

Explanation: The Maryland Department of the Environment has been unable to muster sufficient resources to inspect every active construction site for compliance with erosion and sediment control plans an average of once every two weeks in accordance with State regulations. This is reflected in the department's November 2011 audit and again in its January 2015 audit. This action reduces general funds contingent on authorization of Chesapeake and Atlantic Coastal Bays 2010 Trust Fund special funds for this purpose and related activities. There are fewer claims on the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund than there are on the State's general fund and thus, there is a higher likelihood that the Maryland Department of the Environment will receive sufficient resources to meet its duty under State regulations.

Department Response: MDE does not agree with this recommended action and will defer to DBM on this item as part of HB 72 or SB 57 negotiations. The Chesapeake and Atlantic Coastal Bays 2010 Trust Fund is a multi-agency fund that is not managed by MDE.