

Maryland Department of the Environment
Fiscal Year 2017 Operating Budget Presentation
Response to the Department of Legislative Services

This response addresses the Legislative Analyst's issues noted for discussion and the recommended action. The department accepts the recommended action 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 how agencies will meet the calendar 2015 40.0% recycling goal and what the preliminary data says about this goal.

Department Response: MDE receives State agency recycling data on a calendar year basis. Reports from the State agencies are not due to MDE for calendar year 2015 until March 30, 2016. It is not practical for MDE to estimate the 2015 recycling rate at this time, given the wide-range of the reported recycling rates achieved during 2014. The mandated recycling requirement for state agencies is 30% as an overall average by 2015.

2. DLS recommends that MDE comment on what dictates the operating times of plants and how this correlates with GHG and criteria pollutant emissions reductions.

Department Response: Electrical demand is a function of weather, cost, unexpected plant outages and other factors. Overall, the amount of time any individual plant runs is a function of its participation in the regional electric grid manager's long-term capacity market or the daily spot market. Greenhouse gases and criteria pollutant emissions occur when a plant operates. For greenhouse gases (CO₂), these emissions will rise and fall with the plant's operating times and the type and amount of fuel used.

For criteria pollutants, emissions can change between two or more years due to improved pollution controls being installed or operated, as well as a reduction in operating times. For 2011 and 2012, there was an overall 13% reduction in the amount of electricity generated by coal-fired power plants, and an almost identical reduction (14%) in overall NO_x emissions, which suggests that the emission reductions were primarily the result of reduced generation levels. This conclusion is reasonable, since there were no significant pollution controls added in 2011 or any significant operational changes to bring about an improvement in NO_x reductions.

In 2015, coal-fired power plants were required to run NO_x controls during the ozone season at optimal levels, which was a regulatory change from 2014 requirements. For those two years, there was both a change in generation levels (a 16% reduction from 2014 to 2015) and a change in pollution control operations, leading to the determination that there was an overall 3,300 ton decrease in NO_x emissions for 2014 and 2015. Of this reduction, 55% was due to the decrease in generation and 45% was due to plants running their NO_x controls optimally during the 2015 ozone season.

3. DLS recommends that MDE comment on the status of the discussion concerning universal testing and the impact on the prevalence of childhood blood lead levels, both between 5 and 9 micrograms per deciliter and greater than 10 micrograms per deciliter.

Department Response: In January 2016, DHMH proposed regulations to require universal testing of all Maryland children at ages 1 and 2 years of age. It is not known how much this testing will influence the prevalence of childhood blood lead levels between 5 and 9 micrograms per deciliter and greater than 10 micrograms per deciliter. According to revised projections from DHMH, the number of children testing positive for lead is estimated to double. Once the regulations are adopted, children born in 2015 will begin being tested in 2016; the first full year of testing will be 2017. MDE will prioritize investigations utilizing existing staff for any new cases discovered in 2016 and 2017.

Issues

1. More Fee Reductions on the Way

DLS recommends that MDE comment on the impact on revenues and agency operations of the proposed reduction in the fee for minor projects or general permits from, \$750 to \$500, and whether MDE has any plans to convene a work group to review and assess the performance of the Wetlands and Waterways Program and the adequacy of any amended application fees to support an effective program.

Department Response: MDE is in the process of convening a workgroup to review and assess the performance and efficiencies of the Wetlands and Waterways Program and the current and proposed fee structure. MDE will continue to adjust expenditures as necessary to operate within available revenue.

2. Sediment and Erosion Control Inspection Positions Reclassified

DLS recommends that MDE comment on the timeframe for updating its database to capture reissuance/expiration dates, the response to and current status of expanded delegation to counties, and the status of the meeting to amend the regulatory language mandating that all sites be inspected on average once every two weeks.

Department Response: In FY15, MDE initiated a temporary database, which includes plan approval expiration dates, to track new erosion and sediment control approvals. MDE has data for newer approvals, and can screen out expired plans from the list of those that may require inspections. MDE has also been working on a permanent data solution for approval file tracking, using TEMPO, which includes "approval expiration date" tracking, and also tracks the acquisition and eventual disposal of the files in accordance with the records retention policy. Additionally, field staff is manually reviewing existing files and removing those that are expired or complete.

Regarding the status of expanded delegation to counties, MDE will send letters shortly to the non-delegated local jurisdictions to solicit interest in delegation. The Environment Article (Section 4-103) requires that applications for delegation be received by MDE on or before October 1 immediately preceding the fiscal year in which delegation is sought. The majority of the delegated local jurisdictions are in the metropolitan areas of the State.

In response to the audit finding and to improve government efficiencies, MDE began the process of convening a workgroup to discuss the frequency rate of inspecting active construction sites for compliance with erosion and sediment control plans. Additionally, issues related to erosion and sediment control were brought before the Governor's Commission on Regulatory Reform. MDE made the decision not to convene the workgroup until the Governor's Commission had concluded their work. The report of the Commission was issued in December 2015. Utilizing information from the Commission Report, MDE will convene a workgroup in the spring of 2016.

3. Maryland Energy Administration Co-locating with MDE

DLS recommends that MDE comment on (1) the justification for the move; (2) the type of costs incurred in the move, the reconfiguration of MDE space, and when the costs were or will be incurred and by whom; (3) the amount and fund source associated with each cost; and (4) the expected long-term cost savings associated with the move and explanations for how these cost savings will be achieved.

Department Response: As part of Governor Hogan's promise to reform and increase efficiency in state government and to reduce spending, the Maryland Energy Administration (MEA) relocated from its Annapolis office into vacant, leased space at Montgomery Park, a move that will ultimately allow MDE and MEA to better perform their complementary missions. MEA's mission is to promote affordable, reliable, clean energy; their programs and policies help lower energy bills, fuel the creation of green collar jobs, address environmental and climate impacts, and promote energy independence. That mission ties intimately into MDE's mission of protecting and restoring the environment for the health and well-being of all Marylanders.

It is anticipated that the majority of the costs to be incurred will be one-time build-out costs to transform the vacant space, which is currently sections of non-contiguous cubicles, into office space for MEA. Cost estimates for this build-out are not yet available. It is anticipated that the move-related costs will be paid from within existing appropriation. Long-term savings, outside of MEA's rent, have not been determined.

4. Lead Paint Issues Linger

DLS recommends that MDE comment on the status of resolving the January 2015 lead paint audit findings and of working with DoIT on the upgrade of the lead rental property registration and certification databases; the costs associated with the universal lead testing program for children ages one to two years old; and whether a State contract for inspections, audits and spots checks of lead rental properties is necessary given the fraud reported on January 28, 2016.

Department Response: MDE is continuing to resolve the January 2015 lead paint audit findings regarding procedures to identify and pursue property owners who fail to register affected rental properties and pay the annual fee, and to establish procedures to ensure that property owners with affected properties have the required inspection certificates.

MDE is also implementing enhancements to the Online Lead Registration database and is in early discussions with DoIT on moving forward with Lead Registration Certification and Accreditation database. This database will allow accredited lead abatement contractors, lead inspectors, risk

assessors, training providers, and individuals to apply online for accreditation and for lead risk reduction, lead-free and limited lead-free inspection certificates.

The costs of universal testing are not clear at this time, and would initially be incurred by DHMH. If universal testing leads to an increase in the number of lead-poisoned children, MDE would initially utilize existing staff to conduct the child-poisoned investigations.

MDE is early in the investigation of the lead free certificates referenced in the January 28, 2016 press release. At this time, MDE is coordinating with the US Environmental Protection Agency and the US Department of Housing and Urban Development to conduct the investigation. It is too early in the investigation to determine if there is enough evidence to consider all the certificates issued by the inspector to be fraudulent. It is also too early to determine if there is a larger problem within the lead accredited inspectors and contractors universe which may warrant the State seeking a private contractor to conduct additional audits and spot checks.

Recommended Actions

1. Concur with Governor's allowance.

Department Response: The department accepts this recommended action.