

Maryland Department of the Environment
Fiscal Year 2018 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 two of the four 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 the status of implementing Maryland's Zero Waste Strategy and the potential for increasing the recycling rate as a result of doing so.

Department Response: The Zero Waste Strategy is being evaluated to determine the feasibility and priority for each of the goals. MDE is implementing activities such as conducting a waste audit statewide to determine priority materials to target for additional initiatives and holding a Food Summit to encourage stakeholder communication regarding reducing food waste, which is a priority material to remove from the waste stream. The waste audit will assist in determining if there are initiatives that could contribute to an increased recycling rate goal.

2. DLS recommends that MDE comment on the role of cooperative federalism in reducing Maryland's air quality concerns, the likelihood that cooperative federalism will be promoted in the current EPA Administration, and whether Maryland will pursue lawsuits to seek the redress that has not been provided by filing petitions with EPA.

Department Response: The future of EPA is being shaped by the new administration in terms of both structure and policy; predicting how EPA will work with states is not possible at this point. Maryland has a history of working through environmental issues in partnership with EPA and other states in the region, and takes legal action to protect Maryland's interests only after careful consideration of a variety of factors.

Fiscal 2017 Targeted Reversion

1. DLS recommends that MDE explain what funds will be reverted as well as the impact of the reversion on its operations.

Department Response: MDE will fund adjust general fund salaries to non-general fund savings related to the Section 20 position abolitions. This action is a one-time adjustment.

Issues

1. Requested Reports Not Submitted

DLS recommends that MDE comment on why neither the compliance and enforcement inspections and positions report nor the wetland restoration funding report were submitted as

requested. DLS also recommends adding budget bill language to restrict funds pending the receipt of the reports.

Department Response: The reports have been submitted.

2. MDE and the Judiciary Coordinate on Rental Property Data

DLS recommends that MDE comment on whether the Administration will propose the recommended legislation.

Department Response: The Administration has not submitted legislation on this topic. MDE will continue to work with the Judiciary to implement the recommendations included in the report.

3. Volkswagen Emissions Settlement Approved

DLS recommends that MDE comment on the full extent of Maryland's exposure to nitrogen oxides and smog as a result of the defeat devices, the ongoing and concluded lawsuits from which Maryland stands to benefit, and the planned use of any funding to be received from settlements.

Department Response: The EPA lawsuit against VW resulted in two settlements - one for the 2.0 liter engine models and a second for the 3.0 liter models. Maryland is a third-party beneficiary to the settlements and is eligible to receive \$75.7 million in settlement funds to support NOx reduction projects that are deemed eligible under the terms of the settlement agreements. A final decision on the specific use of those funds consistent with the terms of the settlement agreements has not been made.

Regarding NOx emissions, the purpose of the Mitigation Trust Fund set up under the settlement agreements, in addition to the buyback/repair actions taking place under consumer protection actions, was to offset the excess emissions that noncompliant VW vehicles emit. As projects funded under the Fund materialize and buyback/repairs occur, excess NOx emissions will gradually lessen. MDE has no plans to adopt new NOx reduction programs in response to the VW matter. This approach parallels how other instances of excess and noncompliant emissions from other operations, such as excess short-term emissions from smokestack sources, are handled.

4. Staffing Shortage Status Uncertain Due to Lack of Information and Proposed Regulation Change

DLS recommends that MDE comment on its current understaffing status.

Department Response: As stated in the analysis, the Administration proposed regulations to remove the requirement that active construction sites be inspected every two weeks; however, the requirement to inspect remains. MDE believes the current staffing levels are adequate to provide inspection coverage provided that positions are not held vacant for extended periods of time. MDE has cross-trained inspectors so that one inspector can perform inspections across programmatic areas. Where possible, MDE has added inspector positions through federal grant programs to meet short-term or specific programmatic needs.

Since its inception in the early 1970s, the State's sediment and erosion control program has matured significantly. Construction companies hire on the job State-certified sediment and erosion control

inspectors, which is essentially third party inspection; the requirement for coverage under the federal NPDES General Permit for Stormwater Associated with Construction Activity requires extensive inspection and record-keeping by construction companies. MDE has delegated sediment and erosion control plan review and inspection to the State Highway Administration thereby addressing work load issues related to State highway projects. In addition, local governments have become much more sophisticated since the inception of the sediment control laws, and medium and large municipalities are themselves subject to federal regulation under the NPDES program, and must demonstrate the ability to implement adequate sediment control and stormwater management programs.

5. Lead Poisoning Prevention Issues Continue

DLS recommends that MDE comment on why it has been unable to make further progress on the online lead rental registry enhancements project and lead rental certification and accreditation information databases.

Department Response: The lead registry enhancement project has been submitted to DBM and DoIT for funding consideration in fy18. MDE has requested that the fy18 MITDP funding currently identified for the permit modernization project be redirected to the lead registry enhancement project. This project 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.

Recommended Actions

1. Delete funding for double-budgeted Maryland Energy Administration (MEA) rent. MEA includes the same amount of special fund appropriation in its budget. The Maryland Department of the Environment is authorized to process a reimbursable fund budget amendment in order to process the MEA rent payment. (\$170,000 SF)

Department Response: The department accepts this recommended action and will work with DBM and MEA to process a reimbursable fund amendment.

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

Provided that \$200,000 of this appropriation made for the purpose of administering the Water Management Administration shall be restricted pending receipt of a report on compliance and enforcement inspections and positions. The report shall be written by the Maryland Department of the Environment (MDE) and the Maryland Department of Agriculture (MDA) and shall include information on the necessary inspectors per inspection activity associated with Chesapeake Bay restoration, the actual inspectors per inspection activity, and both the funding and programmatic changes necessary to reach the necessary inspectors per inspection activity. The report should also include a list of all inspection activities conducted by MDE's Water Management Administration, Land Management Administration, Air and Radiation Management Administration, and MDA's Office of Resource Conservation; and the number of regular positions and contractual full-time equivalents associated with the inspections including the number of vacancies for fiscal 2011 through 2019 estimated. In addition, MDE and MDA should comment on potential innovative funding options available for meeting inspection goals and the experience of nearby states. The report shall be

submitted by November 15, 2017. The budget committees shall have 45 days to review and comment. Funds restricted pending the receipt of the report may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund if the report is not submitted to the budget committees.

Department Response: The department respectfully disagrees with this recommended action. The report has been submitted. MDE tracks enforcement data by broad inspection category as listed in the report, not by specific watershed, and does not have IT systems in place or other data management tools to capture data at the level of detail requested in the analysis, specifically the request to include 'information on the necessary inspectors per inspection activity associated with Chesapeake Bay restoration, the actual inspectors per inspection activity, and both the funding and programmatic changes necessary to reach the necessary inspectors per inspection activity.'

Inspectors are cross-trained and often perform more than one type of media inspection. MDE performed more than 148,000 inspections, audits and spot checks across 32 major programmatic areas during fiscal 2016, and almost 820,000 inspections, audits and spot checks from fy 2011 through fy 2016.

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

Further provided that \$200,000 of this appropriation made for the purpose of administering the Water Management Administration shall be restricted pending receipt of a report on wetland restoration funding. The report shall be written by the Maryland Department of the Environment (MDE) and shall reflect on how the Administration could use up to \$2,000,000 from the funds received under Public Service Commission Order 86372 to be used through the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund under Natural Resources Article Section 8-2A-02 for wetland restoration projects in fiscal 2019.

Department Response: The department respectfully disagrees with this recommended action. The report has been submitted.

Although funds from the Public Service Commission Order 86372 are not currently identified for wetlands restoration projects in fy18, if funds were made available, MDE would develop a Request for Proposal (RFP) to solicit proposals for coastal wetlands restoration projects at priority sites. Working with its partners, MDE would use various mapping and evaluation tools to identify priority sites based on adaptation benefits and cost-efficiency measures. MDE would then select for funding, projects which both contribute to carbon sequestration and provide climate change adaptation benefits, including flood storage, storm surge buffers, and erosion control. Project selection criteria would target greenhouse gas reduction, coastal resiliency, and climate habitat adaptation components.

4. Reduce funding for Bay Restoration Fund revenue bond debt service. The current revenue bond issuance schedule and prior issuance debt service schedule require only \$33,000,000 in the fiscal 2018 special fund appropriation. (\$5,000,000 SF)

Department Response: The department accepts this recommended action as there will be no impact on MDE's ability to fund critical infrastructure projects.