

Maryland Department of the Environment
Fiscal Year 2019 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 accepts the recommended actions and is prepared to discuss the issues as requested.

Issues

1. Volkswagen Emissions Settlements Progressing

The Department of Legislative Services (DLS) recommends that MDE comment on when the civil action settlement discussions are anticipated to be completed and on the plan for the \$75.7 million from the multi-state consumer protection settlement.

Department Response: As with all civil actions, Maryland Department of the Environment (MDE) is coordinating with the Office of the Attorney General regarding the settlement of our state lawsuit MDE v. VW; it is unknown at this time when the discussions will be complete.

Regarding the federal settlement, MDE is the designated lead agency for developing the plan to utilize the \$75.7 million settlement. This plan, which is currently under development in collaboration with the Department of Budget and Management (DBM), Maryland Department of Transportation (MDOT), Maryland Energy Administration (MEA) and others, will be released for public comment in the coming weeks. A public hearing will be held once the plan is ready, and notification of the hearing date will be posted on MDE's website.

Additional information regarding this settlement is included as Attachment A and is also available at <http://mde.maryland.gov/programs/Air/MobileSources/Pages/MarylandVolkswagenMitigationPlan.aspx>, which includes links to 'Eligible Mitigation Actions and Mitigation Action Expenditures', and to the U.S. Environmental Protection Agency website.

2. Hurricane Environmental Lessons Sought

DLS recommends that MDE comment on the State's preparedness as it relates to large storms that may pose challenges related to dam safety, hazardous waste site toxins, floodplain concerns, and drinking water vulnerability.

Department Response: MDE works collaboratively with the Maryland Emergency Management Agency (MEMA) and other State, federal and local government agencies to prepare for and respond to storm events. MDE participates in the tabletop exercise conducted by MEMA for various disasters, including winter-storm exercises, hurricane exercises, and FEMA-graded Radiological Emergency Preparedness exercises. These exercises test the coordination and response capabilities across various state agencies, and also allow testing of internal plans in specific functional areas, such as dam or drinking water safety, to ensure operational readiness, should a real event occur.

MDE has developed protocols to prepare for emergencies. Prior to large predicted storm events, MDE notifies water systems to prepare for conditions that may affect the water quality of surface waters and require temporary closure of intakes. Owners of high and significant hazard dams are now required to have emergency action plans in place, update the plans annually, and conduct a functional exercise or test of the plans at least once every 5 years. Owners of these dams are notified by MDE in advance of storm events. MDE also posts advanced advisories for properties on wells in flood-prone areas to prevent waterborne diseases and works closely with local health departments on this aspect of storm preparedness and response.

MDE provides emergency permitting procedures for the restoration of critical infrastructure and replacement/repair of piers and bulkheads in storm-affected areas.

During extreme weather events and both natural and man-made disasters, MDE provides representation at the State Emergency Operations Center at MEMA to assist in the coordination of emergency preparedness and disaster management activities. The MDE representative serves as a conduit to the subject matter experts within MDE to ensure communication of critical information with regards to specific situations, such as authorization to dispose of snow properly in Baltimore Harbor rather than streams or other waterways, extended hours of operations for refuse disposal facilities, or the issuance of advisories to boil water. MDE also participates in MEMA organized desk top exercises for the Governor's Cabinet to rehearse protocols and responses to emergencies. This helps to ensure the State's ability to support and/or respond to specific needs.

MDE, as chair of the State Climate Change Commission, is committed to continual improvement in adapting to climate change and extreme weather. We are adopting various strategies and actions to increase water and hazard related preparedness and resilience.

3. Executive Branch Staffing Shortfall

DLS recommends that MDE comment on whether its current position complement is aligned with its needs and whether reclassification of existing filled or vacant positions would allow it to achieve its mission.

Department Response: MDE continues to work internally and with the DBM on its staffing requirements. MDE employs several strategies to utilize existing positions most efficiently. MDE reviews vacant positions on a monthly basis to determine which positions to fill; hires contractual employees to meet new requirements; reclassifies vacant PINs for contractual conversions where appropriate; and where possible, reassigns and reclassifies filled and vacant positions to meet changing workload requirements.

Recommended Actions

1. Adopt the following narrative:

Clean Water Commerce Act Spending Plan: The committees are concerned that there is \$6.0 million in MDE's fiscal 2019 allowance for the Clean Water Commerce Act without a detailed spending plan being available. Therefore, the committees request that MDE provide a report with the fiscal 2020 budget submission detailing the spending plan for the Clean Water Commerce Act for the fiscal 2018 actual, the fiscal 2019 working appropriation, and the fiscal 2020 allowance.

Department Response: The department accepts this recommended action.

2. Adopt the following narrative:

Volkswagen Settlement Spending Plan: The committees are concerned that there is a substantial amount of funding available to the State from the various Volkswagen (VW) settlements without a clear spending plan for the revenues. Therefore, the committees request that MDE, in collaboration with the DBM, provide a report with the fiscal 2020 budget submission detailing the description, timing, and funding associated with each of the VW settlements, and a spending plan for the fiscal 2018 actual, the fiscal 2019 working appropriation, and the fiscal 2020 allowance.

Department Response: The department accepts this recommended action and will work with DBM, MDOT, MEA and others to submit the requested information.

Maryland Volkswagen Mitigation Plan

On September 18, 2015, the U.S. Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) issued a Notice of Violation of the Clean Air Act to Volkswagen AG, Audi AG and Volkswagen Group of America, Inc. alleging that model year 2009-2015 Volkswagen and Audi diesel cars equipped with 2.0 liter and 3.0 liter engines included software that circumvents EPA and CARB emissions standards for nitrogen oxides (NO_x). This software is considered a "defeat device" as defined by the Clean Air Act. Approximately 550,000 vehicles in the United States had "defeat devices" installed; approximately 16,000 were delivered to Maryland.

On October 25, 2016, the U.S. District Court Northern District of California approved a Partial Consent Decree between the U.S. Justice Department and VW regarding excess emissions of NO_x due to the installation of "defeat devices" on 2.0 liter diesel engines. The use of "defeat devices" has increased vehicle emissions of NO_x, resulting in adverse affects on air quality. NO_x emissions contribute to the formation of ground-level ozone. More information on the consent decrees for VW may be found [here](#).

The Consent Decree established an Environmental Mitigation Trust of \$2.925 billion to fully remediate the excess NO_x emissions from the affected 2.0 and 3.0 liter vehicles. The State of Maryland is eligible to receive over \$71 million from the VW Trust for the 2.0 liter vehicles. A settlement for the affected 3.0 liter vehicles was reached December 20, 2016 as well and Maryland is eligible to receive an additional \$4.6 million from the VW Trust for these vehicles. The State of Maryland is eligible to receive a total of over \$75.7 million from the VW Trust to use for specifically defined eligible mitigation projects. To guide the use of funds over the Trust's 10-year lifetime, Maryland Department of the Environment, in coordination with DBM, MDOT, MEA and others, is currently developing a Draft Mitigation Plan that will outline what eligible projects Maryland will use to reduce excess NO_x emissions. For more information on eligible mitigation projects, please click [here](#).