Chesapeake Bay
Fiscal 2019 Budget Overview
Response to the Department of Legislative Services

Issues

1. Overall Chesapeake Bay Restoration Funding: The Department of Legislative Services (DLS) recommends the addition of budget bill language to request that the Administration continue to publish the overall Chesapeake Bay restoration data in the Governor's Budget Books and provide the electronic data separately. In addition, DLS recommends that budget bill language be added to the Department of Natural Resources' budget to request that the Administration provide the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund annual report and a revenues and expenditures spreadsheet at the time of the fiscal 2020 budget submission.

Response: The Administration will continue to provide the requested data, including the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund Annual Report and a revenue and expenditure spreadsheet with the Governor's fiscal 2020 Allowance.

2. Sufficient Chesapeake Bay Restoration Funding Unclear: DLS recommends that the Administration comment on whether Maryland is on track to meet the requirement of having all practices in place to meet the specified nutrient and sediment reductions by calendar 2025 and what is likely to happen if Maryland and / or the other Chesapeake Bay agreement states do not meet this requirement.

In addition, DLS recommends that the agencies submit a report on updated historical spending and projected Chesapeake Bay restoration spending and associated impacts and the overall framework to meet the calendar 2025 requirement of having all best management practices (BMP) in place to meet the water quality standards for restoring the Chesapeake Bay. It is requested that the report include information on the draft Phase III Watershed Implementation Plan (WIP) and how the loads associated with Conowingo Dam infill, growth of people and animals, and climate change will be addressed.

Response: Phase II WIP model projections indicated that continued progress to achieving Maryland's 2025 pollution reduction goal would be challenging but achievable, assuming funding and regulations remained in place. The 2017 midpoint assessment concluded that Bay partner states, including Maryland, have to do more to address increased pollution resulting from Conowingo infill, climate change, and growth. Maintaining current policies, regulations and programs will be critical for success.

Preliminary Phase III WIP modeling projections, based on a revised model, signal that progress towards reducing phosphorus may be further ahead and nitrogen reductions may be further behind than the Phase II projections. These recent results are currently under review; detailed information is not available at this time. MDE, with the support of the Bay Cabinet agencies, is developing Maryland's Phase III WIP, which is due in draft to EPA February 2019. Moreover, the Bay Program Partnership, which is comprised of the six watershed states, the District of Columbia, the Chesapeake Bay Commission and EPA as the federal representative, is developing a separate Conowingo

Watershed Implementation Plan to be completed in draft in February 2019, concurrent with jurisdictional WIPs.

If states do not meet the requirement of having all practices in place to meet the specified nutrient and sediment reductions by calendar 2025, EPA has outlined nine possible Chesapeake oversight actions in a 2009 letter. Some examples provided in the letter are: conditioning federal grant funding, increasing program oversight, and expanding federal permit coverage. We also want to bring your attention to amendment (#354), passed by the House of Representatives to the Make American Secure and Prosperous Appropriations Act (H.R. 3354). This amendment, if it became law, would prohibit the use of EPA funds for enforcement policies and procedures potentially necessary to achieve needed pollution reductions in the Chesapeake Bay.

The agencies will submit the requested report on updated historical spending and projected Chesapeake Bay restoration spending and associated impacts and the overall framework to meet the calendar 2025 requirement of having all best management practices (BMP) in place to meet the water quality standards for restoring the Chesapeake Bay.

3. Chesapeake Bay Program Funding and Enforcement Questions: DLS recommends that the Administration comment on the impact of the Chesapeake Bay Program being defunded or receiving reduced funding and the potential impact of the EPA being prohibited from using any funds to take retaliatory actions against any of the six states in the Chesapeake Bay watershed in the event that a state does not meet the goals mandated by the EPA's Chesapeake Bay TMDL.

Response: If EPA loses funding capacity and oversight ability, water quality in Maryland would suffer. Bay restoration progress is a result of several important components facilitated and partially funded by EPA's Chesapeake Bay Program. They are: 1) consistent and continued environmental monitoring both in the Chesapeake Bay and the rivers and streams that flow to the Bay; 2) reporting and evaluation of pollution reduction practices to meet clean water goals; 3) science to track progress, respond to change, and support innovative pollution reduction strategies that benefit the Bay and local communities; and 4) facilitating strong partnerships in restoration.

Maintaining federal oversight ensures upstream accountability, which is important for a downstream state such as Maryland. While the six jurisdictions and DC have made significant progress toward clean water, federal funding and federal oversight is necessary to advance Bay restoration that is now driven by the Clean Water Act.

There is no question that US EPA serves a useful role in promoting cooperation between the states within the watershed – to date, its assistance with the scientific evaluations and modeling, water monitoring and WIP development has been substantial. Maryland believes EPA's continuing efforts to track progress and hold the different states to their respective WIPs will be important.

4. Nutrient Trading and Aligning for Growth: DLS recommends that the Administration comment on the status of an Aligning for Growth policy, including possible components such as a sector loading analysis, how this policy will be incorporated into or complement the Phase III WIP, and the relationship between Aligning for Growth and nutrient trading.

Response: New Bay Program models, tools and science allow us to better understand the impact of future growth. The Bay agencies are currently reviewing and revising recent Bay Program growth projection scenarios used to estimate changes in nutrients and sediments loads. Upon completing these revisions, which are expected late winter 2018, Maryland will have a better understanding of the extent that current laws, regulations and policies mitigate impacts of future growth.

As part of EPA's Accounting for Growth policy, the Phase III WIP will be developed using new models and will be based upon 2025 projected land use and population, which means that the WIP will account for changes in pollution loads resulting from new growth.

Nutrient trading is a tool that can be used to offset increased loads as a result of growth. If nutrient credits are used to offset growth, the nutrient trading regulations are necessary to define a credit, provide accountability, and ensure protections.

5. Capacity to Handle Phosphorus Management Tool Requirements Unclear: DLS recommends that the Administration comment on how the large number of acres transitioning to management under the PMT will be handled in the next couple of years and how the work of the DLLC's transport, technology, and mass balance subcommittees informs this process.

Response: As of November 2017, phosphorus data has been collected on 1,105,130 acres of fields. Of the collected data, only 20.6% of sampled acres are subject to Phosphorous Management Tool (PMT) evaluation and potential management changes.

Calendar year 2018 begins the Tier transition schedule to implement the PMT. Approximately 100 operations that have an average Phosphorous Fertility Index Value (P-FIV) greater than 450 are placed into Tier C, consisting of roughly 11,000 acres. Presently, MDA can meet the demand for manure transport from this Tier Group within current funding levels.

Operations within Tier B, having an average P-FIV of 300-450, begin transition in calendar year 2019. This Tier Group consists of approximately 252 operations and represents 55,000 acres.

The largest group to transition will be Tier Group A, consisting of 1,350 operations which cover approximately 123,000 acres. MDA, with the help of the Phosphorus Management Tool Advisory Committee, will evaluate resource needs over the next two years.

Regardless of Tier group, regulations adopted in 2015 place a ban on phosphorous application on all fields with a P-FIV greater than 500. MDA has begun implementation reviews to confirm adherence to these regulations. Results thus far have shown a positive adherence to the ban on the fields with a soil FIV greater than 500.

It is important to note that manure management practices have changed significantly over the past decade. The poultry industry has adjusted house clean out schedules to be less frequent and in most case are only partial clean outs. The industry is also using in-house composting, which further reduces manure volume.

While the DLLC committee is a voluntary group of stakeholders and does not dictate how MDA implements the PMT regulations, the DLLC can provide suggestions on MDA policies. One

suggestion was to have a fast-track process for manure transport, which MDA implemented in 2017. MDA will continue to cooperate with the DLLC and update the group on statewide progress.

6. Conowingo Dam Relicensing and Request for Proposals: DLS recommends that the Administration comment on the role of the Conowingo Dam pilot dredging project proposal relative to the need to reduce upstream loading as part of the separate WIP to address Conowingo Dam infill.

Response: It is expected that pollution reductions to offset the impacts of the near full condition of Conowingo Dam will need to come from upstream, from within the reservoir, and downstream near the Bay. The pilot study addresses information gaps and will provide refined estimates on the costs of dredging sediments and associated nutrients from behind the Dam while also exploring innovative or beneficial reuse options that can help offset dredging costs. The pilot will also help quantify nutrients removed by dredging and provide insight on whether a small scale project can effectively be scaled up to a larger operation.

As part of the Phase III WIP effort, Maryland and Bay partner states are developing a separate and collaborative Conowingo Watershed Implementation Plan. The plan will provide accountability and a timeline at which specific actions must occur. This plan will be developed by a Bay Partners Oversight Steering Committing concurrently with jurisdictional WIPs. In recognition of the fact that several Bay jurisdictions contribute to the sediment and nutrients behind the Dam, that all Bay jurisdictions have benefitted from the Dam's past sediment trapping, and that all Bay jurisdictions will benefit from reducing nutrient and sediment loads flowing over the Dam, one component of the plan is to pool jurisdictional resources to pay for pollution reduction practices in the most effective locations.

7. Stormwater Funding Challenges: DLS recommends that the Administration discuss whether the 10 Phase I jurisdictions will meet their permits before the end of the current permit period, what role nutrient trading is expected to play in the ability of the 10 Phase I jurisdictions to meet the permits, and the implications for both the counties and ongoing Chesapeake Bay restoration progress if the permits are not met.

Response: The Administration relies on information from the NPDES MS4 Phase I permit annual reports and biennial financial assurance plans to evaluate individual progress toward meeting the permits' impervious surface restoration requirements. Overall, based on a review of the FY17 annual reports, the 10 Phase I MS4s are projecting completion of 92% of the impervious surface restoration requirement by the end of their five- year permit terms. Five jurisdictions included the use of water quality trading to satisfy a portion of the restoration requirement.

The NPDES MS4 Phase I permit 20% restoration requirement has stretched many of these local jurisdictions to the extent of their implementation capabilities. While most have shown that they have the fiscal ability to pay for these projects, other constraints, e.g., sufficient contractor design, availability of restoration sites, and construction capacity, are making full restoration through traditional stormwater management practices by the end of the permit term challenging. A number of MS4 jurisdictions are experimenting with public-private partnerships to drive costs down and improve implementation efficiency. Local jurisdictions are also now planning for future implementation requirements of the next MS4 Phase I permit and the long-term maintenance and the eventual replacement of aging pollution reduction practices (i.e. BMPs).

MDE is currently promulgating water quality trading regulations. The use of water quality trading has the potential to temporarily reduce MS4 impervious surface restoration costs through the purchase of less expensive nutrient credits from the agriculture and waste water treatment sectors. Once finalized, a permittee may request an MS4 permit modification to use water quality trading to meet their impervious surface restoration requirement under the current permit term.

Recommended Actions

1. Add budget bill language on historical and projected Chesapeake Bay restoration funding.

Response: The Administration accepts this recommended action.

2. Add budget bill language on Chesapeake Bay spending for programs with over 50% of their activities directly related to Chesapeake Bay restoration.

Response: The Administration accepts this recommended action.