Chesapeake Bay
Fiscal 2020
Budget Overview
Response to the Department of Legislative Services

Issues

1. Chesapeake and Atlantic Coastal Bays 2010 Trust Fund: 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 DNR's 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 2021 Allowance.

2. Historical and Projected Chesapeake Bay Restoration Spending Report Not Submitted: **DLS recommends that funding be restricted until 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 BMPs in place to meet water quality standards for restoring the Chesapeake Bay. It is requested that the report include information on the Phase III WIP and how the loads associated with Conowingo Dam infill, growth of people and animals, and climate change will be addressed.**

Response: The Chesapeake Bay Spending report was submitted to the DLS on January 22, 2019. The report is similar in format to that of the previous years with minor updates documenting annual progress in load reductions, state agency spending and an update on ongoing and new programmatic initiatives. It is important to note that much of the financial analysis and conclusions contained in this and previous years' reports are based on a 2015 "Maryland's Chesapeake Bay Restoration Financing Strategy Report" by the University of Maryland Environmental Finance Center. While those findings are still valid today, the analyses were conducted and conclusions reached during implementation of Maryland's Phase II Watershed Implementation Plan (WIP). Maryland will complete and begin implementing its Phase III WIP by August, 2019 and as a result, next year's report is expected to differ from this year's report.

3. Capacity to Handle PMT Requirements Unclear: DLS recommends that MDA comment on whether it has the information necessary to complete the evaluation of the State's manure handling capacity given the lack of information on the exact Fertility Index Value (FIV) levels for soils less than 150 and thus the uncertainty about where and to what extent excess poultry manure may be applied.

Response: MDA believes it has the information necessary to complete the evaluation of the State's manure handling capacity. The Delmarva Land and Litter Challenge (DLLC) took a different approach and looked at the methodology from the aspect of a nutrient neutral basis for the Delmarva Peninsula (Maryland, Delaware, and Virginia). Maryland is the only state that has P soil data. Based on the data submitted to MDA for the 2017 crop year, the following assumptions can be made:

- 434,323 tons poultry litter collected
- 61,547 tons poultry litter was used for alternative uses
- 372,776 tons/ 2-ton application rate= **186,388 acres used for land application**
- **P Soil Data <150 FIV on the Eastern Shore - 476,975 acres**

A two-ton application rate is a very conservative application rate. UMD has stated that a three-ton application rate would have minimal affects to raising soil P FIV levels. At a three-ton application rate, 124,258 acres would be needed for land application.

In addition to the data submitted to MDA, annual estimates of poultry production are available from United States Department of Agriculture National Agricultural Statistics Service (USDA NASS) and estimated nutrient concentration of the poultry litter is available.

MDA has funded seven pilot projects across Maryland through its Animal Waste Technology fund to reduce on-farm waste streams, and repurpose manure by creating marketable fertilizer and other products and by-products.

4. Conowingo Dam Relicensing and Request for Proposals: DLS recommends that the agencies comment on the status of deliberations on the Conowingo Dam water quality certification, the possibility for a compromise given that Exelon might cease operations at the Conowingo Dam rather than comply with the State's requirements, and how the sediment beneficial reuse and sediment characterization study will be funded.

Response: The presence of the dam over the past century has fundamentally altered the ecosystems of the Susquehanna River and the Chesapeake Bay, resulting in significant negative impacts on water quality. The proposed 46-year FERC relicensing of Conowingo is a once-in-a-generation opportunity to address those water quality impacts. Accordingly, in connection with that relicensing, MDE issued a water quality certification (WQC) under Section 401 of the Clean Water Act in April 2018 to address dam-related water quality issues such as low dissolved oxygen in the Bay, reduced migratory fish passage, an altered flow regime that impacts aquatic life and fish passage, debris and trash removal, algal levels in the reservoir that impact drinking water and habitat restoration necessary for important aquatic species. Exelon is challenging the WQC via judicial and administrative appeals. MDE is confident that the WQC will be upheld on appeal because of its sound legal and scientific foundation, and we remain optimistic that a constructive resolution can be reached with Exelon. MDE is continuing to work with DBM to determine funding for the sediment beneficial reuse and sediment characterization study.

5. Stormwater Challenges: DLS recommends that MDE comment on why it has not been able to submit the annual report evaluating the compliance of local jurisdictions with the requirements of both Chapter 124 and Chapter 151 in a timely manner. In addition, DLS recommends that the agencies comment on whether a P3 or other partnership model with a statewide focus on stormwater management remediation would be feasible and in the best interests of the State and counties.

Response: MDE continues to encourage public-private partnerships within and across stormwater jurisdictions and believes that recently adopted water quality trading regulations will provide a model with a broader geographic focus than a single permitted entity. In December, three county Phase I MS4 permits were modified to allow the use of credits generated through the trading market to be used in meeting part of the restoration requirement. In addition, all Phase II MS4 permits and all Industrial Stormwater permits allow for part of the restoration requirements to be achieved through credits. As described in the 2017 report to the Legislature, numerous MS4s are experimenting with public-private partnerships (P3s) for driving costs down and improving implementation efficiency. MDE is observing an expansion of partnerships across state agencies, such as the Department of General Services and the Department of Transportation, in meeting stormwater restoration requirements. MDE will continue to encourage and work to expand these public-private partnerships.

6. Encouraging Agricultural BMP Implementation: DLS recommends that MDA comment on the feasibility of developing a BMP stewardship model for the agricultural sector, the benefits of encouraging a soil conservation and water quality plan on farms with agricultural leases, and whether it intends to apply for the increased funding available through the Regional Conservation Partnership Program.

Response: MDA has been working with the University of Maryland Agriculture Law Education Initiative conducting a series of workshops across Maryland to illustrate leasing agreements between landowners and farmers that could encourage those individuals to incorporate conservation practices on leased farms.

An incentive-based approach to increase conservation planning is an interesting approach. MDA's first attempt at this was through the development of the Certainty Program to recognize farmers for "doing their part." Another approach would be working with Maryland Association for Soil Conservation Districts on aligning MDA's program with the Farm Stewardship Certification and Assessment Program (FASCAP).

MDA would have concerns if "A budgeted tax credit for farmers paid from a portion of cover crop funding could be considered as an encouragement to sign up for the Nutrient Trading Tool, aside from the benefits of being able to trade". Cover crops are one of the most cost effective measures for nutrient reduction and any reduction in funding may jeopardize MDA's ability to achieve WIP goals.

With the passage of the new federal Farm Bill, $300 million has been designated for critical conservation areas of which the Chesapeake Bay is one. This money is directed by the Natural Resource Conservation Service which is a critical partner of MDA through the soil conservation

districts. MDA currently has Regional Conservation Partnership Program (RCPP) grants for soil health practices and precision nutrient management and will be looking for additional funding opportunities within that program. Federal dollars through the USDA Environmental Quality Incentives Program (EQIP) and the Conservation Reserve Enhancement Program (CREP) are also critical to Maryland in meeting its WIP goals.

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.