

Chesapeake Bay Cabinet
Fiscal 2022
Response to the Department of Legislative Services

House Appropriations Committee
Transportation and the Environment Subcommittee
Delegate Marc Korman, Chair

Senate Budget and Taxation Committee
Public Safety, Transportation and Environment Subcommittee
Senator Cory McCray, Chair

February 1, 2021

Issues

1. Overall Chesapeake Bay Restoration Funding: The Department of Legislative Services (DLS) recommends the addition of committee narrative 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. For administrative purposes, this recommendation will appear in the DNR operating budget analysis. In addition, DLS recommends that budget bill language again be added to DNR's budget to request that the Administration provide the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund annual report at the time of the fiscal 2023 budget submission.

Response: The Administration will continue to provide the requested data, including the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund Annual Report, with the Governor's fiscal 2023 Allowance.

2. Historical and Projected Chesapeake Bay Restoration Spending Report: DLS recommends that the Administration comment on a timeline and specific BMP implementation plan for meeting the nutrient and sediment reductions target under the TMDL by 2025. DLS also recommends that language be included requesting a similar report from the agencies for the fiscal 2023 budget submission 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. The report should include updated information on the Phase III WIP implementation and how the loads associated with the Conowingo Dam infill, growth of people and animals, and climate change will be addressed.

Response: The Administration will continue to provide the requested report.

Maryland's 2020/2021 Milestones provide details on specific practices and implementation steps. The bulk of the nutrient reductions between now and 2025 are expected to come from agricultural conservation practices and wastewater treatment plant improvements. The priority commitments are listed below.

- Wastewater: finalizing wastewater treatment plant upgrades and increasing financial incentives to optimize performance below ENR levels of 3 mg/l nitrogen and 0.3 mg/l phosphorus. This will achieve nearly 50% of Maryland's pollution reduction goals by achieving an overall average wastewater concentration of 3.25 mg/L nitrogen. For septic systems, the Administration will continue funding Best Available Technology in the critical area and pursuing sewer connections in priority areas.
- Agriculture: MDA is currently recruiting for additional technical assistance and inspection positions.

- Stormwater: Steady progress on urban stormwater restoration continues and while urban stormwater restoration does not result in high nutrient reductions per dollar invested, compared to agriculture practices and wastewater treatment plant upgrades, these practices are important for climate resiliency in and around urban communities and improve local water quality.

Additionally, the Administration continues to identify, develop, and implement, comprehensive Bay restoration practices which both meet our nutrient and sediment reduction goals in the most cost effective manners possible, but also address critical co-benefits such as climate resiliency, habitat, quality of life, and recreation.

3. Capacity to Handle Phosphorus Management Tool Requirements Unclear: DLS recommends that the Administration comment on what determination has been made about whether satellite manure storage facilities can receive Maryland Agricultural Cost-Share Program funding and on what manure transport assistance is available for farmers that grow chickens for integrators that do not contribute cost-share funding to the Manure Transport Program.

Response: MDA is currently analyzing all funding sources, including GO bonds and other state funding sources, that may be available for implementing manure storage for receiving farms using poultry litter. GO bonds do have a restriction that any state bonds for capital projects must meet a natural resource concern or result in an improved conservation benefit.

Cost share assistance is available for the transport of poultry litter from farms that cannot use litter for crop production to farms that can as well as for alternative uses and is only available for litter produced from poultry farms that grow for poultry companies that commit a 50/50 match to the Manure Transport Program. Currently, four out of the five companies commit funds to the Manure Transport Program.

4. Conowingo Dam Relicensing, WIP, and Sediment Study: DLS recommends that the Administration comment on the expected outcome of the Conowingo Dam WIP financing strategy; the status of Conowingo Dam relicensing; and the status of the sediment characterization and next steps for the pilot dredging project.

Response: The draft Conowingo WIP financing strategy was submitted to the Chesapeake Bay Program partnership on December 8, 2020 and is currently under review by the partnership. The expectation is that the financing strategy will create a financing framework that accelerates public and private investment in Bay restoration, fosters pay for performance funding to lower implementation costs, and drives financing and best management practices innovations to both accelerate and sustain Bay restoration into the future.

A decision by the Federal Energy Regulatory Commission (FERC) to accept the settlement agreement between Maryland and Exelon and issue the license for the Conowingo Dam is pending. On August 24, 2020 MDE sent a letter to FERC urging immediate action and conveyed to FERC that continued delay and the associated uncertainty surrounding Exelon's obligations impedes progress in meeting the Chesapeake Bay targets by 2025. MDE intends to follow-up shortly with the newly appointed FERC chairman urging immediate attention to this issue.

The sediment characterization samples were collected in mid-December 2020 and consisted of approximately 130 five-foot core samples at 19 locations in the Conowingo reservoir. The raw sampling results for these cores were received in January 2021 and are undergoing analysis. The draft sediment characterization report is expected by the end of April 2021. A final report on the bench scale testing of different potential end uses of the dredged material and an economic analysis of those potential uses is expected to be complete by the end of November 2021. The dredging portion of the pilot project is currently projected to start in early September 2021. The dredged material will also be tested for different end uses and summarized in an addendum to the bench scale test and economic analysis report. This addendum, all final reporting, and project close-out is expected by June 2022.

5. Lawsuits Filed Against the U.S Environmental Protection Agency: DLS recommends that the Administration comment on the ramifications of the new Biden administration in terms of both regulatory oversight and additional Chesapeake Bay restoration funding.

Response: Maryland expects the Biden Administration will have a renewed focus on the environment, particularly climate change. Maryland also expects a renewed focus on EPA fulfilling its responsibilities under the Clean Water Act to take action where needed to ensure that all Bay jurisdictions meet their obligations for nutrient reductions.

Maryland intends to work with the Biden Administration to ensure that additional funding and technical resources are made available for local governments and underserved communities and for the areas in the Chesapeake Bay Watershed where these resources will provide the most water quality benefits.

Recommended Actions:

1. Add budget bill language on historical and projected Chesapeake Bay restoration funding, including \$1,000,000 in restricted funding pending submission of the report by December 1, 2021.

Response: The Administration will continue to provide the annual report on Chesapeake Bay restoration funding. The Administration respectfully disagrees with the \$1,000,000 funding restriction pending submission of the report.