

Chesapeake Bay Cabinet  
Fiscal Year 2024 Operating Budget  
Response to the Department of Legislative Services Analysis

Senate Budget and Taxation Committee  
Public Safety, Transportation, and Environment Subcommittee  
Senator Sarah K. Elfreth, Chair  
February 16, 2023

House Appropriations Committee  
Delegate Ben Barnes, Chair  
February 10, 2023

**Issues**

**1. Comprehensive Evaluation of System Response Planned: The Department of Legislative Services (DLS) recommends that the Administration comment on the implications of the tentative *Comprehensive Evaluation of System Response* findings noted above, in particular how spatial targeting could improve nonpoint source pollution controls.**

Response: As noted in the Policy Analysis, the Chesapeake Bay Program's Scientific and Technical Advisory Committee (STAC) is completing a multi-year assessment of what has worked, what isn't working, and recommended policy changes in our Bay restoration efforts. That report, the "Comprehensive Evaluation of System Response" (CESR) has not yet been released, so it is premature to know exactly what the findings are, resulting recommendations, and how to most appropriately adjust our strategies.

However, there have been some preliminary briefings by STAC during which some findings have been broadly presented as noted in the Analysis. There have also been some preliminary recommendations suggested, including finer scale targeting of practices to those areas and BMPs that realize the greatest improvements to the Bay, changes to how we incentivize funding programs, increased focus on shallow water (vs deep trench) habitats, and greater encouragement of innovation.

The Moore Administration remains firmly committed to being guided by the best science available in our efforts to restore the Chesapeake and Coastal bays, and this pending report (along with other STAC reports such as the recently published "Rising Temperatures" report on the impacts of climate change to the Bay) represents that best science available and we look forward to reviewing the report when released, following up with the STAC on specifics, and adjusting our strategies accordingly.

**2. Overall Chesapeake Bay Restoration Funding: DLS recommends the adoption of committee narrative requesting 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 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 2025 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 2025 Allowance.

**3. Historical and Projected Chesapeake Bay Restoration Spending: DLS recommends that the Administration comment on its plans for requiring wastewater treatment plant engineering reports with permit renewals and its early warning system, whether the agriculture sector will adopt targeting to reduce nonpoint source pollution, and what the next step is for stormwater load reductions.**

**DLS also recommends that language be included requesting a similar report from the agencies for the fiscal 2025 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 how the loads associated with the Conowingo Dam infill, growth of people and animals, and climate change will be addressed as well as the status of staffing and preventive maintenance at the 67 major wastewater treatment plants, the status of the 53 Soil Conservation District field positions in terms of Soil and Water Quality Conservation Plan development and BMP implementation, and the long-term plans for reducing loading from the stormwater sector.**

Response: The Administration will continue to provide the requested data and reporting, including information responsive to any future DLS reporting requests.

Regarding WWTP third party engineering reports, MDE will implement the requirement mainly in facilities with consistent noncompliance history during the previous permit cycle. A facility improvement plan for the facility being evaluated will be required as the follow-up to the evaluation. The monitoring frequency for pollutants involved in past violations may also be adjusted to monitor the progress of the improvement. This information will also help MDE's Compliance Program make adjustments for the site inspection accordingly.

The WWTP early detection system is a screening analysis, which uses more real-time Discharge Monitoring Report (DMR) data to identify wastewater treatment plants that are not operating at Enhanced Nutrient Reduction (ENR) levels. MDE will be reviewing the DMRs for each quarter of the calendar year to identify major WWTPs that are not on track to achieve annual permit compliance. Once these plants are identified, a letter will be sent to the facility to put them on "alert", acquire related information on the circumstances, and provide compliance and other assistance to improve performance. First early detection letters will be sent in June 2023. It is expected that the early detection of WWTP operations problems will prompt the facilities to seek technical assistance and help resolve the problems in a timely manner before they get out of compliance.

MDA is actively expanding its conservation programs to further reduce nonpoint source pollution. Programs will provide increased technical and financial assistance to all sectors within the agricultural community, including small and urban farms, equine operations, and small to midsize dairy farms. All implemented conservation will be reported and verified according to established CBP protocols.

MDE recently issued ten Phase 1 MS4 permits that require 50% more restoration than the last permits, and recently issued the final industrial stormwater and construction stormwater permits. Moving forward, MDE plans to continue to incentivize Green Infrastructure solutions, like trees and wetlands, to stormwater restoration and ensure stormwater permit achievement through compliance assistance and enforcement actions.

**4.CWIP, Relicensing, and Sediment Study: DLS recommends that the Administration comment on the likelihood that the Chesapeake Bay partners will contribute funding to the CWIP and the details of the memorandum of understanding with the Susquehanna River Basin Commission, the request for proposals, and the crediting of nutrient reduction by projects; the status of Conowingo Dam relicensing and the settlement agreement with Exelon given the recent court order; and the plan for Conowingo Dam reservoir dredging and beneficial reuse of sediment.**

Response: Chesapeake Bay partners are already contributing funding, and staff are working closely with partners to secure more funding. For example, NY has committed \$500,000 towards Conowingo practices, SRBC has identified a \$6-million grant program that can fund Conowingo best practices, and MD is working closely with PA on a Conowingo set-aside in it's \$22-million clean water procurement program run by PennVest.

As far as SRBC, the MOU is focused on a pay-for-success program where MD pays for the lowest cost per pound of nitrogen removed in the Susquehanna basin. SRBC will administer the pay-for-success program and rank proposals for funding in close coordination with the state.

Regarding the Conowingo settlement agreement with Constellation Energy (formerly Exelon), it is still in effect. The FERC license, however, was challenged by a group of NGOs and on December 20, 2022, the court vacated and remanded the license back to FERC. This invalidated the portion of the settlement agreement that provided for Maryland's conditional waiver of its right to issue the WQC but left the rest of the settlement agreement intact.

On dredging, Maryland has completed its pilot dredging and reuse work in Conowingo Reservoir. Maryland agencies are now refining feasibility and cost determinations for a larger environmental dredging project, including:

- Working with the Bay Program Partnership on convening an expert panel to evaluate nutrient reduction credits from an environmental dredging project;
- Working with federal partners to develop a hydraulic and water quality model for Conowingo Reservoir that will inform the expert panel process and quantify nutrient reductions from environmental dredging; and,
- Working on preliminary engineering/design of an environmental dredging program to better define suitable dredging locations and right of entry requirements, the annual dredging window, identify the most feasible and cost-effective dredging, dewatering, and related transportation process.

**5. Lawsuits Filed Against the U.S Environmental Protection Agency: DLS recommends that the Administration comment on the Biden Administration's plans for regulatory oversight of the Chesapeake Bay TMDL and the implications of Pennsylvania's failure to submit a final Phase III WIP that meets its nitrogen, phosphorus, and sediment targets.**

Response: As evidenced by the EPA lawsuit, Maryland is very concerned about Pennsylvania's lack of progress and overall jurisdictional accountability in meeting Bay water quality goals. We cannot comment on pending litigation but can say we are currently waiting to hear from EPA on their latest position on the litigation. Chesapeake Bay Restoration is a partnership approach among watershed jurisdictions, with EPA as the federal umpire holding jurisdictions accountable to water quality under the federal Clean

Water Act. EPA's oversight entails requiring jurisdictions to develop watershed implementation plans, related 2-year milestones, evaluations of those milestones as well as jurisdictional progress in meeting them, and using funding and regulatory backstops (water quality standards and criteria, permits, compliance and enforcement) for jurisdictions that are not making sufficient progress meeting clean water goals. Pennsylvania is now under enhanced regulatory oversight for submitting a clean water plan that falls short, which includes heightened regulatory oversight as well as redirecting PA's federal funding to entities who can achieve faster results. Maryland's lawsuit will help provide further federal oversight and clarity around EPA's expectations for Pennsylvania progress. On a positive note, PA did recently approve nearly \$300 million in federal ARPA funds they received to go towards its clean streams programs that reduce pollution to the Bay.

**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, 2023.**

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