

**Maryland Department of the Environment**  
**Fiscal Year 2024 Capital Budget**  
**Response to Department of Legislative Services Analysis**

**House Appropriation Committee**  
**Capital Budget Subcommittee**  
**Delegate Mark S. Chang, Chair**  
**February 26, 2024**

**Senate Budget and Taxation Committee**  
**Capital Budget Subcommittee**  
**Senator Craig J. Zucker, Chair**  
**February 27, 2024**

This response addresses the Legislative Analyst's recommended actions and the issues noted for discussion. The department is prepared to discuss the issues and recommended actions as requested.

**PAYGO Recommended Actions**

1. **Recommended Action**: Concur with Governor's allowance for the Maryland Department of the Environment.

**Department Response**: The department accepts this recommendation.

**GO Bond Recommended Actions**

1. **Recommended Action**: Approve all authorizations for the Maryland Department of the Environment.

**Department Response**: The department accepts this recommendation.

**Overview**

**Water Quality Revolving Loan Fund (WQRLF)**: The Department of Legislative Services (DLS) recommends that MDE comment on the overall plan for the allocation of IIJA emerging contaminants funding.

**Department Response**: MDE is allocating WQRLF IIJA funding for emerging contaminants (EC) projects in accordance with the IIJA signed on November 15, 2021 and [the U.S. EPA's March 8, 2022 Implementation Memo](#). Additionally, [MDE's Final Water Quality Integrated Project Priority System Revision 6 Amendment 1 approved by U.S. EPA on February 6, 2023](#) includes additional scoring criteria to be used specifically for WQRLF IIJA EC projects submitted to MDE during its annual solicitation. This updated scoring criteria was used to select projects to receive WQRLF IIJA EC funding for FFY22 and 23. The project selected for this funding is

included in this year's state capital budget - the Anne Arundel County Thermal Processing Demonstration Facility. MDE is using the same criteria and process to allocate FFY24 WQRLF IIJA EC funding.

**Drinking Water Revolving Loan Fund:** DLS recommends that MDE comment on why encumbrances decreased from \$12.9 million in fiscal 2022 to \$1.5 million in fiscal 2023.

**Department Response:** There were several projects that were expected to be encumbered in FY23 that we now anticipate encumbering in FY24.

Projects are still experiencing delays on the local jurisdiction side for numerous, often project-specific, reasons. Generally speaking:

- Increased availability of federal funds, including ARPA funds and Congressionally Directed Spending, has led to local governments deferring projects to maximize federal grant funding.
- Some projects have taken longer to design, permit, and construct.
- Projects undertaken by smaller jurisdictions with limited resources can take longer.
- The recent economic situation with inflation, supply chain issues, and lack of contractors has led to project bids being much higher than local governments and their engineers have anticipated. As a result, local governments are forced to try to secure additional funding before proceeding with projects.

MDE continues to work closely with local jurisdictions on these projects to get them to the point that funds can be encumbered.

**Drinking Water Revolving Loan Fund:** DLS recommends that MDE comment on the plan for allocating federal IIJA lead service line replacement and emerging contaminants funding to Maryland jurisdictions, whether Maryland provided updated service line information to EPA in fall 2023, and the status of the statewide lead service line survey required by EPA by October 2024.

**Department Response:** MDE is allocating DWRLF IIJA funding for EC projects and lead service line inventory and replacement projects in accordance with the IIJA signed on November 15, 2021 and [the U.S. EPA's March 8, 2022 Implementation Memo](#). Additionally, [MDE's Final Drinking Water Integrated Project Priority System Revision 4 approved by U.S. EPA on December 19, 2023](#) includes scoring criteria specifically for DWRLF IIJA EC projects and DWRLF IIJA lead service line projects submitted to MDE during its annual solicitation. This updated scoring criteria was used to select projects to receive DWRLF IIJA EC funding and DWRLF IIJA lead service line funding for FFY22 and 23. The projects selected for this funding are included in this year's state capital budget, including 13 DWRLF IIJA EC projects for more than \$57M and 13 DWRLF IIJA lead service line projects for more than \$75M.

As a follow-up to the EPA's 7th Drinking Water Infrastructure Needs Survey Assessment (DWINSA), MDE contacted the 30 water systems previously surveyed under DWINSA in fall 2023 to get refined estimates of lead service line quantities. MDE provided these updated service line estimates to EPA in November. MDE is currently waiting for EPA to complete their review and release the updated DWINSA reflecting the additional needs identified by the states. MDE is optimistic that these updated needs will increase the FFY24 lead service line funding that we will receive from EPA.

The federal Lead and Copper Rule Revisions will require Public Water Systems to submit lead service line inventories to MDE by October 2024. MDE is providing support to water systems to be able to complete this work. This support includes direct technical assistance from MDE engineers and Maryland Rural Water Association (MRWA) staff, and funding for inventories and replacements through the IIJA.

**Bay Restoration Fund – Wastewater Projects:** DLS recommends that MDE comment on the outcome of its review of third-party engineering reports and facility improvement plans as part of permit renewals for plants with consistent noncompliance history during the previous permit cycle and on the outcome of its quarterly review of Discharge Monitoring Report data for WWTPs. In addition, DLS recommends that MDE comment on the findings in the staffing reports for the Back River and Patapsco WWTPs and what possible lessons learned are generally applicable to address the expert staffing shortages in the wastewater treatment sector.

**Department Response:** To address chronic noncompliance at Back River and Patapsco WWTPs, the upcoming NPDES permit renewals will include special conditions requiring third-party engineering reports and facility improvement plans to tackle the root causes. Furthermore, both plants will operate under recently entered formal consent decrees to ensure sustained compliance with their discharge limits. MDE will continue implementing this approach for other persistently non-compliant facilities, with updates provided as they become available.

MDE's early warning system tracks WWTP performance results on a monthly basis, then we send notices to facilities quarterly when they are above quarterly benchmarks. The purpose of this system is to notify facilities on a more frequent quarterly basis when their performance may be trending towards noncompliance. That way, we do not wait for our annual compliance process before we assess compliance with annual permit limits and loads. For 2023 tracking, we had 8 ENR facilities that did not meet either their total annual nitrogen or total phosphorus limits by the end of 2023. Of those 8 facilities, half exceeded their benchmarks for each quarter and were notified accordingly. Those 8 facilities are now under our annual compliance evaluation to finalize facility-specific next steps. Preliminary results are showing that this early notification process is helping to reduce benchmark exceedance during the year so that we have fewer facilities in noncompliance by year's end.

MDE has reviewed the Back River and Patapsco staffing reports, including recruitment and retention strategies, and continues to inspect the plants monthly. MDE is providing feedback on

those strategies to Baltimore City as appropriate, while recognizing there are larger nationwide challenges in hiring, recruiting and retaining certified wastewater operators. To address those broader challenges, MDE will likely need to build partnerships with other agencies and academic institutions to develop apprenticeship, certification and workforce development programs.

**Bay Restoration Fund – Septic System Projects:** DLS recommends that MDE comment on when the January 2024 Bay Restoration Fund Advisory Committee annual status report will be submitted and posted online.

**Department Response:** The Bay Restoration Fund Advisory Committee annual report has been completed and will be submitted to the Maryland General Assembly and posted on MDE's webpage by the week of March 4.

**Comprehensive Flood Management Program:** DLS recommends that MDE comment on how the Middle Branch Resiliency Initiative Project was developed, the role of the two large private employers in the development of the project, and the lessons learned from this project for future large-scale stormwater and flood mitigation projects. DLS also recommends that MDE comment on the methodology for determining whether to show prior State matching funds as prior State appropriations for projects.

**Department Response:** The Middle Branch Resiliency Initiative (MBRI) is a comprehensive capital improvement program to improve water quality in the Middle Branch of the Patapsco River in Baltimore City while providing community resilience, improving and increasing aquatic habitat, enhancing public green open space and recreational opportunities, and creating outreach and environmental education opportunities for the surrounding low-income neighborhoods of color. The MBRI is the ecosystem restoration and implementation arm of [Reimagine Middle Branch](#), a multi-year Public-Private-Partnership. Reimagine Middle Branch is being led by the City of Baltimore and the South Baltimore Gateway Partnership (SBGP), working in collaboration with Parks & People, SB7 Coalition, State agencies, and a variety of other local organizations. MedStar Harbor Hospital and BGE have granted access to their properties, and it is MDE's understanding that BGE is an enthusiastic partner in this work and is currently participating in regular team meetings to move the project forward. It is premature for MDE to comment on lessons learned from this project.

Regarding State matching funds: MDE's budget submittal does show prior appropriations to a project from that program in Requested Funds By Source, as applicable (these appear as "State Share"). Any additional project funds not from that program appear as "Match," with the matching fund source(s) and amount(s) listed in the Matching Funds section.

With specific regard to the matching funds for projects in the FY25 Comprehensive Flood Management Program (CFMP):

- Ellicott City Maryland Avenue Culverts - \$4,096,846 prior CFMP funds are State Share; the \$9,928,154 balance of prior funds are Match (source is local funds).

- Town of Hebron Flood Mitigation - all \$141,706 of prior funds are Match (source is local funds).
- Smith Island Clean Water Project - all \$20,918,673 of prior funds are Match (sources are BRF Wastewater grant, Supplemental Assistance grant, WQRLF, USDA funding, and local funds).
- Annapolis City Dock Stormwater and Flood Mitigation, Phase 2 - all \$1,852,500 of prior funds are Match (source is local funds).
- Middle Branch Resiliency Initiative Project, Stage 1 - all \$48,533,394 prior funds are Match (anticipated sources are some combination of funding from Baltimore City, Baltimore County, FEMA, National Fish and Wildlife Foundation, and DNR, all of which were shown in the project application as having been “secured”).

## **Issues**

### **1. Federal Emerging Contaminants Funding Allocation and Award Report Not Submitted:**

DLS recommends that MDE comment on when it will submit the requested report detailing the process and criteria under which MDE is allocating the State's share of federal funds received through the IIJA specifically designated to address emerging contaminants.

**Department Response:** MDE acknowledges the report has not yet been submitted. As previously stated, MDE is allocating WQRLF IIJA funding for emerging contaminants (EC) projects in accordance with the IIJA signed on November 15, 2021 and the [U.S. EPA's March 8, 2022 Implementation Memo](#). Additionally, [MDE's Final Water Quality Integrated Project Priority System Revision 6 Amendment 1 approved by U.S. EPA on February 6, 2023](#) includes scoring criteria specifically for WQRLF IIJA EC projects submitted to MDE during its annual solicitation.

MDE is allocating DWRLF IIJA funding for EC projects in accordance with the IIJA signed on November 15, 2021 and the [U.S. EPA's March 8, 2022 Implementation Memo](#). Additionally, [MDE's Final Drinking Water Integrated Project Priority System Revision 4 approved by U.S. EPA on December 19, 2023](#) includes scoring criteria specifically for DWRLF IIJA EC projects submitted to MDE during its annual solicitation. These updated scoring criteria were used to select projects to receive WQRLF IIJA EC funding and DWRLF IIJA EC funding for FFY22 and 23.

The resulting Project Priority Lists, which provide detailed applicant information, scope, and schedule are available [here](#) (WQRLF) and [here](#) (DWRLF); the resulting Intended Use Plans that show the funding allocated to projects are available [here](#) (WQRLF) and [here](#) (DWRLF). The projects selected for this funding are included in this year's state capital budget. MDE will provide the requested report before the end of the 2024 legislative session.