

Maryland Department of the Environment

Fiscal Year 2011 Operating Budget Presentation Response to the Department of Legislative Services

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

Overview

The Maryland Department of the Environment's budget is the tightest budget the agency has had since its inception. In 2007, the Department requested that a team composed of MDE staff and external volunteers familiar with state budgeting conduct an assessment of ten years of revenues and expenditures to determine the fiscal condition of the agency. The 2007 Fiscal Study concluded that the agency had an internal structural deficit of over \$25 million dollars and over 300 full-time positions. The Study also found that the Department's budget would need to increase by \$4 million annually to maintain the current level of effort due to increasing personnel costs and factors that are beyond the agency's control. The Study was updated in 2009 and 2010 and that finding remains constant.

The Department has also made a series of reductions, mostly transfers from special funds, over the past three years, that are equivalent to 1/3 of the agency's operating budget in any given year. The result is that the Department's budget is such that there is no reserve or cushion, nor, other than personnel costs, funds to supplement and carry out day-to-day functions. All progress made in areas including increased inspections, improved control of sources of pollution such as coal combustion by-products, stormwater, and greenhouse gas emissions, has been through either shifting resources internally or through very limited fee increases directed toward specific programs.

The budget submitted reflects this reality and also reflects an enormous undertaking to realign resources internally and to prioritize activities based on the impact to public health first, and impact to the environment, second. The recommended reductions can't be absorbed due to the high reliance on ever-decreasing special funds, and negate the reprioritization effort that has been underway for two years to meet the targeted budget reductions and public health priorities.

Performance Analysis: Managing for Results

The Department of Legislative Services recommends that MDE comment on the measures that will need to be taken to meet the proposed 60 to 70 parts per billion eight-hour ozone standard.

Department Response: Maryland is approaching compliance with the current ozone standard of 75 parts per billion, and has supported and will work to meet the lower standard. There will be significant public health benefits from the new standard. Meeting such a new standard though will require additional monitoring, modeling and a strong national effort to finally, adequately address out-of-state transport of ozone forming pollutants. The States impacted by the new standards share these issues and it will be imperative that the EPA take new actions and provide additional resources to enable States to meet this standard.

Issues

1. Status of MDE's Special Funds

The Department of Legislative Services recommends that a \$2.7 million reduction in general funds be made and that a provision be included in the BRFA of 2010 to allow MDE to expand

the use of its balance-carrying special funds to allow it to recover indirect costs from its special funds.

Department Response: The Department, through the fiscal analysis project, has focused significant attention on special fund revenues, expenditures, and authorized uses in the past few years. In general, MDE's dependence on special funds to meet operating costs has increased. Annual revenues are not sufficient, in many cases, to meet the annual expenditures, and the department has been drawing down fund balances to maintain operations. This trend is not sustainable.

MDE, in conjunction with the Legislative Auditors, developed a special fund indirect cost calculation methodology which is applied across all eligible special funds in an equitable manner. The analyst's recommendation would either require MDE to apply a different indirect rate to the balance-carrying special funds, or would require application of a higher rate across all funds. The use of multiple indirect rates would require the balance-carrying funds to cover a disproportionate share of departmental administrative expenditures and creates potential audit findings. Applying a higher indirect rate across all funds would negatively impact environmental programs. Since annual special fund revenues are already not sufficient to meet annual programmatic expenditures, applying a higher indirect rate to cover administrative costs would further reduce funds for the environmental programs that generate the permit and license fees. As noted in the analysis, the fund balances are declining, and twelve special funds have projected balances of less than \$200,000 at the end of FY 2011. These projected balances do not account for the loss of interest income in FY 2011.

2. Climate Change Programs Underfunded?

The Department of Legislative Services recommends that MDE comment on the level of funding and staffing needed for its climate change programs and its progress toward implementing the provisions of Chapters 171 and 172 of 2009 (Greenhouse Gas Emissions Reduction Act of 2009). In addition, MDE should comment on how it is using Strategic Energy Investment Fund monies in fiscal 2010 and 2011. Committee narrative is recommended to request a report on Strategic Energy Investment Fund expenditures for the fiscal 2012 budget submission.

Department Response: MDE has been allocated \$2,192,000 in SEIF funds for FY2010. The funds are to be used for salaries and operating costs, RGGI dues which cover the operating expenses for the auction program, and for outside service contracts for engineering and economic services. For FY2011, it is assumed that MDE's SEIF allocation will be \$1.8 million and will be used for the same types of activities. MDE will continue to work to secure additional PINs for greenhouse gas program activities.

3. Report on Full and Timely Information Technology Project Disclosure

The Department of Legislative Services recommends that the fiscal 2011 funds budgeted for improving EEMS be deleted and that the agency comment on why it has not provided the annual update to the budget committees on information technology funding as directed in the 2009 Joint Chairmen's Report.

Department Response: In the June 2009 JCR report, the Department offered to provide project summary reports on major information technology development projects (MITDPs) to the Budget Committees and to DoIT. The report covering the both the web revamp project and Tools for Environmental Management and Protection Organizations (TEMPO) activities through December 2009 is in process and will be submitted within the next month. MDE believes and DoIT concurs that TEMPO is being successfully implemented and is being utilized to track new permits for 12 of

19 candidate programs. MDE tracks more than 60% of its approvals and generates more than 30% of its approvals through TEMPO. The TEMPO master contract ended in December 2009.

The web revamp project began in FY 2009 with a feasibility study. Phase I of the web revamp project is currently being executed to implement a new Commercial-off-the-shelf (COTS) Content Management System (CMS) and associated website technical infrastructure. These activities include infrastructure remodeling, hardware and network upgrades, implementation of a new CMS, migration of web content, improving the website information architecture, updates to the design of MDE's external web pages, creation of a web governance policy for web content management, and production support and enhancements to the new website.

Recommended Actions

1. Delete the appropriation for the Coastal Plain Aquifer Study and Fractured Rock Water Supply Study. The estimated cost is \$18 million over six years, and so a one-year hiatus would extend the project to seven years. In addition, it is possible that local governments could fund this study. (\$1,000,000 GF)

Department Response: The Maryland Department of the Environment does not agree with the recommended reduction. Despite the increasing pressure on the State's general fund, the Governor recognizes the critical importance of basic scientific information to ensure that Maryland continues to have a sustainable fresh water supply and has elected to maintain level funding for these important studies in FY 2011. These studies are essential to proper management of the State's current and future water supplies.

A reliable source of clean fresh water is a fundamental requirement for both good public health and economic health. Between now and 2030, Maryland's population and demand for fresh water are projected to increase by 15 to 20 percent State-wide, with higher rates in the faster growing parts of the State. These studies provide critical scientific information to ensure that our State's fresh water sources are properly managed to maintain adequate supplies to support our existing population and meet the demands of continued economic growth and development. These studies have been developed by MDE in cooperation with the Maryland Geologic Survey and the U.S. Geologic Survey as recommended by the Governor's Advisory Committee on the Management and Protection of the State's Water Resources. The Advisory Committee was established by the Governor at the request of 72 legislators following the drought of 2002, which caused many water systems in Maryland to run short of water and required the imposition of State-wide water use restrictions. It is only a matter of time before the State will face the next drought. In the mean time, demand for water is continuing to increase, particularly for public supplies, thermoelectric power generation and agricultural irrigation.

It is not feasible for local governments to pay for these studies. Aquifers cross many boundaries and allocation of expenses would be problematic. Local governments also have no source of funding for this type of scientific assessment work. This is a State responsibility.

2. Delete grant funding for the Interstate Commission on the Potomac River Basin and Susquehanna River Basin Commission. These organizations are more appropriately funded out of the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund or other Chesapeake Bay restoration related funding source due to their harmony with that purpose. (\$557,750 GF)

Department Response: The Maryland Department of the Environment does not agree with the recommended reduction. It is absolutely critical that Maryland remain an active participant in both of these Commissions in order to ensure continued strong management of these river basins that are the source of the major water supplies for the Washington and Baltimore metropolitan areas. The

Commissions were not established as part of the Bay restoration efforts; they provide critical functions that are not part of the Bay restoration effort and should not be funded as part of Maryland's Bay restoration effort.

The Potomac (ICPRB) and the Susquehanna (SRBC) River Basin Commissions were established in all of the states' and federal law in 1940 and 1968 respectively, including all watershed states and the federal government (Potomac: MD, VA, PA and DC; Susquehanna: MD, PA, and NY) . By law, the work of the Commissions is to be jointly supported by all of the States and the federal government with proportions determined based on population living in the Basin and other relevant factors. The Purpose of the Commissions is to coordinate the management of these major rivers with regard to both water supply and water quality. The Commissions are of critical importance to Maryland and the other states in particular for the coordination and regulation of water withdrawals from these major interstate rivers. Water demand is increasing in all of the states that border these rivers and withdrawals must be regulated to ensure water is equitably shared and enough water is left in the rivers to meet downstream needs. At the same time, coordinated actions by the Commissions' members to protect drinking water source quality are equally critical. In both cases, Maryland's major points of withdrawal are located at the most downstream points of the rivers (Potomac: Washington Suburban Sanitary Commission water supply intake serving Montgomery and Prince Georges counties; Susquehanna: Baltimore City withdrawal serving Baltimore City and County, and parts of Anne Arundel, Howard, and Harford counties).

Maryland benefits significantly above and beyond our relatively small contribution to support the work of the Commissions with respect to protection of our most critical water supplies, and must continue to play a strong role on both Commissions, including paying our fair share of the support for the important work of the Commissions. Although the work of the Commissions to ensure a sustained, clean fresh water flow in these rivers benefits the Bay, it is not the primary function of the Commissions. It would not be appropriate to divert Bay restoration-related funding to this activity and away from the intended activities, which themselves are underfunded.

The suggested fund source, the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund, is a dedicated fund source for addressing one of the Bay restoration's largest unfunded needs - non-point source pollution. Diversion of the limited resources from non-point source projects to other programs will further delay Bay restoration activities. MDE's FY 2011 allocation of \$2.10 million is targeted for two stormwater projects: Moore's Run in Baltimore City (\$1.87 million); and the second installment for Back River Restoration in Baltimore County (\$0.23 million).

3. Delete funding for three wetland mitigation projects. The three projects – located at the Central Maryland Correctional Facility, Paul Hanrahan Property, and Russell Train Property – would be delayed for a year, and Tidal Wetlands Compensation Fund special funds would be available to defray operating expenses. (\$600,000 SF)

Department Response: The Maryland Department of the Environment does not agree with the recommended reduction. The Nontidal Wetlands Compensation Fund is comprised of monies paid to the State by the regulated community to offset damages to nontidal wetlands to ensure the State meets the legislatively mandated goal of no net loss of wetland acreage. Over the last two centuries, the State has drained and filled 95% of its wetlands. Water quality and ecosystem health depends on the continued efforts to offset these losses. The use of the Fund is restricted and is required to be expended to mitigate these damages. This funding can not be diverted to alternative uses to offset those expenditures. Considerable staff time and effort goes into the planning and development of these important mitigation projects. Delay in implementation puts the projects at risk due to the potential for landowners to change to alternative uses for the property.

4. Reduce general funds for Total Maximum Daily Load development to reflect approximately \$1,000,000 in prior year funding encumbered for this purpose. The prior year encumbered funding could be used to replace the general fund reduction. (\$1,000,000 GF)

Department Response: The Maryland Department of the Environment does not agree with the recommended reduction. The analyst is correct in noting the existence of approximately \$1M in encumbrances for TMDL contracts at the end of FY 2009. These unexpended obligations resulted, in part, from staffing and operational issues at outside laboratories, principally those of the University of Maryland. These operational issues at the laboratories have been resolved. Samples are being gathered, analyzed, and used in the TMDL process. To date, \$499K or approximately half of the prior year encumbrances have been expended, as well as \$317K or 47% of FY 2010 appropriation. The activity levels have increased since the beginning of the current fiscal year and are on target to be significantly expended by the end of FY 2010.

Under an MOU signed with EPA, Maryland is required to address all of the impairments listed on the 1998 list. MDE will not meet this requirement without sufficient funding. In addition to what must be completed under the MOU with EPA, it is also EPA's policy that impairments are to be addressed within 13 years of listing. There are currently at least 47 listings that must be addressed by 2015, for which TMDL monitoring and modeling contracts will need to be in place by 2012. The FY 2011 funding will help meet a portion of that requirement. The FY 2011 funding is for TMDLs for bacteria, PCBs, mercury, and other impairing substances that are required in addition to the TMDLs for nitrogen, phosphorus and sediment that are being developed as part of the EPA-States cooperative Bay TMDL effort.

The MOU is critical because it forestalled litigation, which, in other parts of the country, routinely resulted in court imposed deadlines for the development of TMDLs.

5. Adopt the following narrative:

Report on Status of Voluntary Cleanup Program: The Voluntary Cleanup Program is a hybrid environmental remediation and economic development program and has smart growth components because of the focus on the remediation of blighted properties in urban areas. However, there is insufficient information available concerning the status of the program because Managing for Results measures are not included in the fiscal 2011 budget submission. In addition, applications have dropped between fiscal 2007 (72), fiscal 2008 (59), fiscal 2009 (31), and fiscal 2011 projected (30). Finally, the Voluntary Cleanup Fund balance is projected to be reduced to zero at the end of fiscal 2010, although additional revenue is anticipated in fiscal 2011. Therefore, the Maryland Department of the Environment (MDE) is requested to submit a report on the number of applications the program has received for each year since fiscal 2001; the geographic location of applications; the number of acres and properties in the program completed and a No Further Requirements Determination or a Certificate of Completion issued and where they are located; the cumulative number of properties remediated/completed since the beginning of the program; the number of jobs created each year as a result of the program; the amount of capital investment in program sites that have been cleaned up; and the increase in the tax base from job creation or capital investment resulting from cleanup of program sites. In addition, MDE is requested to comment in the report on why applications have decreased and whether the program should be improved, and how, or whether it should be ended.

Information Request	Author	Due Date
Report on status of Voluntary Cleanup Program	MDE	September 1, 2010

Department Response: The Department accepts this recommended action and will submit the requested report.

6. Adopt the following narrative:

Report on Strategic Energy Investment Fund Expenditures: The Maryland Department of the Environment (MDE) receives funding from the Strategic Energy Investment Fund that is deposited into the Maryland Clean Air Fund. The budget committees are concerned that the revenues from the Strategic Energy Investment Fund – the sale of carbon dioxide allowances – is subject to uncertainty and year-to-year variability despite the need for MDE to recoup the costs of managing Maryland’s role in the quarterly carbon dioxide allowance auctions and the expenses associated with implementing Chapters 171 and 172 of 2009. In addition, the committees are concerned that it is not clear how the revenues received from the Strategic Energy Investment Fund are being used. Therefore, the committees request a report on how MDE is using the revenues from the Strategic Energy Investment Fund to further climate change work, in general, and to meet the requirements of Chapters 171 and 172. The report is requested to cover the fiscal 2010 actual, fiscal 2011 working, and fiscal 2012 allowance funding period.

Information Request	Author	Due Date
Report on Strategic Energy Investment Fund expenditures	MDE	Fiscal 2012 budget submission and annually thereafter

Department Response: The Department accepts this recommended action and will submit the report after the fiscal 2012 allowance is submitted to the General Assembly.

7. Reduce general funds for administrative expenses in conjunction with a provision in the Budget Reconciliation and Financing Act of 2010 to allow special fund indirect cost recovery in line with the federally approved indirect cost recovery rate. (\$2,700,000 GF)

Department Response: The Maryland Department of the Environment does not agree with the recommended general fund reduction and reallocation of special funds. As discussed earlier, this recommendation would either require MDE to apply a different special fund rate to balance-carrying funds, or would require a higher rate across all funds. The use of multiple indirect rates would require the balance-carrying funds to cover a disproportionate share of departmental administrative expenditures, in direct contrast to a prior legislative audit finding requiring an equitable assessment across all eligible funds. The legislative auditors helped MDE develop the current special fund indirect cost calculation methodology.

Applying a higher indirect rate across all funds would negatively impact the environmental programs, as special fund revenues would be diverted from the programs generating the permit and license fees to cover a higher percentage of administrative costs. The first option could create audit findings; the second option will negatively impact the environmental programs the fees were intended to support. Neither option is sustainable long-term. The second option will affect the programs beginning in FY 2011. Twelve of the funds listed in the analyst’s report already show projected balances below \$200,000, not factoring in the interest transfer to the general fund as required in the BRFA.

8. Delete funding to improve the functionality of the Enterprise Environmental Management System software system. The agency was requested to provide updates on the status of

information technology projects given concerns about how information technology projects were funded in the past. The fiscal 2011 allowance funding reflects a \$120,000 increase from the fiscal 2010 working appropriation level with no such notification. (\$350,000 SF)

Department Response: The Maryland Department of the Environment does not agree with the recommended reduction. MDE offered to provide project status reports on MITDPs, and the report on the TEMPO contract, which ended in December 2009 and is an MITDP, is in process. These small contracts, while mentioned in the report, are not considered an MITDP.

The \$350,000 included in the fiscal 2011 allowance represents requests from the administrations which evolved after completion and acceptance of the system, and will further streamline the permitting process, and assist the administrations to better document inspections and develop enforcement actions.

The allowance also includes improvements in data capture for reporting to the EPA.

9. Delete operation and maintenance funding for wastewater treatment plants upgraded to enhanced nutrient removal technology. The agency is required to use up to 10% of the annual fee revenue from wastewater treatment plant users for this purpose. However, the draft January 2010 Bay Restoration Fund Advisory Committee report notes that one option to reduce the funding gap for upgrading the State's 67 major wastewater treatment plants to enhanced nutrient removal technology would be to discontinue the annual operation and maintenance grants. This action executes that option for fiscal 2011 and reduces operation and maintenance funding for approximately 14 wastewater treatment plants. (\$1,000,000 SF)

Department Response: The Department accepts this recommended action.