



**The Maryland Department of the Environment
Secretary Serena McIlwain**

House Bill 245

Department of the Environment - Fees, Penalties, Funding, and Regulation

Position: Support with Amendments

Committee: Environment and Transportation

Date: January 31, 2024

From: Leslie Knapp, Jr.

The Maryland Department of the Environment (MDE) **SUPPORTS** HB 245 **WITH AMENDMENTS**. The bill addresses numerous programmatic and fiscal challenges MDE faces by making necessary fee and policy adjustments.

Bill Summary

The bill proposes changes to MDE's fee structures in various land, air, and water programs. See the attached bill summary for a full description of the bill's changes and why the changes are necessary.

Guiding Principles

In approaching the issue of fees, MDE followed four guiding principles:

1. *Environmental/Programmatic Sustainability:* MDE considered which programs are challenged with meeting environmental protection requirements or timely public service.
2. *Budgetary/Fiscal Sustainability:* MDE considered which programs are running deficits, particularly those that must be made up by general funds.
3. *Responsible Party Pays:* A person who is receiving a service from MDE or who has created a problem that MDE must address should be the person who pays.
4. *Economic Growth/Leave No One Behind:* MDE also considered the economic impact on the individuals and businesses that would be affected by the fees, as well as the impact on underserved and overburdened communities.

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Stakeholder Outreach

MDE staff has met with various stakeholders, including businesses, local governments, and the environmental community, to discuss the proposed fee changes. In response to these discussions, MDE is offering a set of amendments that addresses some of the concerns raised.

Policy Impact

House Bill 245 will affect programs in all three of MDE's policy administrations, including Air and Radiation, Land and Materials, and Water and Science. The bill addresses staffing and resource shortfalls, permitting capacity, training, ongoing public health and safety concerns, and compliance with federal law.

Fiscal Impact

As introduced, HB 245 will have a total fiscal impact of \$12.1 million. This includes \$7.9 million in new annual revenue and the prevention of \$4.2 million in annual budget shortfalls. There will be a total of \$3,455,000 in general fund reductions if the bill passes.

Conclusion

MDE believes that the fee and policy adjustments proposed in HB 245 are vital to improving environmental protection and ensuring the safety of Maryland's residents. The bill will also improve MDE's capacity to provide better customer service and communication in a number of areas. The fees were carefully considered under the four guiding principles and affected stakeholders were consulted. Accordingly, MDE urges a **FAVORABLE WITH AMENDMENTS** report for HB 245.

HB 245: Department of the Environment - Fees, Penalties, Funding, and Regulation: An Overview

Guiding Principles

- *Environmental/Programmatic Sustainability*
- *Budgetary/Fiscal Sustainability*
- *Responsible Party Pays*
- *Economic Growth/Leave No One Behind*

Total Annual Fiscal Impact: \$12.1 million

- Total Annual New Revenue: \$7.9 million
- Annual Shortfall Prevented: \$4.2 million

Water and Science Administration (WSA) Components

- **Well and Septic Permit Application Fee**
 - *Summary:* Enables Maryland Department of the Environment (MDE) to charge an application fee for well or onsite sewage disposal system (septic system) permit applications when MDE is directly running the program for a local jurisdiction.
 - *Rationale:* MDE delegates well and septic permitting authority to local health departments or, in some cases, county governments, who typically charge a fee to process a well or septic permit. This would give MDE the same ability to charge a similar fee when MDE has taken back the delegated authority or the delegated authority has been returned. Currently, MDE has no legal ability to collect such a fee, limiting its ability to run a program. The fee would be set in regulation and approximate the costs of running the program.
 - *Fiscal Impact:* None at this time - this is solely enabling.
- **Responsible Personnel Training Program Certification**
 - *Summary:* Authorizes MDE to establish a fee for the initial processing and renewal of responsible personnel certifications. The fee would be established by regulation, set at a rate that approximates the cost of administering and issuing the certification, and would be deposited in the Clean Water Fund.

- *Rationale:* A construction project that disturbs more than 5,000 square feet or 100 cubic yards of earth is required to have a certified responsible person involved to manage erosion, sediment, and runoff from the project. MDE's training program was originally established using federal funds and has been offered free of charge. Most adjoining states, such as Delaware, charge a fee for this training.
 - *Fiscal Impact:* MDE intends the certification fee to be set at \$75 and for it to last for 3 years. This will result in about \$375,000 of projected annual revenues. This funding would go back to the Program implementing the training.
- **Wetlands and Waterways Application Fees**
 - *Summary:* Adjusts wetlands and waterways applications fees based on the Annual Consumer Price Index (CPI). Authorizes MDE to adjust the fees in the future based on CPI. MDE must issue a public notice of the adjusted fees 90 days prior to new fee rates taking effect.
 - *Rationale:* Wetlands and waterways application fees were established in statute in 2008 and last adjusted for CPI in 2012. In 2008, MDE processed around 1,800 permits annually. Currently, MDE annually processes around 2,600 permits.
 - *Fiscal Impact:* The CPI adjustment increase would represent an approximate 30% increase since the last CPI adjustment, raising an additional \$452,500 annually. The fee increase proposed was calculated in accordance with the regulations. With the fee adjustments, the total revenue for the program is anticipated to be \$1,961,000 for FY 2025.
 - **Private Dam Repair Fund and Loan Program**
 - *Summary:* Requires MDE to charge a fee for the issuance of a Dam Safety Permit (an existing permit required for the construction, repair, removal, or modification of a dam). The fee shall be set in regulation and based on project cost and the cost of MDE administering the permit. Requires all non-federal dam owners to register their dam annually with MDE and pay a registration fee established by MDE in regulation. The fee will be based on the dam's hazard hazard classification. Requires MDE to place dam safety permit fees, dam registration fees, and penalties collected from dam violations into a new Private Dam Repair Fund. The Fund shall offer loans to private dam owners to repair dams in unsafe condition. Loans shall be made at or below market interest rates and MDE may partially forgive loans based on a dam owner's lack of financial resources. Repaid loans go back into the Fund. A portion of the collected fees and fines will also be used for dam inspections. Increases the maximum civil penalty for water appropriation, dam, or reservoir violations from \$5,000 to \$10,000. Clarifies and simplifies definitions relating to dams.

- *Rationale:* Out of approximately 557 active dams in the State's dam inventory, 162 dams are considered in need of repair or unsafe. Seventy six of those 162 dams are privately owned by individuals, businesses, or homeowner associations. The repair costs for just the eight privately owned high hazard dams out of the 76 are estimated at \$54 million. Many private owners lack the necessary financial resources to make needed repairs, placing the burden on counties or the State. There is very little assistance at either the State or federal level to assist. Twenty three out of 50 states have established similar emergency dam repair funds.
- *Fiscal Impact:* The dam safety permit fee and dam registration fees would yield approximately \$618,000 in annual revenue. MDE is unable to estimate the amount of annual penalties that would be collected for dam violations. This revenue would go towards program operations or loans.

Air and Radiation Administration (ARA) Components

- **Air Emission Permit Fees**

- *Summary:* Increases the Operating Permit Program fee for regulated air pollutant emissions from \$70 per ton to \$200 per ton (these amounts may be adjusted based on CPI per existing law). Removes an existing \$2 million dollar cap on the amount of money that may be held by the Clean Air Fund. Clarifies that the Maryland Clean Air Fund may be used for reducing air pollution in the State.
- *Rationale:* Maryland's ability to issue air emission permits is delegated to us from the Environmental Protection Agency (EPA). The federal Clean Air Act requires delegated states to maintain fees adequate to cover the costs of the permit program. MDE's current fees are no longer sufficient to cover the program costs due to declining emission sources and more complex permits, with revenue projections for FY 2024 coming in \$2.2 million below recent years and even more below years farther in the past. If MDE does not take action, EPA could withdraw the delegation, meaning the program would be run federally.
- *Fiscal Impact:* This proposal is projected to bring in \$2.25 million dollars annually, which would bring revenues closer to past revenue levels. This is based on a \$130 increase from the current CPI-adjusted level of \$69.79 applied to 17,300 tons of billable emissions.

Land and Materials Administration (LMA) Components

- **Oil Transfer License Fee**

- *Summary:* Clarifies that the oil transfer license fee is paid by the licensee that owns the oil upon the first transfer into the State. Extends the current 8.0 cents per barrel fee, which is set to decrease to 5.0 cents per barrel on July 1, 2024, through July 1, 2027.
- *Rationale:* The oil transfer license fee is paid into the Oil Disaster Containment, Clean-Up and Contingency Fund, which is used by the Department to respond to oil and petroleum product spills and administer oil pollution control permitting and oversight. Without the extension, there will be a significant revenue shortfall. The legal clarification on when the fee is paid is needed to resolve some confusion over the issue.
- *Fiscal Impact:* If the oil transfer license fee is not adjusted, there will be an estimated \$3.2 million dollar shortfall in FY 2025 and future years. MDE would have to find another source of revenue or greatly reduce staff in the Oil Pollution Program.

- **Voluntary Cleanup Program**

- *Summary:* Increases the Voluntary Cleanup Program (VCP) application fee from \$6,000 to \$10,000 and allows for cost recovery for program costs exceeding \$10,000.
- *Rationale:* The VCP has become a very popular program for brownfield cleanup and redevelopment given the property owner liability protection and local tax incentives it offers. The fee has not been adjusted since it was established in 1997 and no longer covers the cost of administering the program. Applications have increased significantly from an average of 44 from 2004 through 2020 to 62 applications in FY 2023, 71 in FY 2022, and 57 in FY 2021. VCP applications are hundreds of thousands of pages long and very difficult to process.
- *Fiscal Impact:* Between FY 2018 and FY 2021, the VCP was underfunded between roughly \$50,000 and \$100,000. In FY 2023, the program was underfunded by \$280,000. The proposed changes, combined with federal EPA State Response grant funding, would cover the costs of the program.

- **Non-Coal Surface Mining Licenses and Permits**

- *Summary:* Increases the original license, license renewal, and surface mine permit fees for non-coal surface mines. Original licenses increase from \$300 to \$500, license renewals increase from \$150 to \$300, and surface mine permits increase from \$12 per acre to \$50 per acre. Additionally, the permit cap of \$1,000 would be repealed.
- *Rationale:* Fees for non-coal surface mine permits and licenses have not been increased since 1992. Since 2009 the Mineral Oil and Gas Division has been required to perform inspections and compliance for all media associated with non-coal surface mines and the current fee structure covers less than a quarter of the Division's costs. There are no federal funds available for this program and adjacent states, including West Virginia, charge higher fees for similar services.
- *Fiscal Impact:* This fee increase will bring in an estimated \$1.12 million in additional annual revenue, covering the cost of the program and allowing for much needed equipment upgrades.

- **Coal Combustion By-Products Management Fund Fee Structure**

- *Summary:* Alters how the coal combustion by-product (CCB) fee is collected. Rather than collecting the fee from current active generators of CCBs, the fee would be collected from generators whose operations or activities created CCBs after October 1, 2009. Specifies an additional factor MDE must consider when setting the CCB fee - the manpower and resources required to inspect, monitor, and evaluate the disposal, recycling, and re-use operations, activities, processes, or actions related to operational and inactive facilities when CCBs are or have been managed.
- *Rationale:* CCBs can cause significant surface and groundwater pollution if not properly managed. The CCB fee goes into the State Coal Combustion By-Products Management Fund, which is used to oversee the disposal, recycling, use, transport, and storage of CCBs. Currently, the fee is collected from active generators of CCBs. This has placed an unfair burden on those generators, who are paying not only for what they produce but also for the CCBs from former generators. As coal-fired power plants continue to shut down, the costs still remain, which has led to the fee increasing from \$3.20/ton in 2016 to \$32.08/ton in 2022. With the last coal-fired power plant being slated to close later this year, there will be no generators that meet the threshold to pay the fee, reducing the program's funding to \$0. Shifting the fee to to charge all former generators for their share in what the State is still managing will allow the program to sustainably continue and incentivize the remediation of coal-ash landfills.

- *Fiscal Impact:* A total of \$1,009,503.15 was expended from the Fund in FY 2022 and that level of effort will continue for the foreseeable future. Without a new dedicated funding source, MDE will get \$0 revenue and that amount must be made up from General Funds.

- **Rental Property Lead Registration Fee**

- *Summary:* Increases the annual lead registration fee for rental properties from \$30 per unit to \$60 per unit. Provides that the payment of the fee is made every other year instead of annually (\$120 per unit payable every two years).
- *Rationale:* The registration renewal fee is the primary funding mechanism for MDE's Lead Poisoning Prevention Program (LPPP). The fee has not been adjusted in 10 years. During that same time, EPA has significantly lowered the elevated blood level for lead threshold resulting in increased caseloads and investigations. LPPP had a \$4.0 million shortfall in FY 2023. Caseloads at least doubled in 2020 and are set to increase again by 3 to 4 times for 2024.
- *Fiscal Impact:* Changing the fee will yield \$2.8 million in additional annual revenue. Making the fee payable every two years will create administrative efficiencies for both MDE and registrants.

By: Department of the Environment

To be offered in the Environment and Transportation Committee

AMENDMENTS to House Bill 245

(First Reading File Bill)

AMENDMENT NO. 1

(Well and Septic Permitting)

On page 5, in line 31, after “PERMITS” insert “IN A COUNTY”.

On page 6, strike beginning with “A” in line 1 down through “SECRETARY” in line 4 and substitute:

“1. THE DEPARTMENT WITHDRAWS THE AUTHORITY DELEGATED UNDER THIS SECTION TO PROCESS AND ISSUE ON-SITE SEWAGE DISPOSAL PERMITS OR INDIVIDUAL WELL CONSTRUCTION PERMITS FROM A HEALTH OFFICER FOR THE COUNTY OR ANOTHER COUNTY OFFICIAL AUTHORIZED TO ADMINISTER AND ENFORCE ENVIRONMENTAL LAWS; OR

2. THE HEALTH OFFICER OR COUNTY OFFICIAL RETURNS THE DELEGATED AUTHORITY TO THE DEPARTMENT”;

in line 6, after “PERMITS” insert “IN THE COUNTY”; in line 7, after “(2)” insert “(I)”; in the same line, strike “SHALL BE”; in line 8, strike “(I) ESTABLISHED” and substitute “1. SHALL BE ESTABLISHED”; and strike beginning with “(II)” in line 9 down through

“PROCESS” in line 10 and substitute “2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, MAY NOT EXCEED \$575.

(II) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, THE DEPARTMENT MAY ANNUALLY INCREASE THE FEES UNDER PARAGRAPH IN ACCORDANCE WITH THE PERCENTAGE INCREASE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE WASHINGTON METROPOLITAN AREA DURING THE PREVIOUS YEAR.

2. THE DEPARTMENT MAY NOT ANNUALLY INCREASE THE FEES UNDER THIS SUBSECTION BY MORE THAN 3%.

Rationale for Amendment: The amendment 1) clarifies the circumstances under which the Department can charge a fee for processing and issuing on-site sewage disposal permits and individual well construction permits; and 2) sets the parameters for the fee amounts.

AMENDMENT NO. 2

(Oil Transfer)

On page 10, strike beginning with the colon in line 24 down through “Credited” in line 25 and substitute “credited”; in lines 27 and 29, strike “1.” and “2”, respectively and substitute “**(I)**” and “**(II)**”, respectively; in line 27, strike “Before” and substitute “**ON OR AFTER**”; in the same line, strike “7.75” and substitute “**9**”; in line 29, strike “2024” and substitute “**2029**”; in the same line strike the brackets; and in the same line, strike “AN 8”.

On pages 10 and 11, strike beginning with the semicolon in line 30 on page 10 down through “title” in line 3 on page 11, inclusive.

Rationale for Amendment: The amendment changes the oil transfer fee to 9 cents beginning on or after July 1, 2024, and reverts the fee to 5 cents on or after July 1, 2029.

AMENDMENT NO. 3

(Wetlands)

On page 13, after line 9, insert:

“(12) “TIER II HIGH QUALITY WATERSHED” MEANS THE LAND AND WATER AREA WHICH DRAINS TOWARD OR INTO A TIER II HIGH QUALITY WATER AS DESIGNATED AND IDENTIFIED IN A GEOGRAPHIC INFORMATION SYSTEM BY THE DEPARTMENT.”;

in line 10, strike “and”; and in the same line, after “(6)”, insert “**, AND (7)**”.

On page 14, in line 23, strike “paragraph” and substitute “**SUBPARAGRAPHS**”; in line 24, strike “and” and substitute “**, (1)**”; in the same line, after “(ii)(1)”, insert “**, and (7)(i)**”; and in line 29, strike “paragraph” and substitute “**PARAGRAPHS**”; and in the same line, after “(5)”, insert “**and (7)**”.

On Page 16, after line 14, insert:

“EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (5) OF THIS SUBSECTION, ALL APPLICATIONS FOR WETLANDS AND WATERWAYS AUTHORIZATIONS ISSUED BY THE DEPARTMENT FOR ACTIVITIES PROPOSED IN A TIER II HIGH QUALITY WATERSHED SHALL BE ACCOMPANIED BY AN ADDITIONAL APPLICATION FEE, AS FOLLOWS:

(I) FOR AN APPLICATION FOR A MINOR PROJECT OR MINOR MODIFICATION.....\$400; AND

(II) FOR AN APPLICATION FOR A MAJOR PROJECT OR MAJOR MODIFICATION.....\$1,600.

(8)”;

in line 21, strike “and”; in the same line, after “(6)”, insert “, **and (7)**”; and in line 23, strike “**(8)**” and substitute “**(9)**”.

On page 17, in line 14, after “resources”, insert “**INCLUDING TIER II HIGH QUALITY WATERS AND TIER II HIGH QUALITY WATERSHEDS**”.

Rationale for Amendment: This amendment establishes an additional application fee for projects proposed in a Tier II High Quality Watershed. The level of review required by these projects is greater than a standard wetlands application review in order to ensure the protection of the State’s high quality waters and to review any social and economic justifications for impacts that cannot be avoided. The proposed surcharge is calculated based on the annual average number of wetlands applications that occurred in a Tier II watershed and was weighted based on the staff time spent on major and minor projects and modifications.