

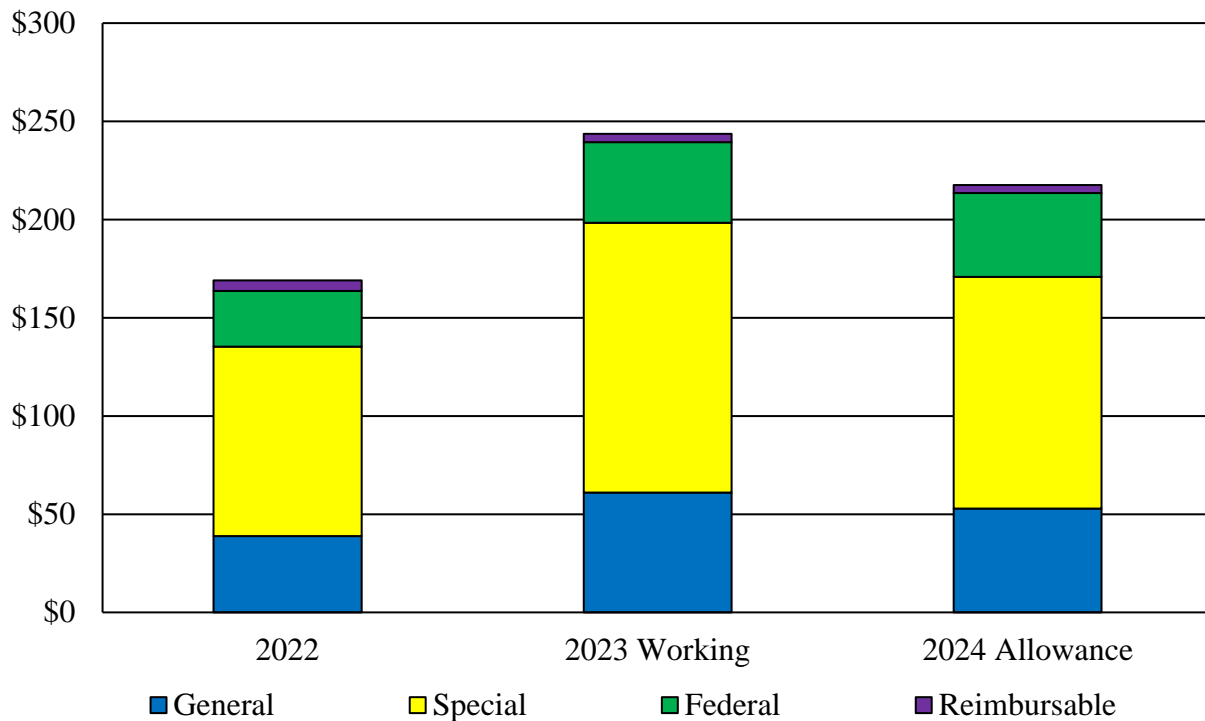
U00A
Department of the Environment

Executive Summary

The Maryland Department of the Environment (MDE) was created to protect and restore the quality of the State’s land, air, and water resources and safeguard citizens from health risks associated with pollution. It is responsible for planning, monitoring, controlling, and regulating air, solid, and hazardous wastes; radiation, sewage sludge, sediment, and stormwater; toxicities, sewage treatment, and water supply facilities; and environmental disease control programs.

Operating Budget Summary

**Fiscal 2024 Budget Decreases \$26.0 Million, or 10.7%, to \$217.6 Million
(\$ in Millions)**



Note: Numbers may not sum due to rounding. The fiscal 2023 working appropriation includes deficiency appropriations including this agency’s share of a deficiency appropriation budgeted in the Statewide Account within the Department of Budget and Management (DBM). Fiscal 2024 salary enhancements are budgeted in the Statewide Account within DBM.

- Significant funding decreases in fiscal 2024 reflect the \$15.0 million reduction due to the one-time nature of the 5 Million Tree program funding from the Bay Restoration Fund (BRF); the \$7.0 million one-time deficiency for Oil Contaminated Site Environmental Cleanup Fund reimbursements; \$5.0 million for BRF revenue bond debt service; and the one-time deficiency of \$4.5 million for salaries in the Water and Science Administration, the Land and Materials Administration, and the Air and Radiation Administration due to special fund revenue shortfalls.

Key Observations

- ***Managing for Results (MFR):*** The MDE MFR measures show that (1) the ozone eight-hour standard is the only national ambient air quality standard (NAAQS) not met by Maryland; (2) no water bodies have been fully cleaned up; (3) child blood lead levels continue to decline, but no data is available on child blood lead testing; and (4) the public information act (PIA) responses increased between fiscal 2021 and 2022, while permit processing decreased.
- ***Water Supply Program Understaffing:*** MDE is addressing the Water Supply Program staffing shortages noted in a December 1, 2021 press release issued by Maryland’s Attorney General. The press release announced that understaffing at MDE’s Water Supply Program has put Maryland’s drinking water at risk and called for the Lawrence J. Hogan, Jr. Administration to release a resource investment plan that was due to the U.S. Environmental Protection Agency (EPA) for review and approval by October 2021. This announcement followed from reports by the strategic and technical consultancy group Cadmus in May 2021 and EPA in July 2021. There are three main reasons why MDE is no longer able to do more than meet the minimum requirements for delegation of authority by EPA to implement the Safe Drinking Water Act of 1974 provisions and why MDE is in danger of losing this authority: increased workload; decreases in personnel; and general program underfunding. MDE submitted the resource investment plan to EPA on May 23, 2022, with the goal of increasing staff to 102 by the middle of calendar 2024, which should require about \$13.5 million. However, the fiscal 2024 budget does not appear to support the goal given that only a combined 86 regular positions and contractual full-time equivalents (FTE) and \$10.5 million in funding are included.
- ***Compliance and Enforcement Position Quarterly Reports:*** Budget bill language in the fiscal 2023 operating budget restricted funding pending the submission of quarterly reports from MDE and the Maryland Department of Agriculture (MDA) on compliance and enforcement inspections and positions. The submitted reports note an increase in the inspections, audits, and spot checks, the use of the new OpenMDE source of online compliance and enforcement data, an enhanced compliance oversight initiative in the Curtis Bay area, the need to increase inspection frequency by Chapter 22 of 2022, the use of next generation compliance tools such as smartphone technology for remote inspections, positive feedback from EPA on federal performance evaluations, and increases in the

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numbers of inspectors in two of MDE’s three administrations between fiscal 2011 and 2022.

- ***Prior Year Actual Personnel Expenditures Not Budgeted as Requested Again:*** For the second year in a row, MDE’s most recent actual fiscal year budget data incorrectly reflects the allocation of funding for personnel expenditures. The 2021 *Joint Chairmen’s Report* (JCR) included committee narrative requesting that the fiscal 2021 budget data be correctly reflected with the fiscal 2023 budget submission. Then, fiscal 2023 budget bill language restricted funding pending the submission of a confirmatory letter with the fiscal 2024 budget submission indicating that prior year actual personnel expenditures up to and including fiscal 2022 are budgeted in the correct statewide subobjects. The fiscal 2024 budget submission again does not properly budget the personnel expenditures.
- ***Special Fund Shortfalls Persist:*** Fiscal 2023 general fund deficiency appropriations of \$1.5 million are budgeted in each of the Water and Science Administration, the Land and Materials Administration, and the Air and Radiation Administration to counter declining special fund revenue. This is the fourth fiscal year in which funding has been provided for declining special fund revenue in at least one of MDE’s administrations. It is not clear that these additional general funds are the appropriate support for the three administrations. Instead of addressing revenue shortfalls by revising outdated fee structures supporting the relevant special funds, the fiscal 2024 budget again has provided general funds – in contradiction to the polluter pays principle.
- ***Maryland Used Tire Cleanup and Recycling Fund Annual Report Submitted:*** The fiscal 2023 Budget Bill restricted \$200,000 in general fund appropriation for MDE pending the submission of the annual Maryland Scrap Tire report. Section 9-275(c) of the Environment Article specifies that an annual status report is due on or before November 1 of each year. This required annual report has not been consistently submitted by MDE prior to the introduction of annual budget bill language. The fiscal 2022 annual report was submitted on November 1, 2022. The report notes that in fiscal 2022 there was one newly identified illegal scrap stockpile and that the successful cleanup of 37 illegal scrap tire stockpiles, consisting of approximately 3,036 scrap tires, was conducted by the responsible parties without using the Maryland Used Tire Cleanup and Recycling Fund. For fiscal 2023, MDE anticipates continuing the cleanup on 37 illegal scrap tire stockpile sites mostly funded by responsible parties.

Operating Budget Recommended Actions

1. Add language restricting funding pending the submission of the annual Scrap Tire report.
2. Add language restricting funding pending the submission of a confirmatory letter about the correct budgeting of fiscal 2023 actual and fiscal 2024 working appropriation personnel expenditures.

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3. Add language restricting funding pending the submission of a report on revised fee structures for the Maryland Clean Water Fund, Lead Poisoning Prevention Fund, and Maryland Clean Air Fund.
4. Add a section restricting funding pending the submission of quarterly enforcement and inspection position reports.

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Operating Budget Analysis

Program Description

MDE was created to protect and restore the quality of the State's land, air, and water resources and safeguard citizens from health risks associated with pollution. It is responsible for planning, monitoring, controlling, and regulating air, solid, and hazardous wastes; radiation, sewage sludge, sediment, and stormwater; toxicities, sewage treatment, and water supply facilities; and environmental disease control programs. The department is structured into six major administrative units.

- ***Office of the Secretary:*** This office provides direction and establishes State environmental policies to be implemented by the operating units.
- ***Operational Services Administration:*** This administration provides general administrative and fiscal services to the department.
- ***Water and Science Administration:*** This administration administers the State's water pollution control and drinking water protection activities, implements Total Maximum Daily Loads (TMDL) for pollutants in impaired waterways, regulates industrial/municipal wastewater and stormwater discharge, develops and promulgates water quality standards, provides technical support and analysis for TMDLs, monitors shellfish, develops environmental and public health risk assessments, implements nonpoint source pollution programs, and develops and issues fish advisories.
- ***Land and Materials Administration:*** This administration ensures that all types of hazardous and nonhazardous solid wastes are managed in a manner that protects public health and the environment. It regulates solid waste management facilities, scrap tire recycling facilities, above- and below-ground petroleum storage facilities, petroleum distribution, hazardous waste transportation, mining, and both concentrated animal feeding operations and Maryland animal feeding operations. In addition, this administration coordinates lead poisoning prevention efforts.
- ***Air and Radiation Administration:*** This administration ensures that air quality and radiation levels in Maryland sustain public health, safety, and the environment. It operates an air-monitoring network, licenses asbestos removal contractors, provides oversight of the Vehicle Emissions Inspection Program, and monitors radiation use. Climate change initiatives are a relatively new component of its operations.
- ***Coordinating Offices:*** This office manages budget matters, the Water Quality and Drinking Water Revolving Loan funds and other water pollution control program capital projects, and Board of Public Works (BPW) activities; coordinates public information and

outreach; provides hazardous chemical and oil spill emergency response services; provides legal advice; and provides information technology services.

MDE’s mission is to protect and restore the environment for the health and wellbeing of all Marylanders. MDE’s vision is for healthy, vibrant, and sustainable communities and ecosystems in Maryland. MDE has five goals that are consistent with efforts to protect and preserve Maryland’s natural resources. The goals are as follows.

- **Goal 1:** Provide excellent customer service and community outreach.
- **Goal 2:** Manage air quality and emissions for maximum protection of human health and the environment.
- **Goal 3:** Reduce Maryland citizens’ exposure to hazards.
- **Goal 4:** Protect water resources and ensure safe and sustainable supplies of drinking water.
- **Goal 5:** Reduce waste and promote sustainable materials management.

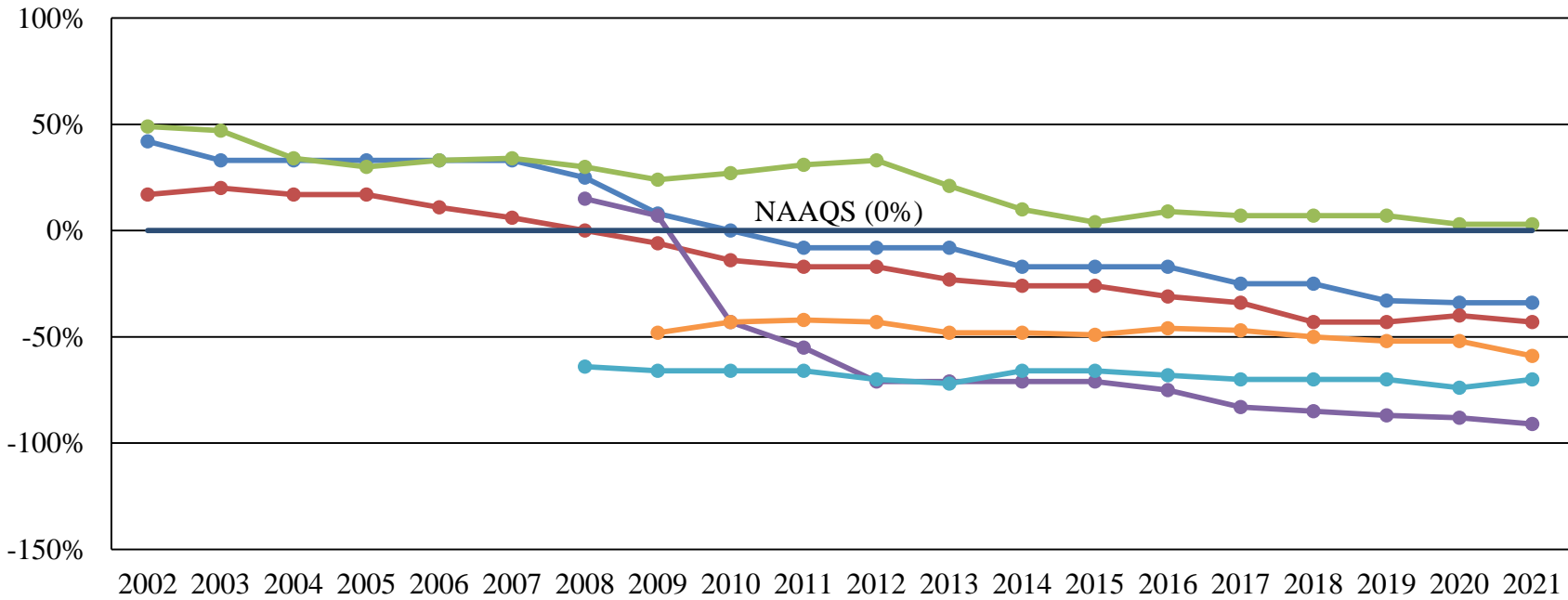
Performance Analysis: Managing for Results

The MDE MFR measures show that (1) the ozone eight-hour standard is the only NAAQS not met by Maryland; (2) no water bodies have been fully cleaned up; (3) child blood lead levels continue to decline, but no data is available on child blood lead testing; and (4) the PIA responses increased between fiscal 2021 and 2022, while permit processing decreased.

1. Ozone Eight-hour Standard Is the Only National Ambient Air Quality Standard Not Met by Maryland

MDE’s second goal is to manage air quality and emissions for maximum protection of human health and the environment. MDE’s 2022 Clean Air Progress Report reflects the progress that Maryland has made in managing six air pollutant and time period combinations relative to NAAQS for each pollutant. As seen in **Exhibit 1**, the lines reflect how far above (not meeting the relevant NAAQS) and below (meeting the relevant NAAQS) each of the six pollutants is in percentages. Maryland has met all but the NAAQS for Ozone Eight-hour Standard for which there does not appear to have been any progress made since calendar 2015. Substantial improvements are reflected over the period shown for Ozone Eight-hour, Daily Particulate Matter 2.5 Microns, Annual Particulate Matter 2.5 Microns, and Sulfur Dioxide One-hour standards. While meeting their respective NAAQS, there has been less progress on Nitrogen Dioxide One-hour and Nitrogen Dioxide Annual. Maryland continues to press for air quality improvements both within the State and in the larger airshed – a part of the atmosphere that behaves in a coherent way with respect to the dispersion of emissions – of which Maryland is a part and that impacts Maryland’s air quality.

Exhibit 1
Maryland Air Pollutant Trends Relative to Air Quality Standards
Calendar 2002-2021



- Annual Particulate Matter 2.5 Microns
- Particulate Matter 2.5 Microns Daily
- Ozone Eight-hour
- Sulphur Dioxide One-hour
- Nitrogen Dioxide Annual
- Nitrogen Dioxide One-hour
- NAAQS (0%)

NAAQS: National Ambient Air Quality Standards

Source: Maryland Department of the Environment

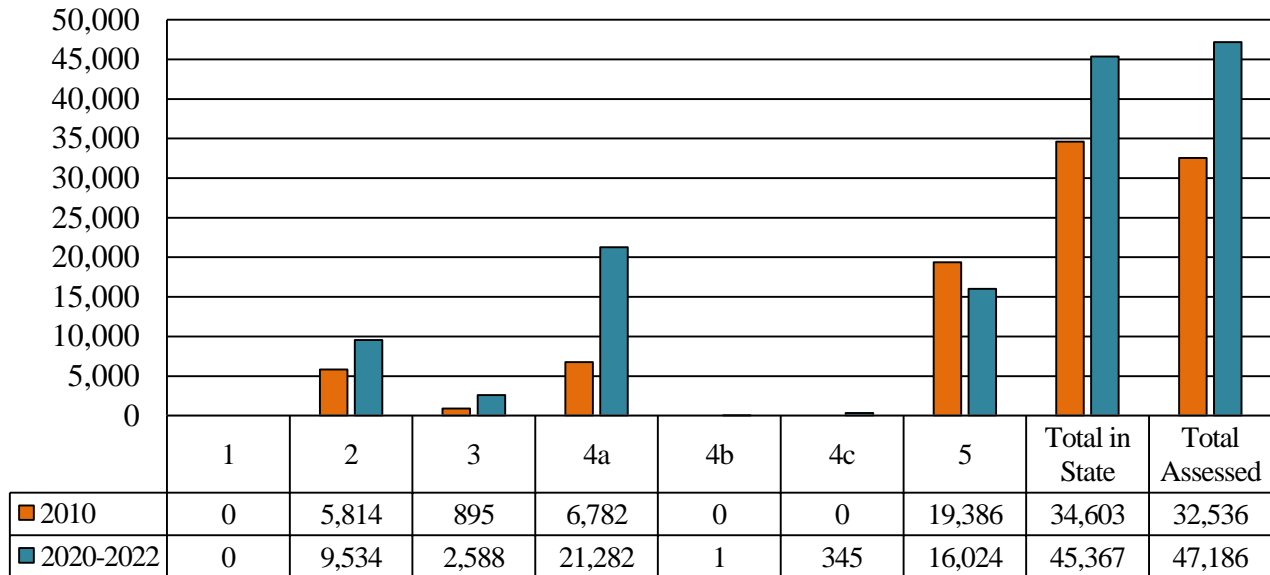
2. No Water Bodies Have Been Fully Cleaned Up

MDE's fourth goal is to protect water resources and ensure safe and adequate supplies of drinking water. Under this goal is the objective to complete all federally required TMDL analyses to address Clean Water Act Section 303d impaired waters listings. Data on TMDL development status may be found in *Maryland's Final Combined 2020-2022 Integrated Report of Surface Water Quality* – a combination of two cycles of water quality data and assessments into one document due to delays in the completion of the 2020 Integrated Report. The major classifications of impaired water bodies are as follows:

- **Category 1:** a water body is meeting all standards;
- **Category 2:** a water body is meeting some but not all standards;
- **Category 3:** there is insufficient data to determine whether standards are being met;
- **Category 4a:** water quality standards are not being met, but a TMDL is not needed (because it has already been completed); and
- **Category 5:** a water body is impaired and a TMDL is needed.

The final 2020 to 2022 report notes that Maryland continues to complete TMDL analyses for water bodies that need them: 568 TMDLs have been established out of a total of 972 water body-pollutant impairments. However, MDE has not fully delisted any water bodies between fiscal 2010 and 2020 to 2022 as shown by the zero acres for Category 1 in **Exhibit 2**. So, while MDE continues to move water bodies out of Category 5 (a water body that is impaired and a TMDL is needed), these water bodies are moving to other categories of impairment.

Exhibit 2
Integrated Surface Water Report Changes
Fiscal 2010-2022
(in Acres)



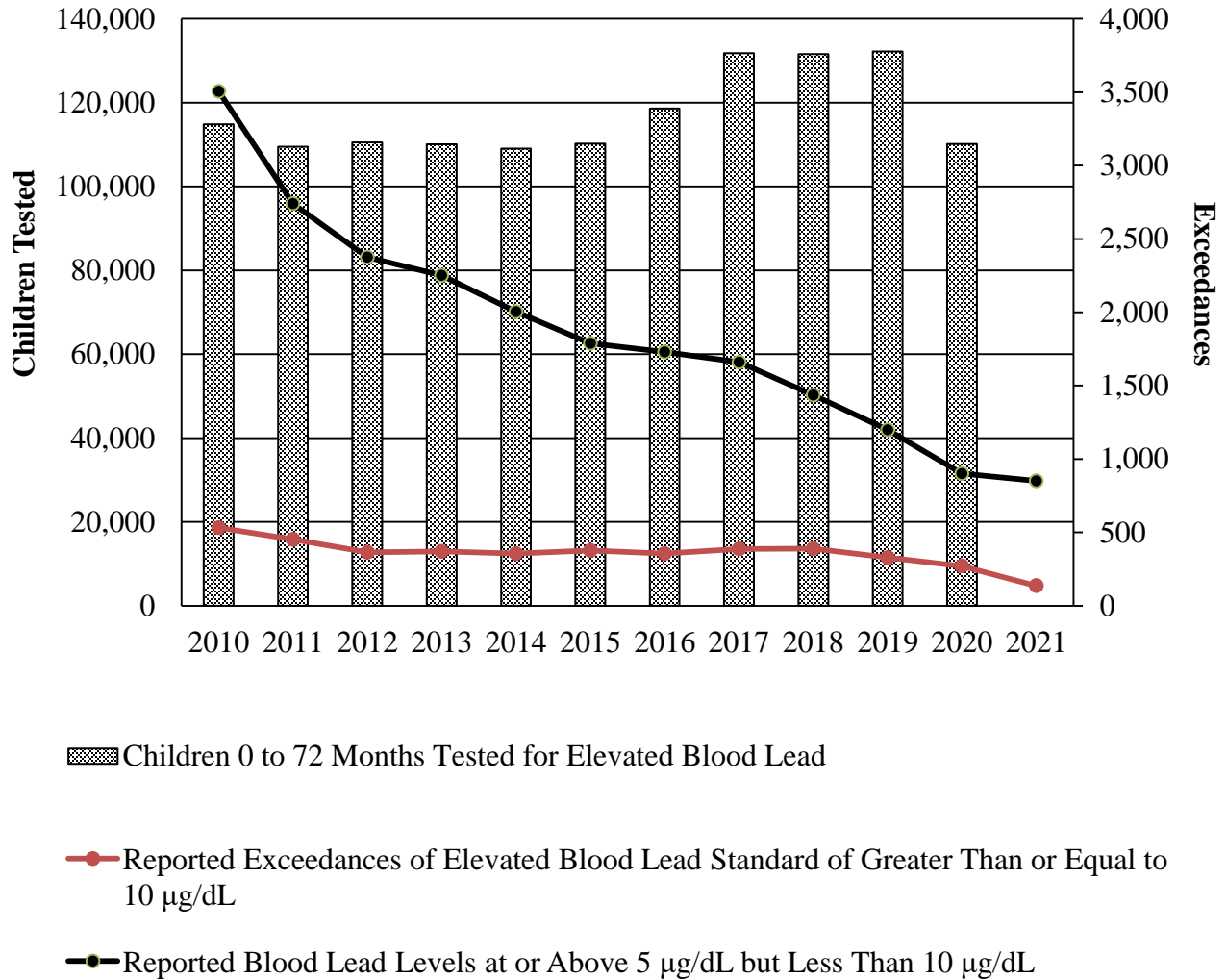
Source: Maryland Department of the Environment

3. Child Blood Lead Levels Continue to Decline but No Data on Child Blood Lead Testing in Calendar 2021

MDE’s third goal is to reduce Maryland citizens’ exposure to hazards. Under this goal is the objective to reduce the number of blood lead levels over 10 micrograms per deciliter found and the number of blood lead levels between 5 and 10 micrograms per deciliter by 10% annually. **Exhibit 3** shows that the number of children between the age of 0 and 72 months tested for elevated blood lead generally has risen over the time period shown, but there was a substantial decrease from 132,224 tested in calendar 2019 to 110,158 tested in calendar 2020. MDE’s *Childhood Blood Lead Surveillance In Maryland 2020* annual report notes that it is likely that this is at least partially a result of the impact of COVID-19, which reduced the use of routine health services. The 2021 annual report does not appear to have been released; therefore, data on the number of children between the age of 0 and 72 months tested for elevated blood lead in that year is not shown. The reported exceedances of the elevated blood lead standard of between 5 and 10 micrograms per deciliter – the most stringent standard for child blood lead levels – continues to fall. The calendar 2022 numbers will be released with the annual report in October 2023. Of note, the Hogan

Administration announced on October 24, 2022, that the blood lead level trigger notification has been reduced from 5 to 3.5 micrograms/deciliter in line with Centers for Disease Control guidance.

**Exhibit 3
Child Blood Lead Status
Calendar 2010-2021**



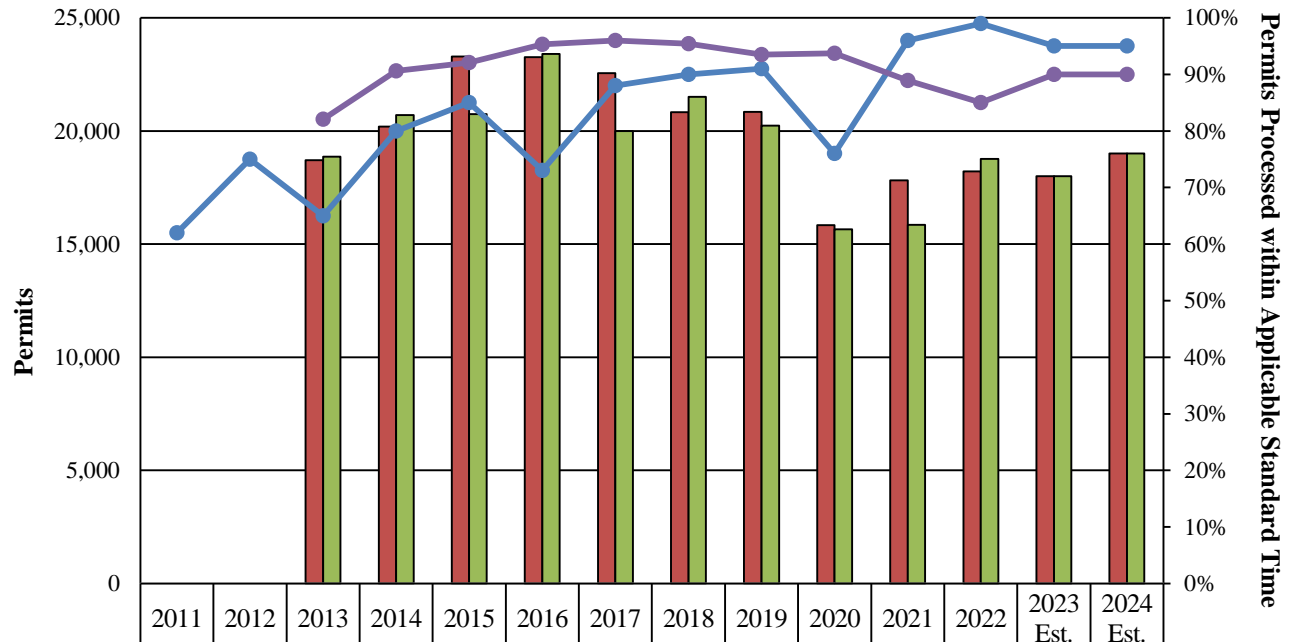
µg/dL: micrograms of lead per deciliter of blood

Source: Governor’s Fiscal 2024 Budget Books; Maryland Department of the Environment

4. PIA Responses Increased in Fiscal 2022, While Permit Processing Decreased for the Second Year

MDE’s first goal is to provide excellent customer service and community outreach. Under this goal are two objectives: respond to 80% of PIA requests within 30 days of receipt; and meet permit turnaround times for 90% of the permits processed. As shown in **Exhibit 4**, the percentage of PIA responses issued within 30 days increased from 76% in fiscal 2020 to 96% in fiscal 2021 and increased again to 99% in fiscal 2022. This reversed the decline from 91% in fiscal 2019, which reflected the difficulty that MDE’s employees experienced transitioning from in-office access to records and databases to a teleworking environment during the COVID-19 pandemic. MDE has noted that the substantial improvement between fiscal 2020 and 2022 is due to MDE making the PIA responses issued within 30 days a key focus area for executive management and implementing process improvements. In contrast, the percentage of permits processed within the applicable standard time decreased from 94% in fiscal 2020 to 89% in fiscal 2021 and then decreased again to 85% in fiscal 2022. This may be partially due to the increase in the number of permits received between fiscal 2020 and 2022. MDE notes that it is investigating why the percentage of permits processed decreased below the 90% target and is identifying steps to address the issue. In terms of the violations over 12 months old for which no enforcement action has been taken, MDE has noted that many significant violations are resolved without enforcement actions.

**Exhibit 4
Public Information Act and Permit Data
Fiscal 2011-2024 Est.**



Permit Applications Received			18,705	20,187	23,288	23,266	22,560	20,832	20,844	15,833	17,821	18,216	18,000	19,000
Permits Issued			18,869	20,695	20,751	23,396	20,000	21,515	20,237	15,649	15,856	18,767	18,000	19,000
Percent of PIA Responses Issued within 30 Days	62%	75%	65%	80%	85%	73%	88%	90%	91%	76%	96%	99%	95%	95%
Permits Processed within Applicable Standard Time			82.1%	90.6%	92.1%	95.3%	96.0%	95.4%	93.5%	93.7%	88.9%	85.0%	90.0%	90.0%
Violations over 12 Months Old for which No Enforcement Action Has Been Taken										1,324	1,198	1,144	1,029	926

PIA: Public Information Act

Source: Department of Budget and Management

Fiscal 2023

Proposed Deficiency

Governor Wes Moore has submitted deficiency appropriations for the fiscal 2023 operating budget that would increase MDE’s appropriation overall by \$12,463,230 in general funds and \$1,000,000 in special funds and would increase MDE’s fiscal 2023 regular positions by 9.0 in the Air and Radiation Administration. This is primarily due to an increase of \$7.0 million in general funds to reduce the backlog of Oil Contaminated Site Environmental Cleanup Fund reimbursement requests. There are also increases of \$1.5 million in general funds in each of the Water and Science Administration, the Land and Materials Administration, and the Air and Radiation Administration to counter declining special fund revenue. This is the fourth fiscal year in which funding has been provided for declining special fund revenue in at least one of MDE’s administrations, although the general fund support does not carry forward into the fiscal 2024 allowance.

The Air and Radiation Administration also received an increase of \$1,963,230 comprised of \$963,230 in general funds and \$1,000,000 in special funds from the Strategic Energy Investment Fund to fund 9 positions at 75% turnover (\$163,230) and contractual services (\$1,800,000) to implement Chapter 38 of 2022 (Climate Solutions Now Act). The position funding carries over into fiscal 2024 with an adjustment to lower turnover for the positions while the contractual services only partially carry over to fiscal 2024.

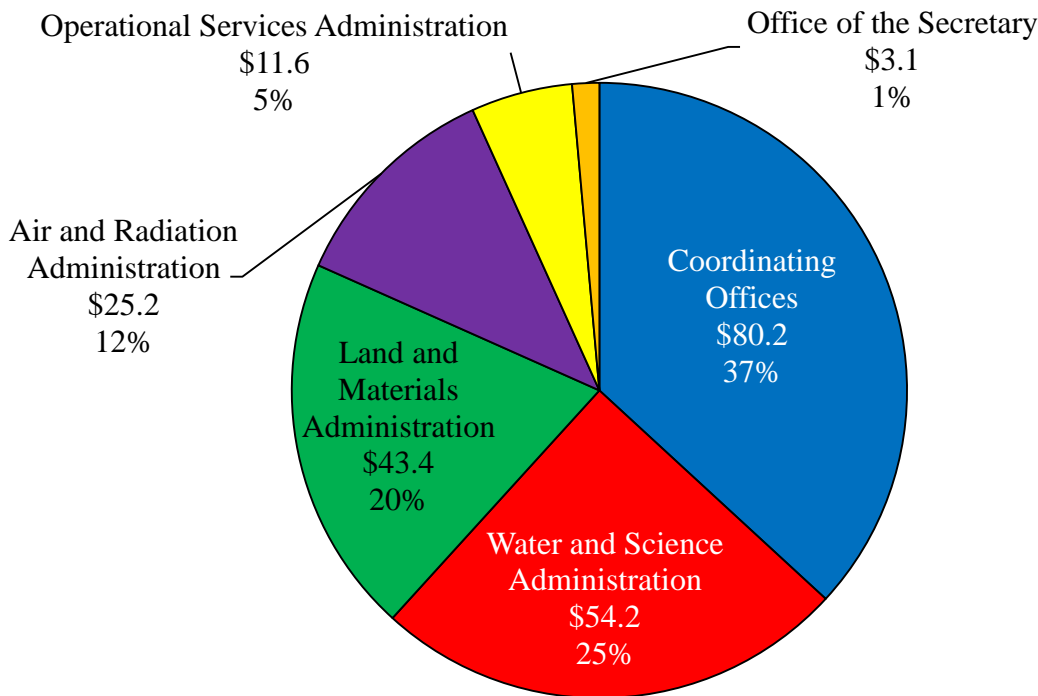
Federal Stimulus Funds

MDE continues to monitor the availability of federal funding through the Infrastructure Investment and Jobs Act and the Inflation Reduction Act. To date, MDE has focused on the pay-as-you-go (PAYGO) capital funding noted in the PAYGO capital analysis for MDE – UA01. **The Department of Legislative Services (DLS) recommends that MDE comment on potential funding opportunities available through the Inflation Reduction Act and MDE’s planned efforts to pursue competitive funding.**

Fiscal 2024 Overview of Agency Spending

MDE is organized into six administrative units and is staffed by 959.0 regular positions and 87.50 contractual FTEs in the fiscal 2024 allowance. **Exhibit 5** reflects the \$217.6 million spending breakdown for the six units as follows.

Exhibit 5
Overview of Agency Spending
Fiscal 2024 Allowance
(\$ in Millions)



Source: Department of Budget and Management; Department of Legislative Services

- **Coordinating Offices (\$80.2 Million, 37%):** The primary funding is \$28.0 million for debt service on BRF revenue bonds; \$20.0 million for Chapters 694 and 695 of 2021 (Clean Water Commerce Act); \$12.5 million for regular positions; \$11.0 million for operations and maintenance grants for wastewater treatment plants upgraded to enhanced nutrient removal technology; \$4.3 million for the Department of Information Technology (DoIT) services allocation; and \$1.5 million for agreements with local jurisdictions to administer septic system upgrade grants and regulations.
- **Water and Science Administration (\$54.2 Million, 25%):** The primary funding is \$42.9 million for regular positions; \$4.6 million for grants comprised of \$1.5 million for the Water Supply program, including \$0.8 million for federal funding to address lead in drinking water in schools and child care centers and \$0.4 million for Safe Drinking Water Act funding for transient noncommunity water supplies, \$1.4 million in the Integrated

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Water Planning program, including \$1.1 million in federal funding for local government nonpoint source pollution controls, \$1.1 million in the Wetlands and Waterways program for a memorandum of understanding with the Chesapeake Bay Trust for nontidal wetland projects, \$0.5 million in Administration Direction for annual dues to the Interstate Commission on the Potomac River Basin and the Susquehanna River Basin Commission; \$3.7 million for contracts comprised of \$1.2 million in the Wetlands and Waterways program, including \$1.0 million for the mussel restoration projects funded by the Exelon Conowingo Settlement, \$1.0 million in Sediment, Stormwater, and Dam Safety, including \$1.0 million for digital floodplain mapping by the Maryland Environmental Service (MES), \$0.6 million for the Water Supply program, including \$0.3 million for stream gages and groundwater monitoring by the Maryland Geological Survey, \$0.2 million for laboratory certification and analysis as part of the federal Safe Drinking Water Act reauthorization; and \$1.6 million for contractual FTEs.

- ***Land and Materials Administration (\$43.4 Million, 20%):*** The primary funding is \$28.3 million for regular positions; \$11.6 million for contracts, of which \$7.0 million is in the Mining Program projects, including \$6.2 million for abandoned mine land reclamation projects, \$1.4 million is in the Oil Control Program, including \$1.0 million for program oversight, \$1.3 million is in Waste Diversion and Utilization, including \$1.0 million for scrap tire projects either conducted by MES or where funding eventually will be recovered from property owners, \$0.7 million is for Lead Poisoning Prevention Program projects, including outreach and Childhood Lead Registry data entry, and \$0.5 million is in Administrative Direction primarily for funding mandated by Chapters 138 and 139 of 2022 for taking back and disposing of Class B fire-fighting foam from fire departments; and \$1.0 million for grants, of which \$0.5 million is for reimbursement of site rehabilitation costs of underground storage tanks and \$0.3 million is for lead poisoning prevention case management.
- ***Air and Radiation Administration (\$25.2 Million, 12%):*** The primary funding is \$20.1 million for regular positions and \$3.2 million for contracts, of which \$1.4 million is for implementing Chapter 38 (Climate Solutions Now Act), \$0.3 million is for dues to participate in the multistate Regional Greenhouse Gas Initiative, \$0.3 million is for modeling to ensure compliance with federal ambient air quality standards, \$0.3 million is for technical analyses by the University of Maryland required under the Clean Air Act, and \$0.2 million is for the Maryland Energy Administration to implement various diesel retrofit projects under the federal Diesel Emissions Reduction Act.
- ***Operational Services Administration (\$11.6 Million, 5%):*** The primary funding is \$5.8 million for rent and \$4.9 million for regular positions.
- ***Office of the Secretary (\$3.1 Million, 1%):*** The primary funding is \$2.3 million for regular positions and \$0.5 million for contractual services, of which \$0.3 million is for administrative hearings.

Proposed Budget Change

The MDE fiscal 2024 allowance decreases by \$26.0 million, or 10.7%, relative to the fiscal 2023 working appropriation, as shown in **Exhibit 6**. The general fund decrease primarily reflects the \$7.0 million one-time deficiency for the Oil Contaminated Site Environmental Cleanup Fund. The special fund decrease primarily reflects the \$15.0 million for Chapter 645 of 2021 (Tree Solutions Now Act) funding and the \$5.0 million decrease in BRF revenue bond debt service. The federal fund increase primarily reflects increases for regular earnings in the Water Supply Program from prior year federal Drinking Water Revolving Fund nonproject set-aside funding.

Exhibit 6
Proposed Budget
Department of the Environment
(\$ in Thousands)

How Much It Grows:	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2022 Actual	\$38,883	\$96,390	\$28,301	\$5,462	\$169,037
Fiscal 2023 Working Appropriation	61,062	137,327	41,084	4,218	243,691
Fiscal 2024 Allowance	<u>52,850</u>	<u>118,014</u>	<u>42,600</u>	<u>4,180</u>	<u>217,644</u>
Fiscal 2023-2024 Amount Change	-\$8,212	-\$19,312	\$1,516	-\$38	-\$26,047
Fiscal 2023-2024 Percent Change	-13.4%	-14.1%	3.7%	-0.9%	-10.7%

Where It Goes:	<u>Change</u>
Personnel Expenses	
New positions (69 position increase after 1 adjustment and 9 deficiency positions)	\$3,434
Employee and retiree health insurance	2,889
Turnover adjustments	1,237
Annualization of the November 2022 4.5% COLA	1,149
Regular earnings	1,006
Retirement contributions	477
Other fringe benefit adjustments	144
Miscellaneous adjustments, partially for one-time fiscal 2023 revenue deficiencies	-9,523
Other Changes	
<i>Environmental Policy</i>	
Mussel restoration projects funded by the Exelon Conowingo Settlement.....	1,000
PFAS chemicals take back required by Chapters 138 and 139 of 2022.....	500
Conowingo Dam dredging contract with Maryland Environmental Service	-396

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Where It Goes:	<u>Change</u>
Partial decrease in fiscal 2023 deficiency funding for Climate Solutions Now Act	-450
Scrap tire recycling events, including agricultural tire citizen recycling drop-off events	-1,782
One-time deficiency for Oil Contaminated Site Environmental Cleanup Fund	-7,000
One-time 5 Million Tree program funding from the Bay Restoration Fund	-15,000
<i>Routine Operations</i>	
Vehicle costs	646
Department of Information Technology services allocation costs	397
Fixed charges primarily due to rent increases	279
Contractual FTE costs, including annualization of the 4.5% COLA, net 2.0 FTEs	219
Additional equipment costs, primarily in Air Monitoring, Water and Science..	146
Supplies costs increase, primarily for office supplies	53
Communication costs decrease, primarily for telephone service	-117
One-time funding for the Upper Potomac River Commission’s wastewater plant	-500
Bay Restoration Fund revenue bond debt service	-5,000
Other	146
Total	-\$26,047

COLA: cost-of-living adjustment
 FTE: full-time equivalent
 PFAS: per- and polyfluoralkyl substances

Note: Numbers may not sum to total due to rounding. The fiscal 2023 working appropriation includes deficiency appropriations including this agency’s share of a deficiency appropriation budgeted in the Statewide Account within the Department of Budget and Management (DBM). Fiscal 2024 salary enhancements are budgeted in the Statewide Account within DBM.

Personnel

Overall, there is an increase of \$812,948 in MDE’s personnel expenses for fiscal 2024, accounting for the fiscal 2023 deficiencies. The largest change is an increase of \$3,434,434 for new positions. MDE’s position count increases by 69 regular positions between the fiscal 2023 working appropriation and the fiscal 2024 allowance, after accounting for positions added through the fiscal 2023 deficiency appropriation.

Other changes include an increase of \$2,888,886 for employee and retiree health insurance, \$1,236,777 for turnover adjustments, \$1,149,128 for the annualization of the fiscal 2023 4.5% cost-of-living adjustment (COLA), \$1,006,270 for regular earnings, and \$476,903 for

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retirement contributions. The increase due to turnover adjustments reflects a decrease in the turnover rate from 6.00% to 5.66% for MDE to be able to fill positions faster.

A portion of the offsetting decrease to personnel expenses is reflective of the one-time nature of the fiscal 2023 general fund deficiencies in the Water and Science Administration, the Land and Materials Administration, and the Air and Radiation Administration due to revenue shortfalls, which are not addressed in fiscal 2024. The revenue shortfalls are discussed more in Issue 4 in this analysis.

The \$9,523,223 decrease due to miscellaneous adjustments is largely reflective of how MDE budgets its personnel funding. Each year, MDE budgets a portion of personnel costs in the miscellaneous adjustments subobject for the working appropriation and then allocates the funding to the relevant subobjects as part of the closeout at the end of the fiscal year. This makes year-to-year personnel cost comparisons difficult because the miscellaneous adjustments are not reflected in the upcoming budget year, in this case the fiscal 2024 allowance.

For the second year in a row, MDE's most recent actual fiscal budget data incorrectly reflects the allocation of funding for personnel expenditures. The 2021 JCR included committee narrative requesting that the fiscal 2021 budget data be correctly reflected with the fiscal 2023 budget submission. Then, fiscal 2023 budget bill language restricted funding pending the submission of a confirmatory letter with the fiscal 2024 budget submission indicating that prior year actual personnel expenditures up to and including fiscal 2022 are budgeted in the correct statewide subobjects. The fringe benefit expenditures – health insurance, pension contributions, and turnover adjustments, among others – are almost entirely reflected as Social Security contributions, which makes it difficult to do historical data comparisons. In addition, as noted above, MDE budgets in its working appropriation a portion of its personnel expenditures in a subobject used as a temporary placeholder, miscellaneous adjustments, which makes it difficult to compare the working appropriation with the Governor's allowance. To date, the confirmatory letter has not been submitted, and the fiscal 2024 budget submission does not properly budget the personnel expenditures again. **DLS recommends that budget bill language be added to restrict funding pending the proper budgeting of personnel expenditures for the fiscal 2023 actual and the fiscal 2024 working appropriation in the correct statewide subobjects with the fiscal 2025 budget submission.**

Other Changes

Overall, the nonpersonnel portion of the MDE fiscal 2024 allowance decreases by \$26,859,572. The areas of change may be broadly categorized as environmental policy and routine operations.

Environmental Policy

There are a number of large changes, primarily decreases, in the category of general environmental policy. In terms of increases, there is an increase of \$1,000,000 in special funds in the Wetlands and Waterways program for mussel restoration projects funded by the Exelon

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Conowingo Settlement. There is also an increase of \$500,000 in general funds in the Land and Materials Administration for per- and polyfluoralkyl substances (commonly referred to as PFAS) chemicals take back. Chapters 138 and 139 required the Governor to include an appropriation of \$500,000 in the fiscal 2024 budget to MDE to take back and dispose of Class B fire-fighting foam from fire departments if requested by a fire department.

The largest decrease is \$15,000,000 in special funds due to the one-time requirement that BRF funding be provided for the 5 Million Tree program in fiscal 2023. Chapter 645 (Tree Solutions Now Act) mandated the transfer of \$15.0 million from the BRF Wastewater Account in fiscal 2023 as follows: (1) \$10.0 million to the Chesapeake Bay Trust for the Urban Trees Program established by Chapter 645; (2) \$2.5 million to the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund in the Department of Natural Resources (DNR) to be used for tree planting on public and private land; and (3) \$2.5 million to MDA to fund tree planting under the Conservation Enhancement Program and other tree-planting programs on agricultural land. This funding is now provided directly as general funds to the Chesapeake Bay Trust, DNR, and MDA.

Another large decrease of \$7,000,000 in general funds is due to the one-time deficiency in the Land and Materials Administration for the funding provided to the Oil Contaminated Site Environmental Cleanup Fund to reduce the backlog of reimbursement requests. There is a net decrease of \$1,782,000 in the Waste Diversion and Utilization Program for tire recycling events. This is comprised of a decrease of \$1,972,000 in general funds, which is offset partially by an increase of \$190,000 in special funds. The net decrease reflects at least a \$456,000 reduction for agricultural tire citizen recycling drop-off events. There was \$1,516,000 in general funds in the fiscal 2023 allowance for tire recycling events, which was increased by \$456,000 in general funds in Supplemental Budget No. 5 of fiscal 2023 to \$1,972,000. There is also a decrease of \$450,000 in general funds as a result of the one-time nature of a portion of the fiscal 2023 deficiency for contractual services in the Air and Radiation Administration to implement Climate Change Now Act activities. Finally, there is a decrease of \$396,000 in general funds for the contract to fund the pilot dredging project in coordination with MES to determine the content and potential uses for the sediment behind the Conowingo Dam.

Routine Operations

There are a number of budget changes between the fiscal 2023 working appropriation and the fiscal 2024 allowance that can be broadly categorized as routine operations. The largest increase is \$645,755 for vehicle costs. This primarily reflects increases of \$432,292 in the Water and Science Administration and \$151,136 in the Land and Materials Administration. There also is an increase of \$397,143 for DoIT services allocation costs comprised of \$279,024 in general funds, \$114,750 in special funds, and \$3,369 in federal funds. Fixed charges increase by \$278,622 primarily due to a \$327,350 increase in rent in the Operational Services Administration, which is offset partially by a \$96,539 decrease in rent in the Water and Science Administration. Contractual FTE costs increase by \$219,313, which includes the \$59,972 annualization of the fiscal 2023 4.5% COLA. There is an increase of \$145,822 in additional equipment costs. This primarily reflects an increase of \$60,000 in the Air Monitoring Program for laboratory equipment and \$58,432 in the Water and Science Administration for computer equipment. There is also an

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increase of \$53,096 for supplies, primarily as a result of an increase of \$61,449 for office supplies across the agency.

In terms of decreases, the largest is a decrease of \$5,000,000 in special funds for the BRF revenue bond debt service, which decreases from \$33,000,000 to \$28,000,000. This is due to a reduction in the debt outstanding as the revenue bonds slowly mature prior to the June 30, 2030 sunset of the BRF fee to the original fee structure. There is also a decrease of \$500,000 in general funds in the Coordinating Offices for a one-time grant to the Upper Potomac River Commission that was made to ensure that the commission could continue to operate its wastewater treatment facility while determining an alternative funding source upon the closure of the Luke paper mill. Supplemental Budget No. 4 of fiscal 2023 included a deficiency appropriation of \$250,000 in general funds for fiscal 2022 and an additional fiscal 2023 appropriation of \$500,000 in general funds for this purpose. Finally, there is a decrease of \$117,367 for communication costs, primarily for telephone service across the agency.

Personnel Data

	<u>FY 22</u>	<u>FY 23</u>	<u>FY 24</u>	<u>FY 23-24</u>
	<u>Actual</u>	<u>Working</u>	<u>Allowance</u>	<u>Change</u>
Regular Positions	880.00	890.00	959.00	69.00
Contractual FTEs	<u>49.35</u>	<u>85.50</u>	<u>87.50</u>	<u>2.00</u>
Total Personnel	929.35	966.50	1,046.50	80.00

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	52.86	6.00%
Positions and Percentage Vacant as of 12/31/22	94.50	10.73%
Vacancies Above Turnover	41.64	

- MDE’s position count increases by 69 regular positions between the fiscal 2023 working appropriation and the fiscal 2024 allowance. The fiscal 2023 working appropriation position count of 890 reflects the following: an adjustment to add 1 position in fiscal 2023; and the addition of 9 positions to address the Climate Change Now Act through a fiscal 2023 deficiency. The 69 regular position change between the fiscal 2023 working appropriation and fiscal 2024 reflects the addition of 35 positions in the Water and Science Administration and 8 positions in the Land and Materials Administration to address Chapter 22; the addition of 24 positions in the Water and Science Administration to increase staffing within the Water Supply Program; and 2 positions in the Land and Materials Administration to address Chapters 138 and 139.

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- As of December 31, 2022, MDE had 94.5 vacant positions, of which 19.5 positions have been vacant for more than a year. The positions vacant for more than a year are fairly evenly spread across the agency with 7.5 in the Water and Science Administration, 5.0 in the Coordinating Offices, 4.0 in the Land and Materials Administration, and 1.0 in the Operational Services Administration.
- MDE contractual FTEs increase by a net of 2.0 in the fiscal 2024 allowance.
- The MDE turnover rate decreased from 6.00% in the fiscal 2023 working appropriation to 5.66% in the fiscal 2024 allowance. Therefore, MDE must hold open 52.86 positions throughout fiscal 2024. MDE had 94.5 positions vacant, or 10.73%, as of December 31, 2022. MDE has noted that the reduced turnover is intended to help fill positions faster.

Issues

1. Water Supply Program Understaffing Addressed

MDE is addressing the Water Supply Program staffing shortages noted in a December 1, 2021 press release issued by Maryland’s Attorney General. The press release announced that understaffing at MDE’s Water Supply Program has put Maryland’s drinking water at risk and called for the Hogan Administration to release a resource investment plan that was due to EPA for review and approval by October 2021. This announcement followed from reports by the strategic and technical consultancy group Cadmus in May 2021 and EPA in July 2021.

The Cadmus report noted that there were three main reasons why MDE is no longer able to do more than meet the minimum requirements for delegation of authority by EPA to implement the Safe Drinking Water Act provisions in Maryland and why MDE is in danger of losing this authority. Those reasons are increased workload; regular position and contractual FTE decreases; and general program understaffing. The Cadmus report recommended the following: filling existing vacancies; developing a resource investment plan with EPA Region 3; utilizing the 4% Drinking Water State Revolving Fund set-aside funding; increasing State investment in MDE’s Water Supply Program via the General Fund; and creating a fee system.

MDE submitted the resource investment plan to EPA on May 23, 2022, with the goal of increasing staff to 102 by the middle of calendar 2024. This reflected the need for \$13.25 million, or an additional \$5 million, in the Water Supply Program. EPA noted in fall 2022 that it was pleased with MDE’s recent efforts. These efforts included the hiring of 13.5 FTEs from July 2021 through February 2022, or roughly 2 FTEs per month, and MDE committing to increasing staff at a similar rate until the goal of 102 has been reached.

The fiscal 2024 allowance reflects an increase of prior year federal Drinking Water Revolving Loan Fund nonproject set-asides funding for a total of \$10.5 million in the Water Supply Program and includes 78 regular positions, an increase of 25 positions from the fiscal 2023 working appropriation. Of note, there is a reduction of 6 contractual FTEs from 14 FTEs to 8 FTEs in the fiscal 2024 allowance. Therefore, the overall complement of both regular positions and contractual FTEs increases from 67 in fiscal 2023 to 86 in fiscal 2024. The increase of 25 regular positions appears to reflect 24 new regular positions and 1 transferred position. The 24 new positions include the following: 16 natural resources planner I positions; 4 environmental program manager I positions; 2 office secretary III positions; 1 epidemiologist III position; and 1 natural resources planner V position. However, the combined 86 regular positions and contractual FTEs will not meet the goal of 102 staff by the middle of calendar 2024.

DLS recommends that MDE comment on how it plans to meet the goal of the combined 102 regular positions and contractual FTEs and \$13.3 million in funding for the Water Supply Program in fiscal 2024 given that the fiscal 2024 budget only includes 86 regular positions and contractual FTEs and \$10.5 million.

2. Compliance and Enforcement Position Quarterly Reports

Budget bill language in the fiscal 2023 operating budget restricted funding pending the submission of quarterly reports from MDE and MDA on compliance and enforcement inspections and positions. The language then further restricted the funding for filling vacant compliance and enforcement positions. The fiscal 2023 language added two new components to the reporting requirement: the delegation of authority by the federal government to the departments, including any evaluations of this delegated authority; and the departments' inspection workload.

The submitted reports note the following:

- ***Inspections, Audits, and Spot Checks:*** MDE conducted more than 130,000 inspections, audits, and spot checks across major programmatic areas in fiscal 2022, which is up from 120,000 in fiscal 2021 and 127,000 in fiscal 2020, but down from 171,000 in fiscal 2019.
- ***OpenMDE and Environmental Compliance History Online (ECHO):*** MDE is now sharing additional compliance and enforcement data online through OpenMDE, which allows for access to information updated daily and for the ability to download inspection reports and enforcement documents. EPA's ECHO website compares MDE's activities in federally delegated programs to the performance in other states.
- ***Enhanced Compliance Oversight:*** MDE implemented an enhanced compliance oversight initiative in April 2022 focused on air quality in the Curtis Bay area. The initiative was in response to the December 2021 explosion at the CSX coal terminal followed by a fire at a gasoline-processing facility. An assessment guiding the next phase of the initiative is forthcoming. EPA has successfully used a portable air monitoring device in the Curtis Bay area to detect excessive volatile organic compounds leaking from a fuel processing facility. An investigation is ongoing.
- ***Chapter 22 – Environment – Discharge Permits – Inspections and Administrative Continuations:*** Chapter 22 will impact the number and types of inspections conducted by the Water and Science Administration's Compliance Program given that Chapter 22 requires certain inspection frequencies and enforcement actions for discharge-permitted sites found to be in significant noncompliance.
- ***Next Generation Compliance Tools:*** The Land and Materials Administration is using offsite review of aerial photographs to evaluate facility characteristics and identify possible environmental impacts through stressed vegetation. The Land and Materials Administration also used smartphone technology to conduct follow-up inspections at animal feeding operations during the period of enhanced State biosecurity protocols designed to contain the Highly Pathogenic Avian Influenza outbreak around February 2022. The Air and Radiation Administration is also using smartphone technology to conduct remote inspections and has set the goal of 100% electronic submission of reports.

- ***Federal Performance Evaluations:*** MDE noted positive feedback from EPA on improvements made after the Solid Waste Program’s five-year controlled hazardous substances in-depth performance audit – State Review Framework – conducted in 2018; the most recent Water Pollution Control Activities Report submitted in May 2022 covering October 2021 through September 2022; and work done by the Water and Science Administration reflected in the November 2022 status report covering October 2021 through September 2022.
- ***Inspectors:*** Between fiscal 2011 and 2022, the number of inspectors for the three administrations has changed as follows: 12 additional positions for the Land and Materials Administration (from 66 to 78 positions); 12 additional positions for the Water and Science Administration (from 48 to 60 positions); and 13 fewer positions for the Air and Radiation Management Administration (from 48 to 35 positions). The number of vacancies has continued to remain high in recent years for the Land and Materials Administration and is increasing for both the Water and Science Administration and the Air and Radiation Administration.

DLS recommends that the annual enforcement and inspection position strength assessment and vacant position budget bill language be added to MDE’s budget.

3. Special Fund Shortfalls Persist

Fiscal 2023 general fund deficiency appropriations of \$1.5 million are budgeted in each of the Water and Science Administration, the Land and Materials Administration, and the Air and Radiation Administration to counter declining special fund revenue. This is the fourth fiscal year in which funding has been provided for declining special fund revenue in at least one of MDE’s administrations. The Air and Radiation Administration received general fund support in fiscal 2020 (\$750,000), 2021 (\$1,750,000), and 2022 (\$1,750,000). In the fiscal 2023 budget, the Water and Science Administration and the Air and Radiation Administration each received fiscal 2022 deficiencies of \$750,000 in general funds, and the fiscal 2023 budget included \$1,500,000 for the Land and Materials Administration, \$1,250,000 for the Water and Science Administration and \$750,000 for the Air and Radiation Administration. While the additional support is needed, it is not clear that general funds are the way this support should be provided for the three administrations.

According to the polluter pays principle, a core tenant of environmental law and environmental economics, social welfare is maximized when all costs – environmental, social, and actual – are reflected in prices. The revenue shortfalls in the Water and Science Administration, the Land and Materials Administration, and the Air and Radiation Administration are at least partially due to outdated fee structures supporting the relevant special funds. In other words, the relevant nongovernmental entities that pay fees for the right to pollute are not paying enough to support the work of the administrations, which is in contradiction to the polluter pays principle. Instead of addressing these outdated fee structures, the fiscal 2023 budget supports the Water and

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Science Administration, the Land and Materials Administration, and the Air and Radiation Administration through general fund appropriations.

According to the Comptroller’s Biennial Fee Report published in December 2022, the fee structures for the three main funds supporting each of the administrations are as follows.

- ***Water and Science Administration:*** The Maryland Clean Water Fund receives a number of General Permit fees and penalties, but it appears that fees largely have remained unchanged since 2002.
- ***Land and Materials Administration:*** The Lead Poisoning Prevention Fund is supported by penalties and two fees that have not been changed since 2012 – a \$30 annual fee for all pre-1978 rental units and a \$10 one-time fee for rental units certified and registered as “lead free.”
- ***Air and Radiation Administration:*** The Clean Air Fund is supported by Clean Air Act Title V operating permits, non-Title V operating permits, construction permits, asbestos licenses, asbestos training fees, penalties, funds received from the Strategic Energy Investment Fund, and certification fees. The Title V operating permit was last revised in 2013 to raise the annual base fee from \$200 to \$5,000 for federal Title V permit sources, from \$200 to \$1000 for synthetic minor State permit to operate sources, and from \$200 to \$500 for all other State permit to operate sources.

DLS again recommends that MDE comment on why it is using general fund revenue to support the Water and Science Administration, the Land and Materials Administration, and the Air and Radiation Administration instead of revising the outdated fee structures. DLS also recommends that budget bill language be added restricting funding pending the submission of a report on revised fee structures for the fees supporting the Maryland Clean Water Fund, Lead Poisoning Prevention Fund, and the Maryland Clean Air Fund.

4. Maryland Used Tire Cleanup and Recycling Fund Annual Report Submitted

The fiscal 2023 Budget Bill restricted \$200,000 in general fund appropriation for MDE pending the submission of the annual Maryland Scrap Tire report. Section 9-275(c) of the Environment Article specifies that an annual status report is due on or before November 1 of each year. This required annual report was not consistently submitted by MDE prior to the introduction of annual budget bill language. The fiscal 2022 annual report was submitted on November 1, 2022. The report notes that in fiscal 2022, there was one newly identified illegal scrap stockpile and that the successful cleanup of 37 illegal scrap tire stockpiles, consisting of approximately 3,036 scrap tires, was conducted by the responsible parties without using the Maryland Used Tire Cleanup and Recycling Fund. For fiscal 2023, MDE anticipates continuing the cleanup on 37 illegal scrap tire stockpile sites mostly funded by responsible parties. **DLS recommends that language be added to restrict funding pending the submission of the Maryland Scrap Tire annual report on November 1, 2023.**

Operating Budget Recommended Actions

1. Add the following language to the general fund appropriation:

, provided that \$200,000 of this appropriation made for the purpose of general administrative expenses in the Land and Materials Administration may not be expended pending the submission of the Maryland Scrap Tire annual report. The requested report shall be submitted no later than November 1, 2023. The budget committees shall have 45 days from the date of the receipt of the report to review and comment. Funds restricted pending the receipt of the report may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund if the report is not submitted to the budget committees.

Explanation: This action restricts funding pending the submission by November 1, 2023, of the Maryland Scrap Tire Annual Report. Section 9-275(c) of the Environment Article specifies that an annual status report is due on or before November 1 of each year, which was not consistently met before the inclusion of annual budget bill language.

Information Request	Author	Due Date
Maryland Used Tire Cleanup and Recycling Fund annual report	Maryland Department of the Environment	November 1, 2023

2. Add the following language to the general fund appropriation:

, provided that \$200,000 of this appropriation made for the purpose of general administrative expenses may not be expended until the Maryland Department of the Environment (MDE), in cooperation with the Department of Budget and Management, submits a confirmatory letter to the budget committees indicating that MDE’s fiscal 2023 actual personnel expenditures and the fiscal 2024 working appropriation personnel expenditures are budgeted in the correct statewide subobjects. The confirmatory letter shall be submitted with the fiscal 2025 budget submission, and the budget committees shall have 45 days from the date of the receipt of the confirmatory letter to review and comment. Funds restricted pending the receipt of a confirmatory letter may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund if the confirmatory letter is not submitted to the budget committees.

Explanation: For the second year in a row, MDE’s most recent actual fiscal year budget data incorrectly reflects the allocation of funding for personnel expenditures. The 2021 Joint Chairmen’s Report included committee narrative requesting that the fiscal 2021 budget data be correctly reflected with the fiscal 2023 budget submission. Then, fiscal 2023 budget bill language restricted funding pending the submission of a confirmatory letter with the fiscal 2024 budget submission indicating that prior year actual personnel

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expenditures up to and including fiscal 2022 are budgeted in the correct statewide subobjects. The fringe benefit expenditures – health insurance, pension contributions, and turnover adjustments, among others – are almost entirely reflected as Social Security contributions, which makes it difficult to do historical data comparisons. In addition, MDE budgets in its working appropriation a portion of its personnel expenditures in a subobject used as a temporary placeholder, miscellaneous adjustments, which makes it difficult to compare the working appropriation with the Governor’s allowance. Therefore, increased funding is restricted until MDE and the Department of Budget and Management (DBM) submit a confirmatory letter with the fiscal 2025 budget submission indicating that fiscal 2023 actual personnel expenditures and fiscal 2024 working appropriation personnel expenditures are budgeted in the correct statewide subobjects.

Information Request	Author	Due Date
Budgeting of fiscal 2023 actual and fiscal 2024 working appropriation personnel expenditures	MDE DBM	Fiscal 2025 budget submission

3. Add the following language to the general fund appropriation:

Further provided that \$100,000 of this appropriation made for the purpose of general operating expenses may not be expended until the Maryland Department of the Environment submits a report to the budget committees on revised fee structures for the fees that support the Maryland Clean Water Fund, Lead Poisoning Prevention Fund, and Maryland Clean Air Fund to ensure that the special funds can adequately support the Water and Science Administration, the Land and Materials Administration, and the Air and Radiation Administration, respectively, and to reduce the need for general fund support. The report shall be submitted by December 1, 2023, and the budget committees shall have 45 days from the date of the receipt of the report to review and comment. Funds restricted pending the receipt of a report may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund if the report is not submitted to the budget committees.

Explanation: Fiscal 2023 general fund deficiency appropriations of \$1.5 million are budgeted in each of the Water and Science Administration, the Land and Materials Administration, and the Air and Radiation Administration to counter declining special fund revenue. This is the fourth fiscal year in which funding has been provided for declining special fund revenue in at least one of the Maryland Department of the Environment’s (MDE) administrations. According to the polluter pays principle, a core tenant of environmental law and environmental economics, social welfare is maximized when all costs – environmental, social, and actual – are reflected in prices. This is not occurring because of outdated fee structures for the special funds supporting the three administrations: Maryland Clean Water Fund; Lead Poisoning Prevention Fund; and Maryland Clean Air Fund. Therefore, this budget bill language restricts funding pending

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the submission of a report on revised fee structures for the fees supporting these three special funds.

Information Request	Author	Due Date
Revised fee structures report	MDE	December 1, 2023

4. Add the following section:

SECTION XX. AND BE IT FURTHER ENACTED, That \$200,000 of the general fund appropriation in the Maryland Department of the Environment (MDE) and \$200,000 of the general fund appropriation in the Maryland Department of Agriculture (MDA) made for the purpose of general operating expenses may be expended only for the purpose of filling vacant compliance and enforcement positions provided, however, that no funds may be expended until MDE and MDA jointly prepare and submit quarterly reports on July 1, 2023; October 1, 2023; January 1, 2024; and April 1, 2024, which shall include:

- (1) an evaluation of the adequacy of Maryland’s current authorized compliance and enforcement positions in the departments. In completing the assessment, the departments shall:
 - (a) provide information on the delegation of authority by the federal government to the departments, including any evaluations of this delegated authority, and on the delegation of authority by the departments to other entities; and
 - (b) assess the impact of the role that technology has played on compliance and enforcement responsibilities;
- (2) a comparison of the size, roles, responsibilities, and inspection workload of the departments’ compliance and enforcement positions to neighboring or similar states;
- (3) a list of all inspection activities conducted by the MDE Water and Science Administration, the Land and Materials Administration, the Air and Radiation Administration, and the MDA Office of Resource Conservation;
- (4) the number of:
 - (a) regular positions and contractual full-time equivalents associated with the inspections, including the number of vacancies for fiscal 2013 through 2023 actuals; and
 - (b) fiscal 2024 current and fiscal 2025 estimated appropriations;

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- (5) PINs and titles for all positions filled with restricted funding, and how the positions are being used; and
- (6) a description of the use of and outcomes from any next generation compliance techniques to increase compliance with Maryland’s environmental regulations.

Further provided that funding restricted for this purpose may be released quarterly in \$50,000 installments for each agency upon receipt of the required quarterly reports by the budget committees. The budget committees shall have 45 days from the date of the receipt of the reports to review and comment. Funds restricted may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund if the reports are not submitted to the budget committees and the released funding is not used to fill vacant compliance and enforcement positions.

Explanation: This language restricts funding until the submission of quarterly reports from MDE and MDA to the budget committees on compliance and enforcement inspections and positions and then further restricts the funding for filling vacant compliance and enforcement positions. The 2022 Joint Chairmen’s Report included the request for a similar report on compliance and enforcement inspections and positions for Chesapeake Bay restoration.

Information Request	Author	Due Date
Enforcement and inspection	MDA	July 1, 2023
position strength assessment	MDE	October 1, 2023
and vacant position		January 1, 2024
		April 1, 2024

Appendix 1
2022 Joint Chairmen’s Report Responses from Agency

The 2022 JCR requested that MDE prepare 10 reports. Electronic copies of the full JCR responses can be found on the DLS Library website.

- ***Onsite Sewage Disposal System (OSDS) Requirements:*** The committees were interested in OSDS requirements and therefore requested that MDE make certain changes to the requirements and regulations and report on the status of these changes. The submitted report notes the following MDE actions: worked on a standardized septic permit for counties and planned to conduct a pilot of this permit in Wicomico County in December 2022; provided appeal procedures to every county for posting on county websites; is working on decision flowcharts and guidance documents at the beginning of calendar 2023 to promote uniform messaging about OSDS standards and regulations; is working to establish regular and direct lines of communication with county health officers; has applied the regulations for multifamily dwellings to duplexes as requested; and determined that the current procedure for determining the minimum septic reserve area is adequate. Finally, MDE notes that it is reviewing the entire OSDS program.
- ***Legionnaires’ Disease Report:*** The committees were interested in what has been done to reduce the occurrence of Legionnaires’ disease in Maryland and the extent to which the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) 188 standard (Legionellosis: Risk Management for Building Water Systems) is being implemented in Maryland. Therefore, the committees requested that MDE conduct a study on Legionnaires’ disease. The submitted report made three recommendations: (1) form a workgroup to consider technical advances for Legionella management; (2) focus future ASHRAE-188 implementation proposals on high-risk publicly owned buildings that serve people with the highest risk for Legionnaires’ disease; and (3) require owners or building managers of publicly owned buildings to notify the Maryland Department of Health if Legionella is detected in any samples.
- ***Maryland Used Tire Cleanup and Recycling Fund Annual Report:*** The fiscal 2023 Budget Bill restricted \$200,000 in general fund appropriation for MDE pending the submission of the annual Maryland Scrap Tire report. The submitted report notes that in fiscal 2022, there was one newly identified illegal scrap stockpile and that the successful cleanup of 37 illegal scrap tire stockpiles, consisting of approximately 3,036 scrap tires, was conducted by the responsible party without using the Maryland Used Tire Cleanup and Recycling Fund. Further discussion of this data can be found in Issue 4 of this analysis.
- ***Reduction of State Building Operating Costs and Greenhouse Gas Emissions Through District Energy:*** The budget committees were interested in learning more about how district energy – energy production and/or storage and distribution in a distributed manner – can be used as a tool to reduce both the operational costs and greenhouse gas emissions of the State’s building inventory and requested a report from MDE and specified partners.

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The submitted report notes that district energy has the potential to provide energy efficiency, cost reductions, emission reductions, and grid infrastructure improvements but that a definitive response on the potential cost reductions and greenhouse gas emissions reductions from district energy is not possible due to the lack of readily available information. MDE noted that Maryland has at least 11 district energy systems and that it met with one of the district energy systems, Vicinity Energy, as part of its building energy performance standards outreach for the Maryland Climate Solutions Now Act. In addition, MDE noted that on November 14, 2022, in collaboration with the nonprofit organization Institute for Market Transformation, it invited 100 participants to discuss building energy performance standards and building decarbonization for colleges/universities, State-owned buildings, and district energy providers.

- ***Budgeting of Prior Year Actual Personnel Expenditures:*** Fiscal 2023 budget bill language restricted MDE funding pending the submission of a confirmatory letter with the fiscal 2024 budget submission indicating that prior year actual personnel expenditures up to and including fiscal 2022 are budgeted in the correct statewide subobjects. To date, the required confirmatory letter has not been submitted. Further discussion of this data can be found in the personnel portion of the budget discussion of this analysis.
- ***Environmental Investment in Overburdened and Low-income Communities:*** The budget committees were concerned about the lack of investment in overburdened and low-income communities in Maryland. Therefore, the budget committees requested that MDE identify overburdened communities, conduct public information-gathering sessions, and develop recommendations to achieve at least 40% of overall spending in specified programs, project, and investments with an initial report due December 1, 2022, and final report on June 30, 2023. The submitted report notes the five actions that MDE has taken (1) discussed the identification of overburdened and low-income communities with the Governor’s Commission on Environmental Justice and Sustainable Communities and the Center for Community Engagement, Environmental Justice, and Health Laboratory; (2) continued the development of the Environmental Justice Screen Tool; (3) discussed the Environmental Justice Screen Tool with Department of Budget and Management (DBM) staff to inform DBM’s work; (4) began internal coordination with MDE’s Climate Change Program due to similar requirements mandated by the Climate Solutions Now Act; and (5) began the implementation of Chapter 588 of 2022 (Environment – Permit Applications – Environmental Justice Screening), which requires applications for MDE’s public participation permits to submit an Environmental Justice Score from the Environmental Justice Screen Tool at the time of application. In addition, the report notes that MDE intends to hold public information gathering sessions in spring 2023, which will inform recommendations. Finally, the report requests that the June 30, 2023 final report deadline be aligned with the deadlines mandated by the Climate Solutions Now Act, which generally has December 31, 2023 report deadlines.
- ***Conowingo Dam Watershed Implementation Plan Project Non-State Matching Funding and Spending Plan:*** The committees were concerned that insufficient information was known about the non-State support and spending plan for the \$25,000,000 in fiscal 2023

funding for the Conowingo Dam Watershed Implementation Plan project to be implemented by MDE. Therefore, the committees requested that MDE submit a report indicating the level of match funding that MDE has secured from non-State funding sources no later than 30 days after the match funding from non-State funding sources has been secured. The committees also requested that MDE submit a report on how it plans to spend the \$25,000,000 in fiscal 2023 funding no later than 30 days before the fiscal 2023 funding is spent. To date, the triggering conditions have not been met, and the reports have not been submitted, although a January 4, 2023 BPW item did approve the use of the funding with the Susquehanna River Basin Commission selected as the fiscal agent. Further discussion of this data can be found in Issue 4 of the budget analysis for the Chesapeake Bay Overview – CHESBAY.

- ***Oversight Failures at Back River and Patapsco Wastewater Treatment Plants:*** The committees were concerned about the precipitous decline in the proper maintenance and operation of the Back River and Patapsco Wastewater Treatment Plants, which risked catastrophic failure that could result in environmental harm as well as adverse public health and comfort effects. A similar outcome was possible for the Patapsco Wastewater Treatment Plant. Therefore, the committees requested that MDE and MES collaborate on three reports: (1) biweekly MDE and MES status reports on the two wastewater treatment plants; (2) a June 6, 2022 MDE report on the oversight failures at the two wastewater treatment plants; and (3) a June 6, 2022 MDE and MES report on Back River Wastewater Treatment Plant findings and recommendations. Of note, the MDE and MES reports focus on Back River – the plant that MDE ordered MES to take charge of on March 27, 2022 – since no consent order has been entered into for Patapsco. Both plants appear to be having problems processing biosolids, which in turn appears to be caused by staffing and preventative maintenance failures. The June 6, 2022 MDE report on the oversight failures at the two wastewater treatment plants focuses on the regulatory failures – the failures to meet permits. The June 6, 2022 MDE and MES report – largely written by MES – focuses on the staffing and operational failures at Back River. The December 19, 2022 biweekly report – the most recent one available once MDE began reporting monthly – indicates continued improvement at Back River with only one weekly average total nitrogen concentration above the floating cap of 4.0 milligrams per liter between the first week of October 2022 and the second week of December. Biosolids management and staffing remain key concerns. Further discussion of this data from the MES perspective can be found in the budget analysis for MES – U10B00.
- ***Historical and Projected Chesapeake Bay Restoration:*** Section 35 of the fiscal 2023 Budget Bill requested the submission of a report on historical and projected Chesapeake Bay restoration spending and associated impacts and the overall framework to meet the calendar 2025 requirement of having all best management practices in place to meet water quality standards for restoring the Chesapeake Bay. Further discussion of this data can be found in the budget analysis for the Chesapeake Bay Overview – CHESBAY.

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- ***Enforcement and Inspection Position Strength Assessment and Vacant Position Filling:*** Budget bill language in the fiscal 2023 operating budget restricted funding pending the submission of quarterly reports from MDE and MDA on compliance and enforcement inspections and positions. Further discussion of this data can be found in Issue 2 of this analysis.

**Appendix 2
Audit Findings**

Audit Period for Last Audit:	December 20, 2016 – April 30, 2021
Issue Date:	August 2022
Number of Findings:	5
Number of Repeat Findings:	0
% of Repeat Findings:	0%
Rating: (if applicable)	n/a

Finding 1: MDE did not always use available system reports to ensure that all registered rental units had a current lead inspection certificate as required.

Finding 2: MDE did not verify the propriety of charges related to technology enterprise services received from DoIT during fiscal 2020 and 2021, which were valued at \$5.1 million.

Finding 3: Redacted cybersecurity-related finding.

Finding 4: Redacted cybersecurity-related finding.

Finding 5: Redacted cybersecurity-related finding.

**Appendix 3
Object/Fund Difference Report
Department of the Environment**

<u>Object/Fund</u>	<u>FY 22 Actual</u>	<u>FY 23 Working Appropriation</u>	<u>FY 24 Allowance</u>	<u>FY 23 - FY 24 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	880.00	881.00	959.00	78.00	8.9%
02 Contractual	49.35	85.50	87.50	2.00	2.3%
Total Positions	929.35	966.50	1,046.50	80.00	8.3%
Objects					
01 Salaries and Wages	\$ 91,913,827	\$ 103,260,036	\$ 111,034,470	\$ 7,774,434	7.5%
02 Technical and Special Fees	2,488,134	4,578,755	4,918,012	339,257	7.4%
03 Communication	697,497	608,033	490,666	-117,367	-19.3%
04 Travel	129,045	51,758	58,559	6,801	13.1%
06 Fuel and Utilities	344,552	338,139	344,660	6,521	1.9%
07 Motor Vehicles	957,381	742,156	1,387,911	645,755	87.0%
08 Contractual Services	15,997,091	39,998,080	24,678,335	-15,319,745	-38.3%
09 Supplies and Materials	745,550	837,889	890,985	53,096	6.3%
10 Equipment – Replacement	586,412	466,017	483,877	17,860	3.8%
11 Equipment – Additional	79,705	25,000	170,822	145,822	583.3%
12 Grants, Subsidies, and Contributions	17,319,283	37,594,490	38,598,240	1,003,750	2.7%
13 Fixed Charges	5,955,716	6,308,788	6,587,410	278,622	4.4%
14 Land and Structures	31,822,908	33,000,000	28,000,000	-5,000,000	-15.2%
Total Objects	\$ 169,037,101	\$ 227,809,141	\$ 217,643,947	-\$ 10,165,194	-4.5%
Funds					
01 General Fund	\$ 38,883,286	\$ 47,904,954	\$ 52,849,538	\$ 4,944,584	10.3%
03 Special Fund	96,390,195	135,246,899	118,014,096	-17,232,803	-12.7%
05 Federal Fund	28,301,237	40,439,109	42,600,030	2,160,921	5.3%
09 Reimbursable Fund	5,462,383	4,218,179	4,180,283	-37,896	-0.9%
Total Funds	\$ 169,037,101	\$ 227,809,141	\$ 217,643,947	-\$ 10,165,194	-4.5%

Note: The fiscal 2023 appropriation does not include deficiencies. The fiscal 2024 allowance does not include contingent reductions or COLAs.

**Appendix 4
Fiscal Summary
Department of the Environment**

<u>Program/Unit</u>	<u>FY 22 Actual</u>	<u>FY 23 Wrk Approp</u>	<u>FY 24 Allowance</u>	<u>Change</u>	<u>FY 23 - FY 24 % Change</u>
01 Office of the Secretary	\$ 2,339,311	\$ 2,756,671	\$ 3,091,027	\$ 334,356	12.1%
02 Administrative and Employee Services Administration	10,310,697	11,002,316	11,615,951	613,635	5.6%
04 Water and Science Administration	42,939,043	48,568,617	54,186,915	5,618,298	11.6%
06 Land and Materials Administration	31,492,167	43,009,627	43,368,598	358,971	0.8%
07 Air and Radiation Administration	19,569,692	23,237,166	25,190,801	1,953,635	8.4%
10 Coordinating Offices	62,386,191	99,234,744	80,190,655	-19,044,089	-19.2%
Total Expenditures	\$ 169,037,101	\$ 227,809,141	\$ 217,643,947	-\$ 10,165,194	-4.5%
General Fund	\$ 38,883,286	\$ 47,904,954	\$ 52,849,538	\$ 4,944,584	10.3%
Special Fund	96,390,195	135,246,899	118,014,096	-17,232,803	-12.7%
Federal Fund	28,301,237	40,439,109	42,600,030	2,160,921	5.3%
Total Appropriations	\$ 163,574,718	\$ 223,590,962	\$ 213,463,664	-\$ 10,127,298	-4.5%
Reimbursable Fund	\$ 5,462,383	\$ 4,218,179	\$ 4,180,283	-\$ 37,896	-0.9%
Total Funds	\$ 169,037,101	\$ 227,809,141	\$ 217,643,947	-\$ 10,165,194	-4.5%

Note: The fiscal 2023 appropriation does not include deficiencies. The fiscal 2024 allowance does not include contingent reductions or COLAs.