Part K
Natural Resources, Environment, and Agriculture

Natural Resources

Chesapeake Bay Critical Area Protection Program

Chapter 794 of 1984 established the Chesapeake Bay Critical Area Protection Program in the Department of Natural Resources (DNR) to foster more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake Bay and its tributaries so as to minimize damage to water quality and natural habitats.

Under the program, development in the Chesapeake Bay Critical Area is limited, based on a local jurisdiction's critical area program. Current regulations require local jurisdictions to provide for variances to the program where enforcement would result in an unwarranted hardship to an applicant. In recent years, three decisions by the Maryland Court of Appeals have significantly impacted the common understanding of variance law as applied in the Chesapeake Bay Critical Area. Under these rulings, a variance may be granted for development when an applicant is denied reasonable and significant use of any portion of the property, even if alternative sites are available on the applicant's property; grandfathered structures may be considered when deciding whether denial of a variance for new development would be unfair to an applicant; and an applicant may generally meet the standards for a variance, rather than satisfying all of the standards.

In response, ***Senate Bill 326***/***House Bill 528*** ***(both passed)*** statutorily define the conditions under which a variance may be granted. These conditions include: consideration of the entire property when determining whether unwarranted hardship exists; the applicability of comparisons only to development since the implementation of a local critical area program; and the satisfaction of all variance standards. Further, a local program must consider the reasonable use of the entire parcel. Building permits or other activities that comply with an approved buffer exemption or buffer management

plan are exempted from the coverage of these bills. Also, each local jurisdiction is required to review its program and propose program amendments every six years, rather than the current four-year cycle.

Atlantic Coastal Bays Protection Act

Maryland's coastal bays, often called the back bays, are shallow water lagoons west of Ocean City and Assateague Island. They include the Assawoman, Isle of Wight, Sinepuxent, Newport, and Chincoteague bays. More than 300 species of migratory waterfowl, songbirds, and birds of prey seek these shallow bays for food and shelter. Additionally, the shallow bays provide habitat for rare species of plants and animals as well as blue crabs, flounder, and clams. Concern about the impact of development along the coastal bays on the bays' natural resources has been growing in recent years. The Coastal Bays Management Plan, which was released in June 1999, identified five primary problems in the coastal bays: degraded water quality, chemical contamination, loss of habitat, changes in living resources, and unsustainable growth and development. The plan also included four action plans for the long-term restoration and protection of the coastal bays.

Senate Bill 247*/*House Bill 301* *(both passed) apply the existing provisions of the Chesapeake Bay Critical Area Protection Program and corresponding regulations to the Atlantic Coastal Bays Critical Area. In addition to all waters and lands under the coastal bays and their tributaries and all areas within 1,000 feet of wetlands and the heads of tides, the Atlantic Coastal Bays Critical Area also would include additional areas proposed for inclusion by local jurisdictions and approved by the Critical Area Commission.

The bills direct the Governor to include funds in the fiscal 2003 budget for grants to reimburse local jurisdictions for the reasonable costs of developing a local coastal bays critical area program. Local jurisdictions within the Atlantic Coastal Bays Critical Area are required to map the coastal bays area and to establish the three land use designations used in the existing Chesapeake Bay Critical Area Program: Intensely Developed Areas (IDAs), Limited Development Areas (LDAs), and Resource Conservation Areas (RCAs).

The land use designations within the Atlantic Coastal Bays Critical Area are based on land uses and development in existence as of June 1, 2002. In the same manner as the current Chesapeake Bay Critical Area, in order to accommodate future population growth, the total IDA and LDA acreage may be increased by a "growth allocation." This allowable development increase is calculated by formula and may be transferred between the Chesapeake and Atlantic coastal bays critical areas under certain conditions.

Concerning development activity on existing lots, if a lot is legally recorded, legally buildable, and was approved by a local jurisdiction before the date of final

program approval, on or before September 29, 2003, then development activity is permissible.

Each local jurisdiction's program must include a provision requiring proposed development sites in IDAs to provide a forest or developed woodland cover of at least 15 percent after development or a provision for a fee-in-lieu payment, including exceptions for certain single lots. In addition, each program may include provisions regarding: the use of bioretention and other nonstructural stormwater best management practices; minimum buffer requirements applicable to specified tributary streams located outside the critical area but within the coastal bays watershed; and wetland improvements, also known as "wharfing out."

The bills require that local programs approved or adopted by the commission take effect by September 29, 2003. They also allow for the limited grandfathering of certain development projects as to their initial development or current use.

Maryland Seafood and Aquaculture Industries

Each year the Maryland seafood industry contributes an estimated $400 million to the State's economy. Yet the seafood industry has experienced a marked decline due to recent adverse economic pressures resulting from a decline in wild stocks of commercially important species, competition from imports, a shortage of processing labor, regulatory pressures, and overall economic decline. In addition, although the State's aquaculture industry presents great potential to meet increasing worldwide demand for seafood products, the extent of its growth has been slower in Maryland than in other states. By creating the Task Force to Study the Economic Development of the Maryland Seafood and Aquaculture Industries, ***House Bill 662*** ***(passed)*** seeks to address these issues. The task force consists of two workgroups: one focusing on the seafood industry and the second focusing on the aquaculture industry. By September 30, 2004, each workgroup is to study specific aspects of the development of its respective industry and report on these aspects and related recommendations.

Submerged Aquatic Vegetation

Submerged aquatic vegetation (SAV) beds are ecologically significant habitats that are essential for maintaining healthy fish and shellfish populations in the Chesapeake Bay. In order to restore and protect SAV beds, Chapter 385 of 1998 prohibited the use of hydraulic clam dredges in SAV beds when it became evident that these dredges, used for the commercial harvest of several clam species, were causing significant damage to SAV beds.

In an effort to further protect SAV beds, ***Senate Bill 195***/***House Bill 536*** ***(both passed)*** prohibit a person from using a traditional bottom dredge and shinnecock rake in any SAV bed or in specified portions of the Chesapeake Bay closed to hydraulic clam

dredging. In addition, the bills require DNR to update aerial surveys of SAV protection zones and to adjust these zones, to the extent possible, so that delineations are geographically manageable. This will allow DNR to draw delineations in straighter lines that utilize existing points of reference.

Forest Conservation

House Bill 470 ***(passed)*** and ***House Bill 90*** ***(passed)*** each clarify several provisions regarding forest conservation requirements. ***House Bill 470*** allows for a public hearing on the approval of a forest conservation plan that is in keeping with the regulatory scheme of public participation in the formulation of the plan. In addition, the bill requires the State to develop forest conservation requirements for State development projects that are comparable to those of local programs. Finally, the bill clarifies that all penalties paid for noncompliance must be paid into the Forest Conservation Fund. ***House Bill 90*** requires an owner of land that is subject to a forest conservation management agreement to provide notice to the buyer regarding the existence of the agreement and to DNR if the land is sold or transferred.

Senate Bill 552/***House Bill 617*** ***(both passed)*** designate Savage Ravines Wildland and South Savage Wildland as State wildlands. The bills authorize DNR, under specified conditions, to allow research in the South Savage Wildland area that ordinarily would be prohibited or restricted. The bills also require DNR and the University System of Maryland, through Frostburg State University and the University of Maryland Biotechnology Institute, to develop a plan relating to such research.

House Bill 895 ***(passed)*** requires DNR to establish a two-year pilot program in Carroll and Frederick counties that allows a landowner to use a forested stream buffer established under the federal Conservation Reserve Enhancement Program to create a forest retention bank. In order for land to be in this pilot program, it may not be subject to an existing conservation easement, and the landowner must agree to protect it in perpetuity as part of the retention bank. Mitigation through creation of a bank is to be credited at a ratio of 2.5 acres per each acre of mitigation required. DNR must conduct a field inspection of each site, evaluate the program, and by December 31, 2004, report on the effectiveness of this program. The bill takes effect July 1, 2002, and sunsets June 30, 2005.

Vessel Excise Tax

Except under specified conditions, an excise tax is levied at the rate of 5 percent of the fair market value of a vessel on: (1) the issuance of every original certificate of title required for a vessel; (2) the issuance of every subsequent certificate of title for the sale, resale, or transfer of the vessel; (3) the sale within the State of every other vessel; and (4) the possession within the State of a vessel purchased outside the State to be used

principally in the State. Revenues generated by the tax are used for various waterway improvement projects. DNR advises that it has identified $1.9 million in unpaid vessel excise taxes (including interest) for taxes owed through December 31, 2001.

House Bill 1044 ***(passed)*** requires the Secretary of DNR to declare an amnesty period for delinquent taxpayers from September 1, 2002, through October 31, 2002, for penalties attributable to the nonreporting, underreporting, and nonpayment of vessel excise tax liability. The bill also increases misdemeanor penalties for violations relating to the collection and remittance of the vessel excise tax from $5,000 to $10,000, effective at the end of the amnesty period (November 1). Finally, the Secretary of DNR must report to the Governor and the General Assembly on the revenues raised under the amnesty program and other matters relating to the program. Proceeds will benefit the Waterway Improvement Program.

Hunting and Fishing

Deer Management Plans

The State's population of white-tailed deer has steadily increased over the past 50 years, mostly due to a decrease in the number of natural predators. Current Department of Natural Resources (DNR) estimates place the number of white-tailed deer at over 250,000, which is far beyond the State's carrying capacity of 100,000. Moreover, it is anticipated that this current population will double within a few years if the population is not controlled. The dramatic growth in the deer population has led to a marked increase in the number of human-deer conflicts. For example, the reported number of deer-vehicle collisions has doubled in the last 8 years; over 4,300 automobile accidents that led to deer fatalities were reported in 2001. DNR conservatively estimates the property damage resulting from all deer-vehicle collisions to be in excess of $9.7 million annually. In addition to the loss associated with these accidents, deer cause substantial damage to crops and vegetation. Crop damage was estimated at almost $38 million in 1996. The increase in the deer population is also thought to contribute to the increased incidence of Lyme disease; the number of Lyme disease cases increased from 12 reported cases in 1988 to 423 reported cases in 1998.

House Bill 9 ***(passed)*** increases the deer firearms season from 13 to at least 21 days, including the first Sunday of the season. Because the first Saturday of the season annually accounts for approximately 35 percent of the total firearms harvest, the first Sunday of the season is believed to be the single most strategic day to maximize the harvest. Most areas of the State are exempt from this Sunday hunting provision, however. The seven counties in which Sunday hunting will occur include: Dorchester, St. Mary's, Charles, Calvert, Garrett, Allegany, and Washington. In an urban management region in which the deer population has become, or if left unattended will become, a threat to public health or safety or a nuisance because the population is in

excess of the "carrying capacity" of the zone, DNR's deer management plan may allow for an increased harvest by the use, as appropriate, of bait, professional sharpshooters, lethal darts, or capture and euthanasia.

In addition, the bill authorizes the donation of meat from deer harvested under the bill. Processing costs for donated meat may be paid by private donations and, as determined appropriate by DNR, a portion of the revenue obtained from the purchase of deer hunting licenses and stamps issued under the bill. DNR must report annually and make recommendations to the Legislative Policy Committee; the Senate Education, Health, and Environmental Affairs Committee; and the House Environmental Matters Committee on specified issues relating to deer management.

Black Bear Management

The State's population of black bears has also increased notably in recent years. This is due to the absence of natural predators, increased restrictions on development, the hunting ban, and other black bear protection programs. As the population has increased, so have the number of sightings and complaints. In 1996, the first year that DNR tracked these numbers, there were 196 complaints and sightings. In 2000, there were 617. In Garrett County, DNR reports that bear sightings are no longer reported because bears are known to inhabit all parts of the county, and sightings are considered commonplace. Almost 15 percent of the complaints reported actual damage to crops or property, and this is a conservative estimate because damage often goes unreported. According to residents of affected areas, bears have often come into peoples' yards and approached their homes. A few residents have reported bears entering or attempting to enter their homes.

As introduced, ***House Bill 10/Senate Bill 363*** ***(both failed)*** would have established a limited black bear hunting season to control the bear population in a region where the population exceeded the carrying capacity. DNR was to have adopted regulations to organize the hunting season and the operation of a lottery for the purchase of a chance to compete for a black bear hunting stamp. As amended in the House, however, ***House Bill 10*** would have established a black bear management permit program. It would have required DNR to issue a permit to a property owner, lessee, or the designee of an owner or lessee where it was demonstrated that there had been actual damage on the property because of the activities of a bear or that a bear posed a threat of harm to human life or animals on that property. In addition, a permit applicant would have been required to show reasonable preventative measures taken to minimize the risk of bear activity on the property. The bill would have allowed DNR to authorize the harvest of a bear on a site that is reasonably near to the property that was the subject of the permit. If the State's population of black bears was designated as threatened or endangered, DNR could have suspended the permit program for the period of the designation.

Riparian Property Rights

In 1999, legislation was enacted prohibiting nonresident riparian property owners from obtaining a Maryland license to erect stationary blinds or blind sites along the shoreline of the Potomac River. Because the Office of the Attorney General advised that this law unconstitutionally discriminates against nonresidents in a commercial setting and is, therefore, in violation of the Privileges and Immunities Clause, ***Senate Bill 18*/*House Bill 69* (both passed)** amend the 1999 law to provide Virginia and West Virginia landowners with the same rights Maryland residents have with respect to licensing their riparian shoreline. Furthermore, the bill specifies those portions of the Potomac shoreline where the stationary blind licenses may be issued.

Hunting Licenses

***Senate Bill 599* (passed)** streamlines the current hunting license structure, which is considered unnecessarily complicated by the user community. This bill reduces the number of hunting licenses, stamps, and permits and increases the costs of these licenses and stamps for the first time in several years in order to keep up with rising administrative costs. Also, the bill increases the service fee provided to licensing agents and dedicates $1 from most licenses to provide funding for the processing of deer for venison donation programs for the needy. The bill expresses a specific legislative intent that DNR utilize special fund revenue generated from the licensing fee increases to provide public hunting opportunities on the properties known as the Chesapeake Forest Lands.

Blue Crab Management

The blue crab, one of the most important species harvested in the Chesapeake Bay, generates approximately $90 million in economic benefit to the State. In the past several years, the blue crab harvest has decreased substantially. In 1999 the Chesapeake Bay Commission's Bi-State Blue Crab Advisory Committee began a two-year study to determine the status of the blue crab fishery. In January 2001 the committee published its final report and recommended a three-year, 15 percent reduction in fishing effort, stating that blue crabs were being fished almost to the point of collapse. Maryland and Virginia agreed to reduce their harvests.

In 2001, a two-year tightening of regulations on recreational crabbers was approved, capping their daily catch at about a bushel per person. Commercial crabbing regulations effective July 23, 2001, reduced the workday from 14 hours to 8 hours, strengthened a mandatory day off provision, and closed the fishery a month early. Virginia and the Potomac River Fisheries Commission (PRFC) implemented new regulations in time for the beginning of the 2001 crabbing season. Pursuant to those regulations, commercial crabbers in Virginia can no longer work Wednesdays in June,

July, and August. In addition, the daily landing limit in the crab dredge fishery was decreased from 20 to 17 barrels per day. PRFC also shortened the Potomac crabbing season by one month and reduced the crab pot limits by 10 percent.

In an effort to meet the 15 percent reduction goal in Maryland, DNR proposed regulations that, among other things, would have increased the minimum size of male hard crabs, peeler crabs, and soft crabs that may be caught by commercial or recreational means in Maryland or possessed in the State during the crabbing season. Modified from the original proposed regulations as a result of concerns raised during the public hearing process, the final regulations, which were announced by DNR on March 12, 2002, increase the minimum size of male hard crabs from five to five and one-fourth inches, soft crabs from three and a half to four inches, and peeler crabs from three to three and a half inches. While the original proposal also would have banned possession of male crabs under five and one-fourth inches, the final regulations allow the importation from other states of crabs five inches and larger for use in wholesale and retail markets. In addition, the Coastal Bays will retain their five-inch minimum size for male crabs. Among other things, the final regulations also implement a possession ban on peeler and soft crabs smaller than Maryland's limits (except for those harvested from the Potomac River).

According to the Chesapeake Bay Commission, the minimum size of hard crabs in Virginia is currently five inches and the minimum size of soft crabs is three and a half inches. Virginia recently approved the establishment of a three-inch minimum size for peeler crabs.

Senate Bill 717/***House Bill 1321***, ***House Bill 747***, and ***House Bill 1276*** ***(all failed)*** would have overridden these existing crabbing regulations.

Senate Bill 717/***House Bill 1321*** would have prohibited DNR from adopting by regulation any size limits for hard crabs that are different from regulations in other jurisdictions where the same stock of blue crab is harvested.

As introduced, ***House Bill 747*** would have prohibited a person from using a crab scrape in specified areas of the Bay, and it would have authorized DNR to ban crab scrapes completely in a large portion of the Bay. As amended by the House, the bill would have prohibited DNR from adopting regulations to establish a minimum size limit for catching or possessing hard crabs other than five inches from tip to tip of spike. Beginning August 1, 2002, DNR would have been allowed to establish a minimum size limit that is greater than five inches from August 1 through December 31 of each year.

House Bill 1276 would have prohibited DNR from adopting regulations to establish minimum size limits for the possession of hard crabs, soft crabs, or peeler crabs that are caught out of State. The prohibition would have been effective only if Virginia and PRFC adopted regulations by June 1, 2002, establishing minimum size limits of five

and one-fourth inches for hard crabs, four and one-fourth inches for soft crabs, and three and one-half inches for peeler crabs. The bill also would have required DNR to mange the blue crab fishery in tandem with specific management decisions of Virginia and PRFC.

Oysters

Populations of the native Chesapeake Bay oyster (*Crassostrea virginica*) have experienced a modest recovery in the last few years after hitting record lows in the early 1990s. However, the oyster population remains far below historical highs from the late 19th century. The parasitic oyster diseases, MSX and Dermo, which are responsible for most of the oyster population decline of the last 20 years, continued to plague oysters at moderately high rates in 2000.

Increased Penalties

Current law prohibits a person from catching oysters in specified oyster sanctuaries or on any area closed or reserved for propagation of oyster seed. There are, however, no penalties specific to taking oysters from an oyster sanctuary or an oyster reserve; only general fisheries penalties apply. In addition to these existing penalties, ***House Bill 469*** ***(passed)***, a departmental bill, provides that a person who unlawfully takes oysters from an oyster sanctuary or oyster reserve that is designated and marked by buoys or other signage, and who knew or should have known that taking the oysters was unlawful, is subject to a fine not exceeding $3,000 and immediate suspension of the person's tidal fish license for a period of not less than six months or more than one year.

Nonnative and Native Oysters

In an effort to address the shortage of the native population of oysters, there has been a growing interest in studying the feasibility of cultivating a nonnative oyster population. ***Senate Bill 494***/***House Bill 353*** ***(both passed)*** require DNR to authorize the study of the Suminoe oyster and other nonnative species that are relatively resistant to parasitic oyster diseases and grow much more quickly than their native counterpart. DNR is required to ensure that proper biosecurity measures are followed in order to minimize the risk of a de facto introduction of a nonnative species in Maryland. In addition, DNR is to study the viability of native oysters and measures available to enhance their overall health and survival rate. By December 1, 2002, DNR is to issue an interim report; the final report is due by December 11, 2004.

Catfish

According to DNR, the population of catfish in the northern Chesapeake Bay has declined 70 percent since its peak in 1989. DNR advises that catfish are important to both recreational and commercial anglers. ***Senate Bill 87*** ***(passed)*** is a departmental bill

that requires DNR to prepare a fishery management plan for catfish to establish conservation and management measures reasonably necessary to ensure that the fishery resources will be sustained.

Fishing Licenses

Maryland now offers a five-day short-term angler's license and an annual angler's license to nonresidents wishing to fish in the nontidal waters of the State. ***Senate Bill 813*/*House Bill 1149* *(both passed)*** establish a three-day short-term angler's license for nonresidents. Under current law, the fee for a nonresident short-term license is $7 or a fee equal to the fee charged a Maryland resident by the nonresident's home state for a similar license, whichever is greater. The fee for a nonresident annual license is $20 or a fee equal to the fee charged a Maryland resident by the nonresident's home state for a similar license. The addition of the three-day license will reduce unintended adverse annual fee charges to nonresidents who visit Maryland and want to fish over a long weekend.

Additionally, the bills increase the fee a license agent keeps for issuing a license from 50 cents to $1.00 and increase the fees for purchasing various angler's licenses by 50 cents. Finally, the bills modify the process an agent must follow when issuing a license and repeal the requirement that an application for an angler's license contain the applicant's age and height.

Related Matters

Hunting and Fishing Commissions

House Bill 331* *(failed) and ***House Bill 664* *(failed)*** each proposed reorganization of some of the functions and duties of DNR. ***House Bill 331*** would have established a nine-member Marine and Estuarine Fisheries Commission (MEFC) as an independent State agency. The bill would have transferred the authority to manage the State's marine and estuarine fisheries from DNR to MEFC. The bill also would have established a Marine and Estuarine Fisheries Police Force and a Maryland Fisheries Endowment Fund in MEFC. ***House Bill 664*** would have established a seven-member Wildlife and Inland Fisheries Commission (WIFC) as an independent State agency responsible for Maryland's wildlife and inland fisheries resources. The bill would have transferred the Wildlife and Heritage Service and the Fisheries Service from DNR to WIFC. The bill also would have established a Wildlife and Inland Fisheries Police Force and a Wildlife Advisory Committee in WIFC. Both of these bills were referred to interim study by the House Environmental Matters Committee.

Mute Swans

Mute swans, which are not native to Maryland, feed primarily on submerged aquatic vegetation (SAV). Thus, they deplete the restorative effects of SAVs on the Bay's water quality. Legislation passed in 2001 required DNR to establish a program to control the population of mute swans, including the managed harvest of adult mute swans and the solicitation of licensed hunters to participate in the managed harvest.

In December 2001, however, the U.S. Court of Appeals for the District of Columbia ruled that mute swans are protected under the federal Migratory Bird Treaty Act. This decision reverses the U.S. Fish and Wildlife Service (USFWS) policy that allows federal and state agencies, as well as private citizens, to take the swans and their eggs.

***Senate Joint Resolution 15/House Joint Resolution 15* (both passed)** urge USFWS to conduct expedient regulatory processes to allow Maryland to control the mute swan population and to mitigate the mute swan population's impact permanently. They also urge the U.S. Department of the Interior to appeal the holding of the U.S. Court of Appeals that found the mute swan to be a migratory bird protected under international treaties.

Turtles

Current regulations adopted by the Department of Health and Mental Hygiene prohibit hobbyists from keeping turtles. ***House Bill 1107* (passed)** authorizes the breeding, raising, keeping, and possession of turtles by a person who obtains a permit under the captive wildlife provisions of the Natural Resources Article.

Environment

Penalties and Fees

The mission of the Maryland Department of the Environment (MDE) is to protect and restore the quality of Maryland's air, water, and land resources for the benefit of the environment, public health, and future generations. MDE accomplishes its mission by assessing, preventing, and controlling sources of pollution. Among other things, MDE regulates air quality and radiation, the storage and use of hazardous substances, solid waste disposal, water appropriation and use, wetlands and waterways, and the discharge of pollutants into the State's waters. Concern has been raised in recent years that many permittees find it less expensive to pay fines and penalties than to upgrade their systems and processes in order to meet permit requirements. Thus, the Glendening Administration introduced several modifications of existing penalty provisions in order to increase their deterrent effect. Moreover, the Administration sought to establish fees that would generate a source of revenue for MDE to increase its permitting, inspection, and program activities.

Air Quality and Radiation Control

For violations of specified air quality laws, a person is guilty of a misdemeanor and on conviction is subject to: (1) for a first offense, a fine not exceeding $25,000 or imprisonment not exceeding one year, or both; and (2) for a violation committed after a first conviction, a fine not exceeding $50,000 or imprisonment not exceeding two years, or both. For other specified air quality violations, a person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $10,000 or imprisonment not exceeding six months, or both. A person who violates air quality provisions is liable for a civil penalty not exceeding $25,000, to be collected in a civil action in the circuit court for any county. If the Attorney General concurs, the Secretary of the Environment may compromise and settle any claim for a civil penalty.

For specified radiation violations, a person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $25,000 or imprisonment not exceeding one year, or both. Before any prosecution is begun, the Secretary must serve written notice of each alleged violation on a person who is in charge of the place where the violation allegedly exists. In addition to any criminal penalty imposed, a person who violates radiation provisions is liable for a civil penalty not exceeding $10,000, to be collected in a civil action in the circuit court for any county. Whether or not a court action has been filed, the Secretary, with the concurrence of the Attorney General, may compromise and settle any claim for a civil penalty.

As introduced by the Administration, ***House Bill 295*** ***(passed)*** would have increased administrative penalties imposed by MDE and instituted cost recovery as an enforcement mechanism available to MDE. As passed, however, this legislation will enhance MDE enforcement efforts by extending the statute of limitations applicable to both criminal and civil actions. Generally, under current law, a prosecution for a misdemeanor must be instituted within one year of the offense. Civil actions also must be instituted within one year of the violation, with specified exceptions. ***House Bill 295*** allows the initiation of a criminal prosecution or a civil action for a violation of specified air quality and radiation provisions within three years after the violation was committed.

Hazardous Substances and Chemicals

The federal Emergency Planning and Community Right-to-Know Act (EPCRA) was established in 1986 as part of the Superfund Amendments and Reauthorization Act. EPCRA established an infrastructure at the State and local levels to plan for chemical emergencies. Facilities that have spilled hazardous substances or that store, use, or release certain chemicals are subject to various reporting requirements. All this information is publicly available so that interested parties may become informed about potentially dangerous chemicals in their communities. MDE is the State repository for this information. The Emergency Operations Program within MDE maintains a database

of this information that is available to the public. The program also maintains the State's copy of the Toxic Release Inventory data. All data is currently maintained in paper files.

EPCRA requires the governor of each state to appoint a State Emergency Response Commission (SERC). A SERC must appoint local emergency planning committees (LEPCs) and supervise and coordinate their activities. A SERC must also designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Each LEPC must prepare an emergency plan and submit a copy of the plan to the appropriate SERC. Each LEPC must establish rules including provisions for public notification of LEPC activities, public meetings to discuss emergency plans, public comments, the LEPC response to such comments, and distribution of emergency plans. Each LEPC must also establish procedures for receiving and processing requests from the public for information. According to MDE, there are currently 25 LEPCs in the State (in each of the 23 counties, Baltimore City, and Ocean City). MDE advises that LEPCs share approximately $50,000 annually made available to the State through a federal grant program.

House Bill 291 ***(passed)***, also part of the Administration's legislative package, establishes a Community Right-to-Know Fund in MDE to be used for emergency planning, enforcement, data collection, and other activities related to chemicals and hazardous substances. The bill requires facilities that are required to report under EPCRA to pay a fee of up to $1,000 annually to MDE for the new fund and to report the information required under the federal law to MDE. The bill provides for exemptions from the fee for specified types of facilities. The fee schedule will be developed by regulation but must be based on the cost to MDE of processing the information submitted to MDE under the bill. (Under current law, MDE maintains this information only in paper form). MDE is required to use 50 percent of the new fund to provide grants to LEPCs. The bill applies civil penalty provisions to the bill and requires MDE to serve as the information repository for the SERC.

The fiscal 2003 budget includes $835,787 in special funds, contingent upon the enactment of the bill. The Department of Legislative Services estimates that the bill will generate an estimated $800,000 annually in fee revenue, based on the maximum fee.

Solid Waste Management

According to MDE's September 2001 report entitled *Solid Waste Managed in Maryland: Calendar Year 2000,* approximately 6.8 million tons of solid waste was received for disposal in 2000 by permitted solid waste acceptance facilities in the State. MDE currently regulates the management and disposal of solid waste and provides regulatory oversight to State and county recycling programs. Funding for the State's solid waste program currently comes from the general fund. MDE advises that expanded federal requirements for municipal solid waste landfills, an increase in interstate transportation of waste, and new national recycling initiatives have resulted in MDE not being able to effectively address these issues, to achieve its ongoing goals of safe and adequate management of solid waste, and to increase the diversion of waste from landfill disposal by reuse and recycling.

In 1998 the Governor created a Solid Waste Management Task Force to investigate solid waste issues. One task force recommendation was to increase funding so that MDE could broaden its role in policy making, assistance to local jurisdictions, inspection, protection of the environment, and public education. Another recommendation was to increase funding available for recycling, source reduction and education, and the development of a strategic marketing plan for recycled materials.

Senate Bill 243/House Bill 299 ***(both failed),*** another component of the Administration's legislative package, would have established a State Solid Waste Management Fund in MDE. The fund would have consisted of revenues collected by MDE from a solid waste management fee of $1 per ton of specified solid waste, certain reimbursements to MDE, any civil or administrative penalty pertaining to specified solid waste laws, and any fine imposed by a court resulting from departmental actions relative to violations of solid waste laws.

Monies in the proposed fund would have been allocated for: (1) statewide and regional recycling initiatives of MDE; and (2) solid waste program activities relating to inspections, permitting, public education, recycling programs, planning, market development, data management needs, and associated administrative costs. The bills would have authorized MDE to remove or arrange for the removal of solid waste and provide for specified remedial actions upon a determination that improper dumping or disposal of solid waste has occurred at a nonpermitted site. MDE also would have been able to take any other action it considers necessary to protect the public health and welfare or the environment. All expenditures made by MDE for the cost of inspection, monitoring, cleanup, and legal actions relating to such removal and remediation not otherwise recoverable under any State or federal laws or regulations would have been required to be reimbursed to MDE by the responsible party. Recoveries would have been paid into the new fund. The bills also would have established other enforcement provisions, including administrative, civil, and criminal penalties.

Water Management

***Senate Bill 241/House Bill 294* (both failed)**, likewise a part of the Administration's legislative package, would have authorized MDE to adopt regulations establishing reasonable application, modification application, and resource management fees for all permits and licenses issued by MDE, including: (1) water appropriation and use; (2) waterway construction; (3) waterway obstruction; (4) nontidal wetlands; and (5) tidal wetlands.

Fees collected under the bill would have been paid into the Maryland Clean Water Fund. The bills would have clarified that the fund must be used for response to the discharge of pollutants, activities related to program development, and other specified activities. The bills also would have expanded various criminal, civil, and administrative penalty provisions relating to sediment erosion and control, stormwater management, water appropriation and use, nontidal wetlands, wetlands and riparian rights, and water resources provisions. Finally, the bills would have established cost recovery provisions.

***House Bill 1161* (passed)** provides that a criminal or civil action for violation of specified water pollution provisions must be instituted within three years after the violation was committed. The bill only applies to any water pollution violation committed on or after the bill's October 1, 2002, effective date.

Other Water-Related Issues

In addition to bills relating to water management fees and penalties, several other bills were introduced during the 2002 session that address water-related issues.

Drinking Water Regulations

The Secretary of the Environment is required to adopt and enforce State primary drinking water regulations and adopt and implement adequate procedures for enforcing those regulations. The regulations may not be more stringent than the complete interim or revised national primary drinking water regulations in effect at the time. Recent concern relating to methyl tertiary butyl ether, a gasoline additive for which no federal drinking water standard yet exists, has highlighted MDE's inability to adopt standards for contaminants for which no federal standards exist.

***Senate Bill 246* (passed)**, which was introduced by the Administration, and ***House Bill 350* (passed)** authorize the Secretary of the Environment to adopt and enforce State primary drinking water regulations for a contaminant if the Secretary determines that the contaminant poses a significant risk to public health and if the federal government has not adopted complete interim or revised national primary drinking water regulations for the contaminant. As part of the determination, the Secretary must prepare a report including specified information such as monitoring data for the contaminant,

peer reviewed assessments, methodologies and data, and a cost-benefit analysis of implementing the proposed standard for the contaminant.

Water Conservation

According to MDE, the winter of 2001-2002 was one of the driest winters on record. As a result, Maryland is facing one of the worst droughts in the State's history. On April 5, 2002, Governor Glendening issued an Executive Order declaring a drought emergency and imposing mandatory restrictions for Central Maryland, including Cecil, Carroll, Harford, Howard, and Frederick counties. In addition to the 2002 drought, Maryland experienced two severe drought situations in the memorable past, one in the mid-1960s and more recently in the late 1990s. In fact, the drought of 1999 was one of the worst on record in the State. Many public water systems had difficulty meeting high demands combined with diminishing sources. Following that drought emergency, Governor Glendening issued an Executive Order establishing two committees to advise him on issues related to water conservation and drought management. MDE has begun to implement several of the recommendations made by those committees. The State has developed a three-pronged approach to promote water conservation across the State.

State Facilities: On May 24, 2001, Governor Glendening issued an Executive Order requiring all State facilities to conduct water use audits and take actions to reduce their water use. The Executive Order is intended to make State facilities a model for Maryland's citizens and for other states. Any building that is owned, leased, or managed by the State is required to reduce water use by ten percent by the year 2010.

Water Utilities: MDE has asked the State's largest water utilities, which together serve more than 3.5 million individuals, to conduct audits to evaluate the amount of residential water used per person. These utilities will be asked to develop and implement a water conservation plan, including customer education and possible incentive and rebate offers.

Public Education: MDE has undertaken a public awareness initiative to educate Maryland's citizens about the importance of conserving water.

House Bill 693 (passed) states that it is the policy of the State to: (1) encourage investment in cost-effective measures that improve the efficiency with which water is used, treated, stored, and transmitted in the State; (2) reduce costs associated with treating, storing, and transmitting water; and (3) protect the State's natural resources. The bill requires MDE to issue guidelines by October 1, 2003, to public water systems serving at least 10,000 individuals regarding the use of best management practices for water conservation. Those systems will be required to provide information relating to the use of such practices to MDE when applying for a new water appropriation permit, an expanded water appropriation permit that seeks a significant increase in the withdrawal of water, or State financial assistance. In reviewing requests for permits and

financial assistance, MDE will consider existing local initiatives, voluntary efforts, and the best management practices set forth for implementation. The bill authorizes MDE to adopt regulations to establish the minimum increase in the amount of water to be withdrawn under an expanded water appropriation permit that requires compliance with the bill.

***Senate Bill 726* (passed)** requires MDE to encourage the use of "reclaimed water" for irrigation of farmland, golf courses, athletic fields, turf, landscaping, and any other use that MDE considers appropriate. Additionally, the bill declares that it is State policy to encourage the use of reclaimed water. The stated goals of this policy are to: (1) conserve water supplies; (2) facilitate the indirect recharge of groundwater; (3) reduce the amount of wastewater effluent discharged into the surface waters of the State; and (4) pursue the goal of the Clean Water Act to end the discharge of pollutants and meet the nutrient reduction goals of the Chesapeake Bay Agreement.

Wastewater Treatment

Overflows from outdated sanitary sewerage systems have discharged millions of gallons of raw sewage into Maryland waters affecting the vitality of the Chesapeake Bay as a whole. In March 2001 Governor Glendening appointed a task force to address the issues and costs associated with separating and upgrading combined sewerage systems in the State and installing additional nutrient removal technology at wastewater treatment plants. In its December 2001 report to the Governor and the General Assembly, the Task Force on Upgrading Sewerage Systems identified a total estimated capital need of $4.3 billion to upgrade sewerage systems, including conveyance pipes and pumping stations, correction of combined sewer overflows and sanitary sewer overflows, and upgrades at wastewater treatment plants in order to maintain compliance, implement biological nutrient removal, and provide capacity for existing and projected growth. Annualized over 20 years, the estimated annual cost is $289 million.

Although the task force identified some of the needs of local wastewater treatment plants, more detailed research is necessary. ***Senate Bill 643/House Bill 1051* (both passed)** require MDE to: (1) in fiscal 2004, conduct a comprehensive inflow and infiltration data study on every wastewater treatment system, which must involve a statewide analysis using readily accessible existing data, determine whether there is an inflow and infiltration problem and, if so, determine the magnitude of the problem; (2) in fiscal 2005, contract with the Maryland Environmental Service to conduct at least three comprehensive in-depth inflow and infiltration studies at selected systems around the State; and (3) in fiscal 2006, finance a utility rate study for each locality with a wastewater treatment system in Maryland. The fiscal 2003 capital budget includes $1 million in general obligation bonds for MDE to conduct those types of studies.

Other Air-Related Issues

In addition to legislation relating to penalties for air quality violations, which is described above, several other bills were introduced during the 2002 session that relate to air quality.

Standing for Judicial Review of Air Quality Operating Permits

Title V of the Clean Air Act, as amended in 1990, requires major sources of regulated air pollutants to obtain a federally-approved operating permit. This operating permit may be obtained in one of two ways: either under a Part 70 program, named after its location in the Code of Federal Regulations (CFR), that is, Part 70 of Chapter I in Title 40; or under a Part 71 program, likewise named after its CFR location. States that have permit programs that meet the requirements of Part 70 are approved by the U.S. Environmental Protection Agency (EPA) to issue their own Title V operating permits. If a state program does not satisfy Part 70 requirements, then the Title V permit must be obtained under a Part 71 federal program.

On May 9, 1995, MDE submitted a Part 70 operating permits program to EPA for approval. In July 1996, EPA gave interim approval to the Part 70 program and instructed MDE that certain conditions must be met in order for the State to get final approval. One of these conditions related to the enactment of State legislation in order to expand Title V standing - that is, to increase the number of persons who would be entitled to challenge the issuance of a Title V permit because of an actual or environmental injury suffered by those seeking judicial relief. Pursuant to the federal Clean Air Act, federal regulations require that for a state to gain federal approval of an air quality operating permitting program, state law must provide for expeditious review of permit actions, including applications, renewals, or revisions, and an opportunity to petition for state court review of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

Under current State law, standing for judicial review of air quality operating permit decisions is governed by the Maryland Environmental Standing Act (MESA). Under MESA, the following persons have standing to bring and maintain specified actions in the courts of equity of this State: (1) the State, or any agency or officer of the State, acting through the Attorney General; (2) any political subdivision of the State or any agency or officer of it acting on its behalf; and (3) subject to some limitations, any other person, regardless of whether the person possesses a special interest different from that possessed generally by the residents of Maryland, or whether substantial personal or property damage to that person is threatened. Nonstate residents and organizations that do not have an interest separate and apart from their members do not currently have standing for judicial review of air quality operating permit decisions. Under the Administrative Procedure Act, a party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision.

Under the time line issued by EPA, MDE was required to submit its revisions to the Part 70 program to EPA by June 1, 2001. Legislation that attempted to address EPA's concerns did not pass during the 2001 session. Because the State failed to meet the deadline for revising its standing law, MDE lost federal approval of its Title V air quality operating permit program on December 3, 2001. Major sources that did not hold a Part 70 permit by that date are now required to complete a Part 71 permit application. Part 71 permits are issued directly by EPA or by a state acting on behalf of EPA as a "delegate agency" and using EPA standards and procedures. MDE entered into such a delegation agreement so that it, rather than EPA, can administer the Part 71 program. However, even under a delegation agreement, Part 71 allows for no state-by-state variation, as does Part 70, and MDE must defer to EPA standards.

In an effort to address the standing issue, ***Senate Bill 248/House Bill 5*** ***(both passed)*** expand standing for judicial review of Title V air quality permit decisions. Under the bills, except for an applicant who seeks judicial review in accordance with the Administrative Procedure Act, a final decision by MDE on the issuance, renewal, or revision of an operating permit issued pursuant to Title V of the federal Clean Air Act Amendments of 1990 is subject to judicial review by any person who: (1) meets the threshold standing requirements under federal constitutional law; and (2) participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not required by statute or regulation. Judicial review must be on the administrative record before MDE and limited to objections raised during the public comment period, unless the petitioner demonstrates that the objections were not reasonably ascertainable during the comment period or that grounds for the objections arose after the comment period. Unless otherwise required by statute, a petition for judicial review must be filed with the circuit court for the county in which any party resides or has a principal place of business.

An applicant for an air quality operating permit may seek judicial review in accordance with the Administrative Procedure Act. Except for an applicant who seeks judicial review pursuant to that law, a person is not entitled to a contested case hearing regarding Title V operating permits.

Radiation Monitoring and Regulation

MDE regulates approximately 2,700 dental facilities that use dental radiation machines. The Secretary of Environment is authorized to adopt regulations that establish a fee to offset the costs of monitoring and regulating sources of radiation within a dental facility. Currently, the fee may not exceed $40 per dental radiation machine per year. According to MDE, the cost of conducting inspections of dental facilities is four times greater than the revenue generated by the fees. ***House Bill 466*** ***(passed)*** increases the maximum fee that MDE may establish by regulation from $40 per machine per year as follows: for fiscal 2003 and 2004, $60 per dental radiation machine per year; for fiscal 2005 and 2006, $70 per machine per year; and for fiscal 2007 through at least fiscal

2010, $80 per machine per year. After June 30, 2010, the fee shall continue to be $80 per year unless altered by the General Assembly. The Secretary must reduce fees proportionately to reflect the balance of any unspent or unencumbered fees collected in the previous fiscal year.

Commuter Benefits

The Tax Credit for Employer-Provided Commuter Benefits provides a tax credit for employers that provide commuting benefits to their employees. The credit is equal to 50 percent of the cost of ride-share commuting expenses provided by the employer, subject to a maximum credit of $30 per employee per month. Eligible employer-provided commuter expenses are those that cover multiple-seating vehicle transportation costs and mass transit transportation costs. In addition, Chapters 356 and 357 of 2000 provided for a credit against the State income tax for employers who provide employees a "cash in lieu of parking program" or a "guaranteed ride home." Chapters 356 and 357 also allow specified tax-exempt organizations to apply tax credits allowed for employer-provided commuter benefits as a credit against the payment of employee withholding taxes required to be withheld from the wages of employees and paid to the Comptroller.

House Bill 339 ***(passed)*** increases from $30 to $50 the maximum credit per employee per month allowed under the Tax Credit for Employer-Provided Commuter Benefits. The bill requires the Secretary of Environment to include the tax credit in the State's plan for meeting the requirements of the federal Clean Air Act. The bill also requires MDE and the Maryland Department of Transportation to implement an extensive outreach program to market the benefits of the tax credit and to report to the General Assembly on the implementation and the effectiveness of the outreach program.

Electricity Generation and Emissions

After several years of debate in the legislature and in regulatory circles, the Customer Choice Act of 1999 (Chapter 4) restructured the electric industry, allowing for consumer choice of electricity suppliers. In addition to the required disclosure of an electricity supplier's fuel mix and emissions profile, Chapter 4 of 1999 established a number of environmental protection measures. Among other things, that legislation required electric companies in the State to conduct a study that tracks shifts in generation and emissions as a result of restructuring the electric industry. Because the amount of competition that occurred in the first six months of consumer choice was less than anticipated when the 1999 legislation was enacted, the existing study is of limited value in determining the effect, if any, restructuring has had on emissions and generation. The Public Service Commission (PSC) advises that additional studies would be useful. ***Senate Bill 285*** ***(passed)*** requires electric companies in the State to update that generation and emission study. Electric companies must submit an updated study to MDE and PSC by December 31, 2003, and by December 31, 2005.

Environmental Security

In the wake of the September 11, 2001, terrorist attacks, much concern has been raised over the safety of our nation's water and chemical supplies and the vulnerability of those supplies to terrorist attacks as well as accidental releases. Several bills were introduced during the 2002 session that addressed, at least in part, the issue of environmental security.

Water Security and Sewerage Systems

***House Bill 659* (passed)** creates a State Advisory Council on Water Security and Sewerage Systems to, among other things: (1) study innovative technologies relating to water security and sewerage systems and compare the costs of new technologies with current practices; (2) develop a priority funding system for implementing new technology; (3) develop a plan for regular evaluations at timed intervals; (4) develop plans to provide technical assistance to small and medium communities; (5) study user rates; (6) reevaluate and refine local needs data; (7) evaluate and review certain water quality regulations and criteria to improve the waters and prevent interim degradation; (8) study the levels and potential health effects of chlorination by-products in the water supply; and (9) with regard to the use of chlorine and alternative methods of disinfection in drinking water and wastewater treatment, study the associated environmental and public health issues, perform a risk assessment and cost analysis, and examine associated security issues surrounding use and storage. The advisory council terminates September 30, 2005.

The bill also establishes an Interagency Technical Assistance Committee on Wastewater Treatment Systems to advise local jurisdictions on the effective operation and financial management of wastewater treatment systems. The committee must report to the advisory council by November 1 of each year.

Chemical Security

***House Bill 1052* (failed)** would have established requirements for owners and operators of specified facilities relating to the storage, maintenance, and handling of hazardous materials in the State. On or before January 1, 2003, and every three years thereafter, owners or operators would have been required to analyze the security of the facility and to implement improvements, including "inherently safer technologies." Owners and operators would have been required to prohibit unauthorized access to the facility by installing a wall, fencing, or other appropriate structures and to monitor the property, facility, and any adjoining rail lines or other means of access by using security cameras, regular patrols, and other appropriate methods. The bill would have established criminal penalties for violations.

***Senate Bill 630/House Bill 1343* (both failed)** would have required the Secretary of the Environment to adopt regulations relating to the use of "inherently safer technologies" by owners and operators of specified "chemical sources." Owners and operators would have to be required to use such technologies or certify that they could not use them for specified reasons. Each owner and operator of a chemical source that would have been subject to the regulations would have had a general duty to: (1) identify hazards that may result from an accidental or a criminal release using appropriate hazard assessment techniques; (2) ensure safer design and maintenance of the chemical source by preventing accidental and criminal releases; and (3) minimize the consequences of any accidental release or criminal release that does occur. The bill would have established civil and criminal penalty provisions for violations.

Environmental Sanitarians

Environmental sanitarians protect the public health and consumer interests by enforcing compliance with federal, State, and local health laws and regulations. Sanitarians perform a variety of functions related to the control of environmental hazards and the preservation and improvement of human health and the environment. To practice as an environmental sanitarian or use the title "registered environmental sanitarian" or the initials "R.S." in Maryland, a person must be licensed by the State Board of Environmental Sanitarians. The board is scheduled to terminate on July 1, 2003.

During the 2001 interim, the Department of Legislative Services conducted a full evaluation of the board under the Maryland Program Evaluation Act. The department found that, due to the nature of the services provided by environmental sanitarians and the potential impact of these services on citizens' lives, there is a continued need for regulation of the environmental sanitarian profession. Accordingly, the department recommended that the board be continued and that its termination date be extended to July 1, 2013. In response to the department's sunset evaluation, ***Senate Bill 490* (passed)** and ***House Bill 519* (passed)** extend the termination date for the board to July 1, 2013, modify the board's membership, and establish a reporting requirement for the board.

Contested Case Procedures

The following permits issued by MDE are subject to the right of third parties to request a contested case hearing on MDE's determination to issue or deny the permits: (1) air quality control permits; (2) permits to install, materially alter, or materially extend landfill systems, incinerators for public use, or specified rubble landfills; (3) permits to discharge pollutants to waters of the State; (4) specified sewage sludge permits; (5) permits to own, operate, establish, or maintain a controlled hazardous substance facility; (6) permits to own, operate, establish, or maintain a hazardous material facility; and (7) permits to own, operate, establish, or maintain a low-level nuclear waste facility.

Senate Bill 848/House Bill 1229 ***(both passed)*** establish new procedures and deadlines for the disposition of contested case hearings on such permits.

Agriculture

Nutrient Management

Over the past few years, concern regarding the nutrient over-enrichment of the waters of the State and its implications for promoting the growth of *Pfiesteria* has intensified. One legislative method of addressing this issue has been regulating the management of fertilizer and manure involved in agricultural and poultry operations.

Nutrient Management Program

The Water Quality Improvement Act of 1998 (WQIA), as amended by Chapter 485 of 2000, requires certain farmers to develop nutrient management plans. Agricultural operations with a minimum gross income or number of animals were required to have such a plan for nitrogen, developed by a certified management consultant, by December 31, 2001. For a variety of reasons, including a dearth of certified consultants and problems with public awareness, many operations did not meet this deadline. While the Maryland Department of Agriculture (MDA) has repeatedly stated that it has no intention of fining farmers who did not meet the deadline, four bills were introduced during the 2002 session to address these implementation problems. ***House Bill 124*** ***(failed)*** would have transferred the nutrient management program from the MDA to the Maryland Department of Environment. In addition, the bill would have provided a process by which a farmer who was required to prepare a nutrient management plan could have received an extension of time in which to develop and implement such a plan. ***Senate Bill 303/House Bill 984*** ***(both failed)*** would have repealed the current December 31, 2002, deadline for complying with certain nutrient management plans for farmers that did not have a plan completed by October 1, 2002. Furthermore, farmers would have had the opportunity to be taught to prepare their own plans. Finally, under ***House Bill 778*** ***(failed)*** the minimum annual gross income of an agricultural operation subject to nutrient management plan requirements would have increased from $2,500 to $5,000.

Manure Transportation Program

The Manure Transportation Pilot Program, instituted in 1998 as part of the WQIA, assists with the cost of relocating animal litter, primarily poultry litter, from farms with excess manure or phosphorus-enriched soils to those areas where the manure could be more useful. The program provides cost-sharing for poultry manure and other assistance to help farmers transport the excess manure. ***House Bill 468 (passed)*** removes the "pilot" status from the program and establishes it as an ongoing program.

Agricultural Land Preservation

The Maryland Agricultural Land Preservation Foundation (MALPF) was created by the Maryland General Assembly in 1977 to preserve productive agricultural land and woodland. Agricultural preservation districts are formed when qualifying landowners sign voluntary agreements to keep their land in agricultural or woodland use for at least five years. Landowners who agree to place their farms within an agricultural preservation district may sell a development rights easement on that property to MALPF.

Natural Gas Rights

Under current law, MALPF will purchase an easement on a farm only if the owner or lessee of any mineral rights subordinates those rights to the foundation's easement. In Western Maryland, because many mineral rights owners are unwilling to subordinate their rights to the foundation, many farms do not participate in the program. ***House Bill 567 (passed)*** prohibits MALPF from requiring an owner of natural gas rights to subordinate those rights to a MALPF easement if MALPF determines that the exercise of natural gas rights will not interfere with an agricultural operation conducted on land in the agricultural district. This bill only applies to land in Garrett County or Allegany County. An identical bill, House Bill 376, was passed by the General Assembly in 2001 and vetoed by the Governor.

Recommendations of the Maryland Agricultural Land Preservation Foundation

Chapter 634 of 2000 created a task force to study the MALPF. The task force was required to, among other things, study the current program and practices of the foundation and make recommendations to improve the program, practices, and financial standing of the foundation. In its August 2001 report to the Governor and the General Assembly, the task force recommended a number of legislative proposals. The following bills implement a number of those proposals.

Task Force to Study the Maryland Agricultural Land Preservation Foundation: The task force created in 2000 recommended that its charge be extended to complete the development of proposals in the 2003 legislative session. ***Senate Bill 544/House Bill 810 (both passed)*** were a direct result of that recommendation. The

bills establish an 18-member Task Force to Study the MALPF. Specifically, the task force must study and make recommendations on a number of issues, including: (1) guidelines for farmland preservation acreage goals for each county that complement the State goal; (2) guidelines for designation by counties and certification by the State of priority preservation areas; (3) increased funding from new sources that is targeted to priority preservation areas and that enables the program to achieve its legislative goals; (4) the creation and funding of a statewide critical farms program and methods to encourage the creation of county critical farms programs; (5) current and alternative easement valuation systems under the program; and (6) an installment purchase option. The task force must submit a report of its findings to the Governor and the General Assembly before June 1, 2004.

Easement Sale Application: The task force noted that several procedural processes, including the submission of a landowner's offer to sell an easement, resulted in a delay in reaching settlement. In order to address the issue, the task force recommended that MALPF spread several application periods over the course of a year rather than handling all applications at one time. ***Senate Bill 391/House Bill 999 (both passed)*** implement this recommendation by repealing the requirement that an application to sell an easement be submitted to MALPF by July 1 of the fiscal year in which the application is to be considered; instead, the application deadline is to be determined by the MALPF board of trustees.

Preservation of Agricultural Land: The task force recommended establishing a preliminary statewide goal to preserve 1.1 million acres of productive agricultural land by the year 2020. The acreage goal recommended by the task force represents half the remaining privately-owned farmland in the State. In its report, the task force noted that agricultural land and woodland continue to decline statewide. Although MALPF has preserved 186,000 acres across the State since 1980, 371,000 acres of agricultural land have left the agricultural assessment tax rolls since that time; these lands have been or will ultimately be developed, principally for residential use. Development of agricultural land is expected to continue through 2020 at high rates. In consideration of this recommendation, ***Senate Joint Resolution 10/House Joint Resolution 22 (both passed)*** establish a statewide goal to triple the existing numbers of acres of productive agriculture land preserved by the MALPF, GreenPrint, Rural Legacy, and local preservation programs by the year 2022.

Commercial Use Easements: The task force recommended that the MALPF law be amended to allow limited, nonagricultural commercial uses on MALPF easements and districts while ensuring that allowed activities would not compromise production or the rural character of easement properties. The task force report included several proposed uses, such as large animal veterinary hospitals, horse or animal shows, and corn mazes. The task force viewed such activities as a benefit to farmers and the goals of agricultural land preservation. ***Senate Bill 435/House Bill 998 (both failed)*** would have authorized

MALPF to allow, under specified circumstances, nonagricultural, commercial uses on land subject to a MALPF easement.

Agricultural Products

Maryland Egg Law

***House Bill 92* (passed)** revises and clarifies multiple provisions of the Maryland Egg Law by: (1) authorizing the MDA to regulate shell eggs that have been altered by new technologies, such as pasteurization or ionizing radiation; (2) clarifying MDA's authority to regulate eggs donated to church groups, soup kitchens, food banks, and similar organizations; (3) authorizing MDA to set quality standards; (4) removing the specifics of the voluntary program related to shell egg production, processing, quality, and size and granting the Secretary general authority to develop voluntary standards to identify shell eggs that exceed the standards required by the statute; and (5) authorizing MDA to impose civil penalties of up to $5,000, revoke registration, and issue stop sale orders for violations of the Maryland Egg Law.

Milk Sell-by Date

Under current law, a Grade A milk product that is cooled to, packaged at, and stored at 45 degrees Fahrenheit or less before it is purchased by or delivered to the ultimate consumer may be kept for sale for a period of 14 days. ***House Bill 845* (passed)** requires the Secretary of Health and Mental Hygiene to establish the sell-by period for each dairy's products. The sell-by period may be up to 17 days.

Maryland Horse Industry Board

In 1998, the General Assembly expanded the responsibilities of the Horse Industry Board, directing it to support equine research, promote the recreational use of horses, create public awareness of the public value of equine activities, and develop and disseminate equine industry information. ***House Bill 467* (passed)** authorizes the MDA to establish an assessment of up to $2 per ton on commercial horse feed that is sold in Maryland. The assessment must be paid by the person registering the feed, that is, offering the feed for sale, and collected fees must be paid into the Maryland Horse Industry Fund. These fees are then used for the equine industry support activities required of the board. MDA must adopt regulatory guidelines for collecting and reporting the fees, as well as procedures to allow for reimbursement of the fee.

Infectious and Contagious Diseases

Introduced as part of the Governor's anti-terrorism package, ***Senate Bill 236 (passed)***/***House Bill 304 (Ch. 6)*** authorize the Secretary of Agriculture to apply to certain courts for an administrative search warrant to conduct inspections to ensure compliance with State laws regarding the prevention of infectious and contagious livestock and poultry diseases. For a more detailed discussion of this bill, see the subpart "Anti-Terrorism" under Part C - State Government of this *90 Day Report*.

Animal Cruelty

In 2001, the General Assembly made certain acts of animal cruelty felonies. Specifically, the intentional mutilation, torture, or cruel killing of an animal, including allowing a dog or bird to be used in a dog or cockfight, were made felonies punishable by up to three years in jail. ***House Bill 32 (passed)*** follows up on that legislation by requiring the State Board of Veterinary Medical Examiners to adopt regulations encouraging a veterinary practitioner to report suspected instances of animal cruelty to a local law enforcement or animal welfare agency. The bill also affords a veterinary practitioner immunity from any civil liability that results from a good faith report of suspected animal cruelty.