Part K
Natural Resources, Environment, and Agriculture

Natural Resources

Preservation of State Waters

Chesapeake and Atlantic Coastal Bays Critical Area

Chapter 794 of 1984 established the Chesapeake Bay Critical Area Protection Program in order to minimize damage to water quality and wildlife habitat by fostering more sensitive development activity along the shoreline areas of the Chesapeake Bay and its tributaries. The law identified the "critical area" as all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. Viewed as particularly sensitive were the "buffer areas" falling within 100 feet of the shoreline. Because the unique and critical environmental functions of these buffers were regarded as compromised by clearing and construction, their protection was considered a cornerstone of the program.

The 1984 legislation also created a statewide Chesapeake Bay Critical Area Commission to oversee the development and implementation of local land use programs dealing with the critical area. Each local jurisdiction is charged with the primary responsibility for development and implementation of its own local program; that local authority, however, is subject to commission review and approval.

In three cases decided in 1999 and 2000, the Maryland Court of Appeals reinterpreted long-held understandings of "unwarranted hardship" in the context of local zoning variances in the buffer area. Legislation enacted in 2002, which in effect overruled the Court of Appeals in these cases, clarified the underlying intent to protect the viability of the buffer area. Also in 2002, the critical area program was expanded to include the Atlantic Coastal Bays.

In July 2003, the Court of Appeals again departed from widely understood principles of critical area law in the case of *Lewis v. Department of Natural Resources*. Allowing for the construction of a hunting camp in the environmentally sensitive buffer, this ruling was regarded as shifting the burden of proof from an applicant seeking a variance to a local program denying a

variance request. The impact of this shift, in effect requiring a local program to disprove the need for the variance, was predicted to cause significant escalation of administrative costs associated with each local program, thus crippling enforcement of the entire critical area program. Moreover, this decision was expected to impact a variety of other legal issues related to land use and zoning.

Intended to override the *Lewis* case, ***Senate Bill 694/House Bill 1009 (both passed)*** make several changes to the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program. The bills clarify legislative intent regarding human impacts on the bays and the importance of a minimum "buffer," and they codify current regulations requiring a local program to include the establishment of a minimum buffer. The bills specifically define "unwarranted hardship" to mean that, without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested. Also, key procedural aspects of a local jurisdiction's consideration of a variance are established in statute.

Finally, as a matter separate from the *Lewis* case, the bills enhance local program enforcement authority in two additional ways. First, violators of local program requirements are subject to prosecution or suit by local authorities. Local attorneys, however, generally have little experience with the critical area law and its program components. While violations may be referred to the Attorney General, that enforcement tool is not triggered unless the chairman of the commission has reason to believe that a local program has failed in its enforcement requirements, which is rarely the case. Thus, Senate Bill 694/House Bill 1009 streamline the process for referral to the Attorney General. Second, if, for example, a person cuts or clears trees within the critical area in violation of program regulations, the local jurisdiction may bring an action to require replanting or to restrain the violation. As for monetary damages, though, current law allows for a maximum of $500. Therefore, in order to deter program violations, these bills require local programs to establish penalties up to $10,000.

Also, although the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program limits growth allocation to 5 percent of the total resource conservation area, local jurisdictions have been inconsistent in how they factor accessory dwelling units, such as in-law suites, guest houses, or employee quarters, into the calculation of this 1-in-20 acre density. ***Senate Bill 795/House Bill 1345 (both passed)*** address this inconsistency by defining "dwelling unit" to include these accessory structures and by requiring, with certain exceptions, that a local jurisdiction count each dwelling unit for purposes of the 1-in-20 calculation.

Fundraising for Water Restoration Efforts

It is estimated that Maryland's cost to restore the Chesapeake Bay by 2010 will be nearly $8 billion. In an attempt to cultivate significant donations from the private sector for this effort, the Administration introduced ***Senate Bill 184/House Bill 288 (both failed)*** which would have created the Chesapeake Bay Recovery Fund within the Department of Natural Resources (DNR). Funds were slated for bay restoration activities such as oyster restoration, cover crops, and the planting of bay grasses.

For a discussion of additional bills relating to the Chesapeake Bay, see the subpart "Environment" of this Part K.

Boating

Over the years, DNR has found that problems in vessel operation, such as wake damage, are usually not caused by all vessels, but by one select group of vessels of a specified type or size. Without the authority to adopt regulations governing the operations of only one type or size of vessel, DNR has traditionally addressed public concerns by restricting the operations of all vessels. In order to provide greater flexibility for waterway management, ***Senate Bill 61 (passed)*** allows DNR to differentiate by vessel type or size in its vessel regulations so that every vessel of the same type or size may be operated with equal freedom and with equal restrictions under the same circumstances.

Legislation enacted in 2001 (Ch. 429) prohibits a person from operating or permitting the operation of a vessel shorter than 21 feet if a child younger than the age of seven is aboard, unless the child is wearing a securely and properly attached personal flotation device (PFD). By modifying the definition of "child" to include an individual who weighs 50 pounds or less, regardless of age, ***Senate Bill 429 (passed)*** includes those individuals among those subject to the already existing PFD requirement. For children younger than the age of four, the bill authorizes additional PFD safety features through March 31, 2006; as of April 1, 2006, these additional safety features will be mandatory. Also, DNR is required to pursue outreach and public education efforts regarding boating safety for children and to report on these efforts and other pertinent data.

Finally, during the 2003 session, in order to be consistent with federal law, the General Assembly required that any collision involving two or more vessels, regardless of the amount of property damage, be reported to DNR. However, because this understanding of federal law was actually erroneous, ***House Bill 101 (Ch. 36)*** repeals this requirement. Rather, as under federal law, in the event of a collision in which there is only property damage, a report will be necessary only if the damage is at least $2,000.

Enforcement of Natural Resources Laws

At one time, DNR commissioned citizens to act on its behalf in order to enforce laws related to forest reserves, parks, and recreation areas. Because this relationship was often temporary, a set term allowed for a periodic review of those commissioned. Thus, a forest or park warden serves for a term of two years, and the Secretary of Natural Resources must regularly renew those commissions. Meanwhile, however, DNR has restricted the awarding of these commissions to permanent employees, and the review is automatic. Hence, ***Senate Bill 58 (Ch. 20)*** repeals the specification of a set term in order to eliminate the unnecessary administrative work of the renewal process.

During the 2003 session, the General Assembly directed the Department of Budget and Management (DBM), in consultation with the Department of State Police (DSP) and DNR, to

study ways in which DSP and sworn officers at DNR could make more efficient use of State law enforcement resources by consolidating the two organizations. Although DBM advised against combining the Natural Resources Police Force with DSP for several reasons, ***Senate Bill 811***/***House Bill 1406*** ***(both failed)*** would have transferred all Natural Resources Police personnel and their associated functions and duties to DSP.

On a related issue, DBM recommended consolidating the State forest and park rangers into the Natural Resources Police Force. Although there was no legislation addressing this recommendation, a memorandum of understanding between the State and the State Law Enforcement Officers' Labor Alliance effectuated this consolidation, which will take effect January 1, 2005.

Under the Jennings Randolph Lake Project Compact, Maryland and West Virginia are equally responsible for the establishment and enforcement of natural resources and boating laws applicable to the lake and its surrounding lands. Although each state has concurrent jurisdiction with the U.S. Army Corp of Engineers and the other state for the enforcement of the states' civil and criminal laws, the states have not had concurrent jurisdiction to enforce criminal laws beyond offenses related to natural resources and boating. ***House Bill 129*** ***(Ch. 37)*** amends the compact by authorizing concurrent enforcement of all criminal laws in the project by DNR and the West Virginia Division of Natural Resources. This bill does not take effect until West Virginia enacts a similar law, which is expected.

DNR Administration

Initiatives of the Special Funds Workgroup

Because of several concerns about DNR's use of its special funds, the *2002 Joint Chairmen's Report* requested the establishment of a workgroup to study these funds, their statutory requirements, the appropriate level of deductions for administrative expenses, possible streamlining measures to reduce DNR's tracking burden, and the propriety of DNR's use of these special funds. In January 2004, the workgroup recommended that obsolete provisions of the State Boat Act be repealed and that the statutory amount of Waterway Improvement Fund (WIF) monies used by the Natural Resources Police (NRP) be increased. Thus, ***Senate Bill 452***/***House Bill 538*** ***(both passed)*** repeal the requirements that DNR deposit $225,000 of its vessel excise tax revenues in the general fund, that DNR's use of funds collected from the vessel excise tax for enforcement of the State Boat Act be limited to $350,000 annually, and that appropriations from the WIF for marine operations of NRP be limited to $1 million annually. For the support of NRP marine operations, DNR may propose an appropriation from WIF up to $1.7 million in fiscal 2006 and $2 million annually thereafter.

Currently, DNR applies an administrative cost rate of about 10% to the WIF. The workgroup recommended annual budget language that would direct DNR to reduce the percentage of available WIF monies used for administrative purposes over the next five years as follows: 8% in fiscal 2006, 6% in fiscal 2007, 4% in fiscal 2008, 2% in fiscal 2009, and 0% in

fiscal 2010. ***Senate Bill 508* (passed)**, the Budget Reconciliation and Financing Act of 2004, incorporated the phase-out recommendation.

The workgroup also recommended that DNR codify its current practice with regard to the use of several of its special funds for administrative expenses. Thus, ***Senate Bill 640*/*House Bill 1258* (both passed)** explicitly authorize DNR, unless otherwise authorized by statute, to use money in a fund or account established under the Natural Resources Article for administrative expenses directly related to the purposes of the fund or account. DNR must submit any changes in its methodology to the Senate Budget and Taxation Committee and the House Appropriations Committee for review and comment prior to implementing the change. The bills also modify several statutory provisions within the Natural Resources Article to authorize the use of various special funds and account for administrative expense.

Finally, because statutory language governing DNR's various special funds and accounts is inconsistent, the workgroup recommended that this language be updated so as to be consistent with current legislative drafting guidelines. In response to this recommendation, ***House Bill 1414* (passed)** makes several technical changes regarding the management of these funds and accounts. In addition, the bill requires that specified special funds within DNR accrue their earned investment income.

Other Administrative Issues

All electric companies must pay an environmental surcharge per kilowatt hour of electric energy distributed in the State. This revenue is deposited in the Environmental Trust Fund (ETF) within DNR and used primarily to support DNR's Power Plant Research Program (PPRP). The ETF funds activities associated with the assessment and management of the cultural, economic, and environmental impacts of electric power generation and transmission facilities. In turn, PPRP, in cooperation with several specified State agencies, evaluates sites for their suitability for use as electric power plants, including related environmental and land use considerations; this information is then used by the Public Service Commission in considering requests for certificates of public convenience and necessity for new power plants and associated transmission lines. The surcharge is scheduled to terminate on June 30, 2005, but ***House Bill 503* (passed)** extends the termination date for the environmental surcharge for five years to June 30, 2010. The surcharge generates approximately $9 million annually in revenue for the ETF.

According to the International Association of Fish and Wildlife Agencies, about 40 states have implemented Internet licensing systems since 1996. The percentage of total license sales sold through these systems varies significantly by state but ranges as high as 35 percent. ***Senate Bill 841* (passed)** authorizes DNR to develop and implement an electronic system for the sale and issuance of licenses, permits, and registrations and the recording and releasing of security interests. DNR may adopt regulations to implement such a system and determine the appropriate fee levels that my be charged by a vendor and by DNR for the electronic transmission service.

Except upon the written request of a registered vessel owner or in certain other specified situations, DNR may not provide an owner's name, address, or other identifying information to another person. ***Senate Bill 642* (passed)** authorizes DNR to disclose personal information

regarding registered vessel owners to a financial institution, as defined under the Financial Institutions Article, but only to verify the accuracy of personal information submitted by the individual to that financial institution. If the information is not accurate, the financial institution may obtain correct information for the purpose of preventing fraud, pursuing legal remedies, or recovering on a debt or security interest.

Unsuccessful Fee Measures

Finally, a number of departmental bills related to fees did not pass this session. Most prominent of these were ***Senate Bill 762***/***House Bill 1259*** ***(both failed)***, which would have modified the process by which departmental fees are increased. Rather than enacting changes in statute, as is now the usual process, a Natural Resources Fee Commission would have recommended changes to the Secretary, who, in turn, would have adopted regulations to establish fees. Also, ***Senate Bill 60*** ***(failed)*** would have increased fees for recreational fishing licenses and would have established a nonresident fee for some licenses and stamps. ***House Bill 181*** ***(failed)*** would have increased various fees paid to DNR under the State Boat Act and would have repealed the service charge for returned checks. ***House Bill 496*** ***(failed)*** would have authorized DNR to adopt regulations establishing procedures, participant criteria, and fees for participation in or access to wildlife management programs and services provided by DNR.

Hunting and Fishing

Hunting

Licenses

Owners of riparian property in Maryland (landowners) may license their shoreline to establish stationary blinds or blind sites or to prevent other people from doing so. After riparian landowners obtain licenses, Maryland residents not owning riparian property (squatters) may apply to license a blind site adjacent to shoreline that has not been previously licensed. The Department of Natural Resources (DNR) issues approximately 2,000 shoreline licenses annually to riparian landowners and another 2,500 annually to squatters. ***Senate Bill 59*** ***(passed)*** modifies the process used by DNR to issue shoreline and blind site licenses. First, the bill authorizes a riparian landowner to obtain a three-year license for a fee of $60 or the current annual license. Second, the bill requires squatters to possess a current or prior year hunting license to apply to DNR to license shoreline for an offshore blind site. Third, the bill repeals the provision requiring that unexpended funds revert to the general fund; instead, unexpended funds will be credited to the Wildlife Management and Protection Fund and may not be transferred to the general fund.

A "master hunting guide" is an individual who is licensed by DNR and owns or is responsible for the operation of a commercial hunting guide organization that outfits or guides hunters and receives payment for the outfitting or guiding of hunters. ***House Bill 492*** ***(passed)*** repeals the classification of master hunting guide and establishes two new licenses within DNR: a "waterfowl outfitter" is an individual who receives monetary consideration for the outfitting or guiding of hunters to hunt wild waterfowl; and a "waterfowl hunting guide" is an individual who

is an employee of a waterfowl outfitter and furnishes only personal guiding services in assisting a person to hunt. An individual must be licensed by DNR as a waterfowl outfitter or a waterfowl hunting guide before the individual may receive monetary consideration for outfitting or guiding hunters to hunt wild waterfowl. This bill takes effect February 1, 2005.

Black Bears

DNR is currently planning a limited black bear hunt for the 2004-2005 hunting season. ***House Bill 451*** ***(failed)*** would have required a moratorium on black bear hunting until July 1, 2010, and also would have required DNR to survey the black bear population in 2009.

Fishing

Finfish

DNR has broad authority to regulate fishing seasons for various species of finfish. ***Senate Bill 13***/***House Bill 202*** ***(both passed)*** authorize DNR to completely close an area of State waters to all finfishing if, in a written report made available to the general public, it finds that the closure is necessary (after consideration of several items specified in the bill) and it develops protocols and a reporting timeline to monitor the closure. DNR also must hold at least one public hearing on the closure. After a closure, DNR must, in another written report and in accordance with the reporting timeline, evaluate the effectiveness of the closure and determine what, if any, management changes are appropriate.

In general, a person may not buy, sell, ship, transport, or otherwise deal in finfish unless the person is licensed by DNR. Under current law, the following persons are exempt from these requirements: a person licensed by DNR to catch finfish for sale; a retail market, restaurant, or other establishment where finfish are sold or served to ultimate customers; and a person who buys finfish for personal use or consumption. ***Senate Bill 674***/***House Bill 1214*** ***(both passed)*** also exempt a person who catches and sells finfish as bait.

DNR also regulates the nets a person may use when fishing for finfish. ***House Bill 1264*** ***(passed)*** repeals statutory prohibitions and requirements relating to the use of staked gill nets (stake nets), that are already prohibited under current regulations. The bill also prohibits a person from setting at any time a fyke net within 300 feet of a pound net.

Shellfish

The native Chesapeake Bay oyster *(Crassostrea virginica)* plays a vital role in filtering pollutants from bay water and providing habitat for other marine life. At one time, Maryland produced between one and two million bushels of oysters each year. In recent years, however, two deadly parasitic diseases have been responsible for low harvests.

In an effort to address the native oyster shortage, there has been a growing focus on the feasibility of cultivating a nonnative oyster population, *Crassostrea ariakensis*, also known as the Suminoe or Asian oyster. There is significant concern regarding the unknown impact of this

nonnative species on the bay ecosystem. The National Academy of Sciences (NAS), in its February 2004 report regarding ongoing research on the Suminoe oyster, cautioned that as much as five years of additional research is needed to thoroughly evaluate the risks and benefits associated with various management options. Chapter 508 of 2002 requires DNR to authorize the study of the Suminoe oyster and other nonnative species, with the study proceeding in accordance with the findings of the NAS review of the Suminoe oyster. ***Senate Bill 675 (passed)*** repeals the requirement that the study must proceed "in accordance" with the findings of the NAS review of the Suminoe oyster. Instead, the study must "be consistent" with the findings of the NAS review, thus giving researchers flexibility as scientific knowledge advances.

House Bill 308 (passed) temporarily repeals a prohibition on possessing or using a "devil catcher," "devil diver," or similar device on any oyster dredge boat. This repeal terminates in three years, on September 30, 2007. DNR is also required to report to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee by the termination date on the environmental impact of these devices.

House Bill 90 (passed) authorizes DNR to adopt regulations that designate an area as a "harvest reserve area" for oysters. By publishing public notice, DNR may establish the opening or closing of a harvest reserve area; the harvest limit; the seasons, days, and times when oysters may be harvested; a minimum size limit of not less than three inches; and a maximum size limit. The bill establishes criteria DNR must follow when opening and closing an area as well as public notice requirements. The bill also modifies existing public notice requirements relating to natural oyster bars.

Licenses

DNR has authority to suspend or revoke certain fishing licenses or authorizations; ***Senate Bill 50 (passed)*** modifies this authority. Specifically, the bill repeals the minimum and maximum time periods for suspension of a commercial tidal fish license (TFL); modifies the criteria for suspension and revocation of a TFL or authorization; requires DNR to adopt regulations providing for suspension or revocation of a TFL or authorization for conviction of an offense under the Fish and Fisheries Title of the Natural Resources Article; and establishes provisions authorizing DNR to suspend recreational fishing licenses. DNR must adopt regulations relating to the suspension and revocation of licenses and the assignment of points for specific fishery offenses in accordance with specified recommendations made by the workgroup created by the Tidal Fish Advisory Commission and the Sport Fish Advisory Commission.

Environment

Chesapeake Bay Restoration

According to the Chesapeake Bay Program, nitrogen pollution is the most serious problem facing the Chesapeake Bay today. Each year, roughly 300 million pounds of nitrogen reach the bay. This pollution results in excessive algae growth that clouds water, depletes oxygen, and ultimately kills bay grasses, fish, and crabs. As part of the Chesapeake 2000

Agreement, Maryland, Virginia, Pennsylvania, and the District of Columbia committed to reduce nitrogen to levels that will remove the bay from the federal impaired waters list.

Discharges from wastewater treatment plants (WWTPs) account for an estimated 20 percent of the nutrient pollution reaching the bay. Although there are 272 WWTPs with National Pollutant Discharge Elimination System permits in the State, the Maryland Department of the Environment (MDE) advises that the 66 largest facilities account for over 95 percent of the wastewater discharge to the bay. Nutrient removal upgrades to those facilities would reduce nitrogen loading to the bay and its tributaries by an estimated 7.5 million pounds annually, approximately one-third of the additional reduction needed for Maryland to meet its commitments under the 2000 agreement.

In March 2001, Governor Glendening appointed a task force to analyze the issues and costs associated with separating and upgrading combined sewerage systems in the State and installing additional nutrient removal technology at WWTPs. In its December 2001 report to the Governor and the General Assembly, the task force identified a total estimated capital need of $847 million for nutrient reduction and removal.

Because of the significant capital outlay necessary to complete the upgrades, the Administration introduced legislation in the 2004 session to establish a funding source for the upgrades. As introduced, ***Senate Bill 320 (passed)*** would have established a bay restoration fee to be paid by users of WWTPs. The General Assembly amended the bill to extend the fee to users of onsite sewage disposal systems (septic tanks) and sewage holding tanks. The money generated from the bay restoration fee is to be deposited in the Bay Restoration Fund established by the bill.

The bill sets the fee at $2.50 per month ($30 annually), for each residential dwelling that receives an individual sewer bill and for each user of a septic system or sewage holding tank that receives a water bill. For a building or group of buildings under single ownership or management that contain multiple residential dwellings that do not receive an individual sewer bill, or for a nonresidential user, the bill establishes a sliding fee scale based on the volume of wastewater generated; the fee is $2.50 per month ($30 annually) for each "equivalent dwelling unit" (EDU), generally 250 gallons of wastewater effluent generated daily, up to 3,000 EDUs, and $1.25 per month ($15 annually) for each EDU exceeding that threshold and up to 5,000 EDUs. Based on that "cap," the maximum fee is $120,000 annually. The bill also provides that the maximum fee for a single site is $120,000. The fees described above, which will be collected through water and sewer bills, take effect January 1, 2005. The bill exempts certain users, including local governments, from the fee.

The fee for each user of a septic system or a sewage holding tank that does not receive a water bill is $30 per year. These fees, which take effect October 1, 2005, will be collected by local governments, in a method and frequency as determined by individual counties. An advisory committee established by the bill will identify users of septic systems and sewage holding tanks and make recommendations to counties on the best method of collection.

Once the bill's fee provisions are fully implemented, gross fee collections will total approximately $74 million annually ($62 million from WWTP users and $12 million from users of septic systems and sewage holding tanks). After a deduction by billing authorities for administrative costs, fee revenue from WWTP users will support the issuance of bonds to provide the additional revenue needed to provide grants to WWTP owners for upgrades to achieve "enhanced nutrient removal" (ENR). The most recent estimate of the amount of funding needed to upgrade the major WWTPs to achieve ENR is $750 million to $1 billion. Other allowable uses of the revenue collected from WWTP users include grants for sewer infrastructure projects, grants to offset a portion of operation and maintenance costs associated with ENR technology, and administrative expenses.

Of the fee revenue collected from users of septic systems and sewage holding tanks, after a deduction by billing authorities for administrative costs, 60 percent will be deposited into a separate account within the Bay Restoration Fund; MDE is directed to use these funds to provide grants and loans to septic system owners for upgrading their systems with nitrogen removal technology. MDE is allowed to use a portion of these funds for administrative expenses, including the costs to implement an education, outreach, and upgrade program to advise owners of septic systems and sewage holding tanks on proper maintenance of their systems and the availability of grants and loans for upgrades. The remaining 40 percent of fee revenue collected from users of septic systems and sewage holding tanks will be transferred to the Maryland Agricultural Water Quality Cost Share (MACS) Program within the Maryland Department of Agriculture (MDA) to fund cover crop activities. Under MACS, MDA provides grants to farmers to cover up to 87.5 percent of the cost to install best management practices (BMPs). Cover crops planted after the fall harvest to soak up unused fertilizers is one of the BMPs currently eligible for cost-share assistance.

Senate Bill 320 also incorporates the Administration's proposal to amend the Water Quality Improvement Act (WQIA) of 1998 in an effort to encourage farmers to develop and implement nutrient management plans. For a more detailed discussion of the Administration's WQIA proposal, which was also passed as stand-alone legislation as ***Senate Bill 182 (passed)***, see the subpart "Agriculture" of this Part K.

For a discussion of additional bills relating to the Chesapeake Bay, see the subpart "Natural Resources" of this Part K.

Brownfields Redevelopment

Brownfields are abandoned or underutilized industrial or commercial sites, located primarily in urban areas, which are either contaminated or perceived to be contaminated by hazardous substances. Chapters 1 and 2 of 1997 established the Voluntary Cleanup Program (VCP) within MDE to encourage the investigation, cleanup, and redevelopment of eligible brownfields properties in a manner that protects public health and the environment. VCP also works in conjunction with the Brownfields Revitalization Incentive Program (BRIP), a program administered by the Department of Business and Economic Development (DBED) that provides

economic incentives such as loans, grants, and property tax credits to clean up and develop certain properties.

As of January 2004, MDE had received applications for a total of 174 properties, 114 of which had been accepted into VCP. Of the 114 properties that had been accepted into the program, 91 had been completed; cleanups were pending on an additional 23 properties. As of the same date, BRIP had approved 31 projects to receive State funds, totaling about $4.8 million.

Several meetings were held by stakeholders during the 2003 interim to address methods of altering VCP to further encourage the safe redevelopment of brownfields. The Administration introduced ***Senate Bill 186/House Bill 294 (both passed)*** in an effort to encourage participation in the existing programs by expanding eligibility to participate, providing a more predictable process for prospective owners of eligible properties, reducing the costs of redevelopment, and decreasing departmental turnaround times. The bills also provide new enforcement authority to MDE under the Controlled Hazardous Substances Subtitle and broaden eligibility for grants and loans through BRIP. These changes are estimated to result in a 35 percent increase in the number of applications submitted to MDE to enter the VCP.

Air Pollution

Energy-efficient Products

Traditional methods of energy generation produce air emissions that can have a significant impact on the environment. Pollutants from power plants (such as nitrogen oxides, sulfur dioxides, carbon dioxide, mercury, and particulate matter) contribute to a whole host of environmental problems including smog, acid rain, global warming, and water pollution. Concern regarding these negative environmental effects, combined with fluctuating energy prices and supplies nationwide, has sparked debate over policies that can be implemented to conserve energy. According to the American Council for an Energy Efficient Economy, policies to improve energy efficiency can reduce air pollution, reduce oil imports, improve the reliability of the U.S. electric grid, and result in energy savings for consumers.

The General Assembly passed legislation during the 2003 session (Senate Bill 394/House Bill 747) to establish energy efficiency standards for certain industrial and consumer products; that legislation, however, was vetoed by Governor Ehrlich. During the 2004 session, the General Assembly voted to override the Governor's veto; the bills became **Chapters 2 and 5 of 2004**.

The Acts establish minimum energy efficiency standards for specified new products to be sold in Maryland after March 1, 2005, or installed in Maryland after January 1, 2006. Specifically, the Acts require the Maryland Energy Administration (MEA) to adopt regulations establishing minimum energy efficiency standards for nine household and commercial products: (1) torchiere lighting fixtures; (2) unit heaters; (3) certain types of low-voltage dry-type distribution transformers; (4) ceiling fans and ceiling fan light kits; (5) traffic signal modules; (6) illuminated exit signs; (7) commercial refrigeration cabinets (excluding walk-in refrigerators or freezers); (8) large packaged air-conditioning equipment; and (9) commercial clothes washers. The Acts specify minimum efficiency standards for those products and prohibit, with the

exception of commercial clothes washers and ceiling fan light kits, the sale of nonconforming new products on or after March 1, 2005, and the installation of such products after January 1, 2006. Efficiency standards for commercial clothes washers and ceiling fan light kits become effective March 1, 2007; washers and kits that do not meet the standards may not be sold beginning on that date and may not be installed beginning January 1, 2008.

The Acts do not apply to:

- new products manufactured in the State and sold outside the State;
- new products manufactured outside the State and sold at wholesale inside the State for final retail sale and installation outside the State;
- products installed in mobile manufactured homes at the time of construction; or
- products designed expressly for installation and use in recreational vehicles.

The Acts provide for the certification, testing, and inspection of the affected products and establish a civil penalty for repeat violations by manufacturers, distributors, and retailers.

Renewable Energy

***Senate Bill 485*/*House Bill 714* (both passed)** establish a solar energy grant program to be administered by MEA. The grant program will receive an unspecified annual budget appropriation; the expressed intent of the General Assembly is that at least $500,000 be appropriated annually. The purchases of property eligible for the program are identical to those that are currently eligible for tax credits under the solar energy tax credit, which terminates on July 1, 2004. The amount of the grant is equal to the lesser of (1) $3,000 or 20 percent of the total installed cost of photovoltaic property (maximum limit is increased to $5,000 if installed on nonresidential property) and (2) $2,000 or 20 percent of the total installed cost of solar water heating property. Grants can be made to individuals, businesses, and local governments.

Approximately 95 percent of the electricity generated in Maryland comes from conventional energy sources such as coal or oil. The remaining 5 percent comes from renewable sources such as solar, biomass, or municipal waste. In an effort to foster the development and use of renewable energy sources, ***Senate Bill 869*/*House Bill 1308* (both passed)** require the Public Service Commission to establish a renewable energy portfolio standard that applies to retail electric sales in the State beginning in 2006. For a more detailed discussion of these bills and other energy-related legislation, see Part H – Business and Economic Issues of this *90 Day Report*.

Ozone Nonattainment

Under the Clean Air Act (CAA), the Washington, DC metropolitan area was required to comply with the one-hour ozone standard by November 15, 1999. In part due to transported air

pollution, the area failed to meet that standard. Subsequently, EPA reclassified the Washington, DC area's nonattainment status as "severe." Maryland, Virginia, and Washington, DC were required to resubmit clean air plans by March 1, 2004; these plans were required to include all measures mandated under CAA for "severe" nonattainment areas, including imposition of fees under Section 185 of CAA. Section 185 requires major sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) located in "severe" ozone nonattainment areas to pay an emission fee if the ambient air quality standard for ozone is not met by 2005. Maryland has resubmitted its plan, but because it lacks statutory authority to impose Section 185 fees, the plan is incomplete.

To address this issue, MDE proposed ***House Bill 1441 (failed)***. The bill would have established an annual fee to be paid by major stationary sources of VOCs or NO_x located in Maryland within the Washington, DC nonattainment area. The bill would have required MDE to hold the fees collected from each person in a separate account within the Ozone Standard Attainment Fund, a special fund established by the bill, to be used for reimbursements for costs incurred for the installation of air pollution control devices or other pollution prevention or reduction measures. The bill would have terminated if Section 185 fees were no longer required under CAA.

Waste Management

Electronic Waste Collection

According to MDE, in 1998, more than 20 million personal computers became obsolete nationally, only 14 percent of which were reused or recycled. Since 2001 MDE has participated in a regional pilot project called "e-Cycling." The goal of this project was to develop information and data necessary to establish a program and infrastructure for the proper management, recycling, and removal of cathode ray tubes and other electronic components and their associated hazardous materials from the waste stream. In February 2004, the Electronics Industries Alliance announced an agreement with state governments and environmental groups to draft legislation to create a national electronics recycling program. In an effort to address this issue at the State level, ***House Bill 109 (passed)*** requires MDE to study the establishment and implementation, by January 2006, of an electronic waste collection system in the State. MDE must report its recommendations for funding such a system to the Governor and the General Assembly by December 31, 2004. MDE must report its findings and recommendations for the establishment and implementation of a system by July 1, 2005.

Mercury-added Products

Mercury is a naturally occurring element that is found in air, water, and soil. In small quantities, it can conduct electricity, measure temperature and pressure, and act as a catalyst in industrial processes. However, it does not degrade and is not destroyed by combustion; rather, it is a persistent and toxic pollutant that accumulates in the environment and presents a number of health risks. Federal and state agencies across the nation are exploring efforts to curtail the use of mercury. Efforts are also being made to encourage recycling of mercury-containing products.

A number of states, including Connecticut, Florida, Maine, and Vermont, have labeling and/or disposal requirements for such products.

House Bill 136 ***(passed)*** establishes prohibitions and requirements relating to the sale and post-use management of "mercury-added products." Beginning January 1, 2006, the manufacturer of certain mercury-added products is responsible for affixing an informational label on the products. Beginning April 1, 2006, unless a mercury-added product is labeled in accordance with the bill and regulations, a manufacturer or wholesaler may not sell the product at retail in the State or to a retailer in the State. Beginning October 1, 2006, a person who discards more than a minimum weight or number of mercury-added fluorescent lamps in a calendar year must arrange for the final reclamation or destination of the lamps at a reclamation facility (recycler) or a destination facility (hazardous waste facility). MDE will establish in regulation the minimum weight or number of mercury-added lamps that subjects a person to this requirement.

Wetlands and Waterways/Water Pollution Control

Penalties

Tidal wetlands play a vital role in maintaining the health and function of the Chesapeake and Coastal Bays. Current law provides for civil and criminal penalties for violations of tidal wetlands provisions. ***House Bill 494*** ***(passed)*** eliminates a statutory inconsistency pertaining to criminal penalties for violations of State and private wetlands laws. The bill also renames the Wetlands Compensation Fund as the Tidal Wetlands Compensation Fund and provides that any penalty imposed by a court under the law pertaining to wetlands and riparian rights must be paid into the fund. Before taking any civil action to recover a penalty, MDE must provide the alleged violator with written notice of the proposed penalty and an opportunity for an informal meeting concerning settlement of the proposed civil action.

The penalties associated with the underlying violations of the Water Pollution Control subtitle are more severe than those associated with falsifying and tampering with compliance information or required monitoring devices. In an effort to address this inconsistency, ***Senate Bill 65*** ***(Ch. 21)*** increases the maximum criminal penalties for knowingly making any false statement in any required document or tampering with any monitoring device or method under specified water pollution control laws. Specifically, the Act increases the misdemeanor penalties from a fine of up to $10,000, or imprisonment for up to six months, or both, to a fine of up to $50,000, or imprisonment for up to two years, or both.

Fees

In an effort to reduce its reliance on general funds for its Wetlands and Waterways Program and enhance the program, MDE proposed ***House Bill 495*** ***(failed)***. The bill would have established a Wetlands and Waterways Program Fund within MDE and would have authorized MDE to establish reasonable application and processing fees for specified wetlands and waterways permits and licenses. The bill also would have directed the Board of Public Works to require the owner of any public or private commercial marina constructed over State wetlands to

pay an annual fee of $50 per slip to MDE. As introduced, the bill's fee provisions would have generated approximately $7 million annually.

Hazardous Material Security

According to MDE, a 2003 report on homeland security by the U.S. General Accounting Office (GAO) found that chemical facilities may be attractive targets for terrorists. While GAO believes that the chemical industry has undertaken a number of voluntary initiatives to address security at facilities, to date, no one has comprehensively assessed the chemical industry's vulnerabilities. ***House Bill 493*** ***(passed)*** requires facilities that store, dispense, use, or handle threshold amounts of hazardous materials to conduct a self-audit of the security of the facility and submit this analysis, along with a $2,500 fee, to MDE by October 1, 2005, and at least every five years thereafter. By January 1, 2005, MDE must adopt hazardous material security standards and regulations necessary to implement the bill. Fees will be deposited into a new account within the existing Community Right-to-Know Fund. Counties and municipal corporations are exempt from the fees. MDE, in consultation with the Department of State Police (DSP), must audit facilities for compliance with the standards, and MDE must refer violations to DSP for enforcement. DSP, in consultation with MDE, must adopt regulations to enforce compliance. Finally, the bill prohibits a person from knowingly submitting false information and establishes a civil penalty for violations of the bill.

Other Environmental Issues

Lead Poisoning Prevention Program

Chapter 114 of 1994 established the Lead Poisoning Prevention Program in MDE. The program provides limited liability relief for owners of affected property (generally, rental property built before 1950) and others in exchange for the reduction of lead hazards in these older rental properties and limited compensation for children poisoned by lead. Although the number of cases of childhood lead poisoning in Maryland has decreased significantly over the past few years (from 1,830 cases in 1996 to 260 cases in 2002), lead paint remains a significant health issue. Several bills relating to the Lead Poisoning Prevention Program were introduced; successful measures are discussed below.

Fees: Owners of affected properties must register those properties with MDE. The annual registration fee is $10 per unit. An owner of a rental unit who submits a report to MDE that the rental unit is lead-free is subject to a one-time $5 processing fee. Fees are paid into the Lead Poisoning Prevention Fund in MDE. In order to reduce the program's reliance on general funds, ***Senate Bill 508*** ***(passed***), the Budget Reconciliation and Financing Act of 2004, increases both of these fees by $5 each. The increased fees will generate approximately $350,000 annually.

Program Requirements: ***House Bill 1245*** ***(passed)*** makes several changes to the laws governing lead-paint affected properties and risk reduction. For a more detailed discussion of this bill, see Part F – Courts and Civil Proceedings of this *90 Day Report*.

Controlled Hazardous Substance Facilities

Senate Bill 791*/*House Bill 1132* *(both passed) extend the maximum term, from 5 to 10 years, of a controlled hazardous substance facility permit issued by MDE. The extended term would not apply to low-level nuclear waste facility permits. In February 1999 and in July 2003, the Controlled Hazardous Substances Advisory Council (a council that advises and assists MDE in developing rules and regulations for the management and disposal of controlled hazardous substances and low-level nuclear wastes) recommended the change in the maximum term.

Dredged Material Recycling

Sites suitable for the disposal of dredged material are becoming extremely limited. ***House Bill 1471* *(passed)*** establishes a Dredged Material Disposal Alternatives Program in DBED to provide financial assistance for the production and marketing of dredged material reuse technologies. For a more detailed discussion of this bill, see Part H – Business and Economic Issues of this *90 Day Report*.

Well Permit Fees

MDE has delegated the authority to issue well-drilling permits to local health departments. A county board of health may establish a permit fee to defray the cost of inspecting and testing wells. In an effort to offset costs incurred by local health departments in inspecting wells, collecting water samples, and issuing certificates of potability, ***House Bill 1541* *(passed)*** increases the maximum fee, from $80 to $160, a local health department may charge for well permits. The bill also provides that a permit must be issued within a reasonable period of time after receipt of the application. In addition, the bill provides that, for an interim certificate of potability, a local health department must accept initial test results prepared by a private State certified laboratory. Senate Bill 508, the Budget Reconciliation and Financing Act of 2004, also increases the maximum fee from $80 to $160.

Agriculture

Agricultural Land Preservation

The Maryland Agricultural Land Preservation Foundation (MALPF) was created in 1977 to preserve productive agricultural land in the State. Agricultural preservation districts are formed when qualifying landowners sign voluntary agreements to keep their land in agricultural or woodland use for a minimum of five years. Subject to some limitations, once an easement has been sold, the property is protected from further development.

Installment Purchase Agreements

An Installment Purchase Agreement (IPA) is a contract between a purchaser and a seller to pay the unpaid principal at settlement as a balloon payment at the end of the term of the agreement and to pay the seller tax-exempt interest on the unpaid principal during the period of

the agreement. Such contracts typically carry a term of 20 to 30 years. An IPA can be attractive to a seller because of the tax-advantaged nature of the transaction. IPAs also provide benefits to the buyer, as it allows for the leveraging of limited resources, ultimately allowing more properties to be purchased than would be possible under more traditional sale agreements.

House Bill 606 ***(passed)*** authorizes MALPF to purchase an easement using an IPA with a maximum term of 15 years. Easements purchased using an IPA are not subject to termination at the request of the landowner. The bill also requires MALPF, in consultation with the State Treasurer, to prepare a plan to purchase easements using IPAs with a term of 25 years. The plan, which must be presented to the Governor and the General Assembly by November 1, 2004, must identify a revenue source to be dedicated to the purchase of easements using IPAs. To further foster the use of IPAs for purchasing easements, ***House Bill 625*** ***(passed***) authorizes MALPF to provide grants to counties with approved IPA programs for the purchase of easements using such agreements. The bill establishes conditions for MALPF approval of a program and provides that easements purchased using a grant are perpetual and held jointly by the county and MALPF.

Easement Restrictions

On written application, MALPF must release, free from easement restrictions and only for the landowner who originally sold an easement, one acre or less for the purpose of constructing a dwelling house for the use of that landowner or the landowner's child. Though the two-stage lot release process makes it difficult for the lot to be transferred to an ineligible third party before a house is constructed, MALPF reports that a substantial incentive still exists to build a house as a speculative investment to be sold to a third party once the house is ready for occupancy. Under current law, MALPF has no way to verify that lots are developed for legitimate purposes. ***House Bill 164*** ***(passed)*** allows MALPF some level of review by providing that a release must include a statement that the lot of the owner or owner's child may not be transferred for five years from the date of the final release, unless approved by MALPF or unless a lender notifies MALPF of a transfer pursuant to a bona fide foreclosure of a mortgage, deed of trust, or a deed in lieu of foreclosure.

Under current law, a landowner whose land is subject to an easement may construct housing for tenants fully engaged in the farm operation at a rate of up to one tenant house per 100 acres. The land on which a tenant house is constructed may not be subdivided or conveyed, and the tenant house may not be conveyed separately from the original parcel. Historically, MALPF interpreted the statute governing tenant houses to mean that any easement property could qualify for at least one tenant house. Recently, however, MALPF determined that the standards and the process by which tenant houses are approved need to be clarified and that some review process for tenant house requests should be established. ***Senate Bill 367***/***House Bill 770*** ***(both passed)*** provide that any construction of tenant houses on land subject to an easement is subject to MALPF approval. In addition, the bills authorize MALPF to grant an exception, based on a showing of compelling need, to the number of tenant houses allowed to be constructed under current law (one house per 100 acres). MALPF must adopt regulations for the size and location of tenant houses.

Easement Termination

At any time after 25 years from the date of purchase of an easement, the landowner may request that the easement be reviewed for possible termination. On request for a review, MALPF must conduct an inquiry to determine the feasibility of profitable farming on the land. The first easement was purchased by MALPF in October 1980. Accordingly, the first repurchase request could occur in October 2005. In response to that impending date as well as outstanding questions regarding the process of easement termination requests, ***Senate Bill 327*/*House Bill 777* *(both passed)*** require MALPF to provide landowners with the opportunity for a hearing prior to making a termination decision; the bills also establish an appeals process for landowners applying for easement termination. The easement is perpetual if the Board of Public Works approves the purchase by MALPF on or after October 1, 2004.

Nutrient Management

The Water Quality Improvement Act (WQIA) of 1998, as amended by Chapter 485 of 2000, provides for a variety of measures aimed at improving water quality throughout the State, including mandatory development and implementation of nutrient management plans by farmers. For a variety of reasons, including a dearth of certified consultants and problems with public awareness, many operations did not meet the deadlines for plan preparation and implementation. A number of bills were introduced during the 2002 and 2003 sessions to address WQIA implementation problems, all of which failed.

In July and August 2003, the Maryland Department of Agriculture (MDA) hosted two broad efforts to garner information for improving the State's implementation of WQIA. In July, MDA hosted a briefing on recent nutrient management research findings. In August, MDA's nutrient summit involved more than 300 stakeholders who brainstormed ways to make WQIA easier to implement and more effective at protecting the environment. Common themes that emerged from the summit included recommendations to address the current statutory language regarding right-of-entry to farms, simplify the program's paperwork and reporting requirements, use more incentives for plan implementation, and streamline MDA's administrative requirements as to private consultants who prepare nutrient management plans.

As a result of these suggestions, ***Senate Bill 182* *(passed)*** repeals MDA's current right-of-entry authority and authorizes MDA to review the plans and records relating to the plan at a location agreed to by MDA and the farm operator. The bill establishes requirements and conditions regarding site visits and provides for the application of existing penalties if a farm operator fails to cooperate. Second, the bill requires farmers to submit summaries, rather than entire plans, to MDA. Third, the bill reduces the administrative burden on MDA relating to certifying and licensing nutrient management consultants by changing the renewal term from one year to three years; it increases the renewal fee accordingly (from $50 to $150). The bill establishes a certification program specific to farmers; farmers who are certified to write their own plans will pay a one-time fee of $20. Finally, the bill increases flexibility for MDA regarding plan development standards and the use of private nutrient management consultants.

The text of this bill was also amended into ***Senate Bill 320*** ***(passed)***. For a more detailed discussion of that bill, see the subpart "Environment" of this Part K.

Agricultural Development

Because of the advancing median age of Maryland farmers and the small number of younger individuals who choose agriculture as a career, ***Senate Bill 392***/***House Bill 755*** ***(both passed)*** establish a 12-member Young Farmers Advisory Board within MDA. Among other purposes, this advisory board is to communicate the importance of young and beginning farmers to agriculture in the State; identify and address issues relating to young and beginning farmers and make recommendations to the Maryland Agricultural Commission; and establish committees, as necessary, to develop projects relating to the aspects of life for young and beginning farmers.

Senate Bill 589 ***(passed)*** and ***House Bill 1179*** ***(passed)*** create the Maryland Agricultural and Resource-Based Industry Development Corporation as a public corporation to provide financing to agricultural and resource-based businesses. For a more detailed discussion of this bill, see Part H – Business and Economic Issues of this *90 Day Report*.

Departmental Fees and Penalties

Senate Bill 51 ***(passed)*** establishes the State Board of Veterinary Medical Examiners Fund as a continuing, nonlapsing fund to cover the actual direct and indirect costs of the board. The board is to set its fees by adopting regulations, and those fees must approximate the cost of maintaining the board. Fee revenue will be paid into the fund. Currently, the board's fee revenue is paid into the general fund, and the board receives a general fund appropriation to cover its costs.

Senate Bill 508 ***(passed)***, the Budget Reconciliation and Financing Act of 2004, increases the fees for a number of certificates, licenses, and permits issued by MDA. In total, the fee increases amount to an estimated $125,500 in new special fund revenue, allowing for a decrease in general funds appropriated to the department.

In lieu of pursuing criminal penalties, ***House Bill 95*** ***(passed)*** authorizes the Maryland Horse Industry Board to impose an administrative penalty of up to $2,000 on any person who violates any provision of the laws relating to the board. All penalties must be paid into the general fund.