

U00A
Department of the Environment

Operating Budget Data

(\$ in Thousands)

	<u>FY 04</u>	<u>FY 05</u>	<u>FY 06</u>	<u>FY 05-06</u>	<u>% Change</u>
	<u>Actual</u>	<u>Working</u>	<u>Allowance</u>	<u>Change</u>	<u>Prior Year</u>
General Fund	\$38,597	\$37,192	\$33,813	-\$3,379	-9.1%
Special Fund	23,639	26,469	30,865	4,395	16.6%
Federal Fund	21,798	28,047	26,095	-1,952	-7.0%
Reimbursable Fund	<u>7,295</u>	<u>4,327</u>	<u>4,252</u>	<u>-74</u>	<u>-1.7%</u>
Total Funds	\$91,329	\$96,035	\$95,025	-\$1,010	-1.1%
Contingent & Back of Bill Reductions			-1,440	-1,440	
Adjusted Total	\$91,329	\$96,035	\$93,585	-\$2,450	-2.6%

- The Maryland Department of the Environment's (MDE) fiscal 2006 allowance is \$2.45 million or 2.6% less than the fiscal 2005 working appropriation. This overall decrease in funding reflects significant reductions in general and federal funds, being partially offset by an increase in special funds.
- The adjusted general fund allowance is \$4.6 million, or 12.2% less than the fiscal 2005 working appropriation. The general fund allowance reflects the following two reductions that are contingent upon the enactment of legislation: \$440,220 in matching employee deferred compensation funds and \$1.0 million in the Water Pollution Control Program. Other general fund decreases include \$882,576 for Total Maximum Daily Loads contracts, \$171,000 due to closing the Prince Frederick Field Office, \$375,000 for the Baltimore City lead poisoning prevention grant, and approximately \$1.6 million in salary and operating costs being transferred to other fund sources.
- MDE's special fund allowance increases by 16.1%, or \$4.3 million primarily due to increased or new fee revenue. MDE projects the following special fund increases: \$1.9 million in Tire Recycling Funds to cleanup the Morgan/Mechanicsville scrap tire stockpile, \$605,225 in Bay Restoration Funds to administer efforts to upgrade wastewater treatments plants, \$322,712 for the Brownfields Voluntary Cleanup Program (VCP), \$237,325 for oil disaster cleanup and containment programs, and an \$835,098 increase for special fund related indirect costs.

Note: Numbers may not sum to total due to rounding.

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- MDE’s fiscal 2006 federal fund allowance is \$2.1 million, or 7.4% less than the fiscal 2005 working appropriation. This apparent federal funding decrease is primarily due to a one-time fiscal 2005 transfer of \$2.6 million in federal indirect cost recovery fund balances for implementation of the third phase of Enterprise Environmental Management System development.

Personnel Data

	<u>FY 04</u>	<u>FY 05</u>	<u>FY 06</u>	<u>FY 05-06</u>
	<u>Actual</u>	<u>Working</u>	<u>Allowance</u>	<u>Change</u>
Regular Positions	951.00	954.00	956.00	2.00
Contractual FTEs	<u>15.60</u>	<u>46.00</u>	<u>43.50</u>	<u>-2.50</u>
Total Personnel	966.60	1,000.00	999.50	-0.50

Vacancy Data: Regular Positions

Turnover, Excluding New Positions	47.90	5.01%
Positions Vacant as of 12/31/04	67.00	7.02%

- The fiscal 2006 allowance provides for 10 new positions, which are offset by the elimination of 8 positions, for a net increase of 2 positions. The 8 positions abolished in the fiscal 2006 allowance are 4 secretarial staff, 2 personnel administrators, an assistant director, and a programmer analyst. Only 2 of the 8 abolished positions are vacant – a secretary position and a personnel administrator. The 10 new, special funded positions fall into the following categories:
 - three geologists to augment the Brownfields VCP,
 - three environmental compliance specialists to strengthen MDE’s lead poisoning enforcement, and
 - an accountant, sanitarian, engineer, and administrator to implement Bay Restoration Fund supported septic and wastewater programs.
- MDE’s budgeted fiscal 2006 turnover rate of 5% is approximately 2% lower than the current fiscal 2005 vacancy rate.

Analysis in Brief

Issues

Cloudy Skies in Maryland: While Maryland has made progress in meeting the Clean Air Act's requirements, compliance with several air quality standards has been challenging, especially the pollutants known as ozone and fine particulate matter. **MDE should brief the committees on the short- and long-term impacts that the new National Ambient Air Quality Standard for ozone and fine particulate matter will have on the State, as well as specifically on MDE and the private sector. Also, describe the impact these standards may have on proposed and potential development and transportation projects in the State. Finally, the agency should describe how the Environmental Protection Agency's proposed changes to New Source Review regulations, which govern pollution from major stationary sources, will impact Maryland's efforts to improve air quality.**

Maximizing MDE's Reliance on Fee Revenue: Competition for limited State general funds has forced MDE to become increasingly reliant on other sources of revenue. The General Assembly requested additional information about fees from MDE in the fiscal 2005 budget bill. **MDE should be prepared to discuss its findings and why it did not fully comply with the fiscal 2005 budget bill language.**

Enterprise Environmental Management System (EEMS) Development Underway: EEMS implementation phase one and two were completed in early 2004 and phase three is currently underway. **The Department of Legislative Services (DLS) recommends that MDE discuss the status of EEMS project management and when an independent verification and validation report is anticipated. Furthermore, DLS recommends budget bill language expressing the General Assembly's continued intent regarding EEMS implementation and requiring a status report by December 1, 2005 or prior to initiation of the third task order, whichever occurs first.**

Improper Fiscal 2004 Budget Closeout Transactions: MDE improperly retained special funds totaling approximately \$240,000 in a suspense account used to record miscellaneous receipt activity from a number of sources. **MDE should be prepared to discuss the current status of these special funds as well as the procedures the agency has put in place to prevent similar transactions in the future.**

Reduced Funding for Total Maximum Daily Loads: The federal Clean Water Act requires states to develop total maximum daily loads (TMDLs) for all impaired waterways. The fiscal 2006 allowance provides only \$369,400 for contracts to complete TMDLs, an \$882,576 decrease from the fiscal 2005 working appropriation. **MDE should be prepared to brief the committees on how the reduced fiscal 2006 funding will impact the State's ability to achieve the TMDL goals set forth in the Memorandum of Understanding, the amount of State funding this program will require in the future, and whether the federal government should assume responsibility for this program in light of the limited fiscal 2006 allowance.**

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Recommended Actions

	<u>Funds</u>	<u>Positions</u>
1. Add budget bill language expressing the General Assembly's intent with regard to implementation of the Environmental Enterprise Management System and requiring a status report.		
2. Delete a vacant Public Affairs Officer position in the Office of the Secretary.	\$ 71,028	1.0
3. Delete an Assistant Secretary position.	122,306	1.0
4. Amend budget bill language to reduce general funds for the Wetlands and Waterways Program contingent upon enactment of legislation.		
5. Delete funds for the Noise Control Program.	50,000	
6. Reduce funding for cleanup of the Morgan/Mechanicsville scrap tire stockpile.	750,000	
7. Delete a new geologist position.	43,391	1.0
8. Delete a new environmental compliance specialist position.	33,401	1.0
9. Delete a vacant Administrator position in the Coordinating Offices' Office of Communication.	45,886	1.0
Total Reductions	\$ 1,116,012	5.0

Updates

2004 Enforcement and Compliance Report: This update summarizes the results of MDE's eighth annual report on all enforcement and compliance programs.

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Operating Budget Analysis

Program Description

The Maryland Department of the Environment (MDE) was created in 1987 to protect and restore the quality of the State's land, air, and water resources and safeguard citizens from health risks associated with pollution. It is responsible for planning, monitoring, controlling, and regulating air, solid, and hazardous wastes; radiation, sewage sludge, sediment, and stormwater; toxicities, sewage treatment, and water supply facilities; and environmental disease control programs. The department is structured into seven major administrative units.

- ***Office of the Secretary:*** Provides direction and establishes State environmental policies to be implemented by the operating units.
- ***Administrative and Employee Services Administration:*** Provides general administrative and employee services to the department.
- ***Water Management Administration:*** Incorporates all aspects of the State's water pollution control program, including capital project management; implementation of Total Maximum Daily Loads for pollutants in impaired waterways; and industrial/municipal wastewater and storm water discharge regulatory functions.
- ***Technical and Regulatory Services Administration:*** Provides hazardous chemical and oil spill emergency response services; develops and promulgates water quality standards; technical support and analysis for Total Maximum Daily Loads; shellfish monitoring; environmental and public health risk assessments; ballast water regulation; implements non-point source pollution programs; and develops and issues fish advisories.
- ***Waste Management Administration:*** Ensures that all types of hazardous and nonhazardous solid wastes are managed in a manner that protects public health and the environment.
- ***Air and Radiation Management Administration:*** Ensures that air quality and radiation levels in Maryland sustain public health, safety, and the environment.
- ***Coordinating Offices:*** Manages budget matters, the Water Quality Revolving Loan Fund, and Board of Public Works' activities; coordinates public information and outreach; and provides legal advice.

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MDE has identified six goals that illustrate its core efforts to protect and preserve Maryland's natural resources. They are:

- promoting land redevelopment and community revitalization;
- ensuring safe and adequate drinking water;
- reducing Maryland citizens' exposure to hazards;
- improving and protecting Maryland's water quality;
- ensuring the air is safe to breathe; and
- providing excellent customer service and community outreach.

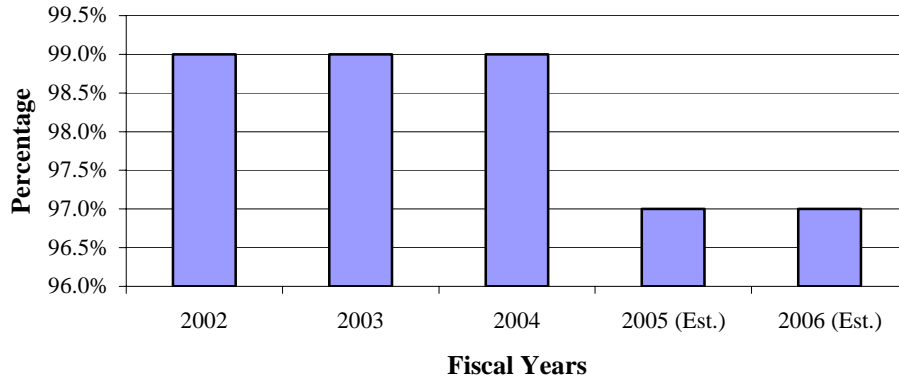
Performance Analysis: Managing for Results

Exhibit 1 provides data on a handful of performance measures that reflect several key program areas. The data provided indicates the following trends:

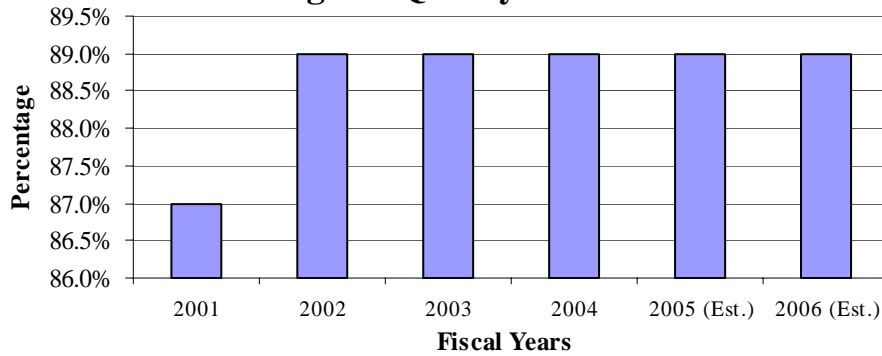
- an estimated decrease in the percentage of Marylanders being served by public water systems that comply with drinking water standards;
- little improvement in the percentage of the State's population living in areas not meeting air quality standards; and
- continued decreases in the percent of children tested for blood lead with elevated and poisoned levels.

MDE should be prepared to discuss why fewer public water systems are projected to be safe and why the State has not been able to make progress in improving air quality.

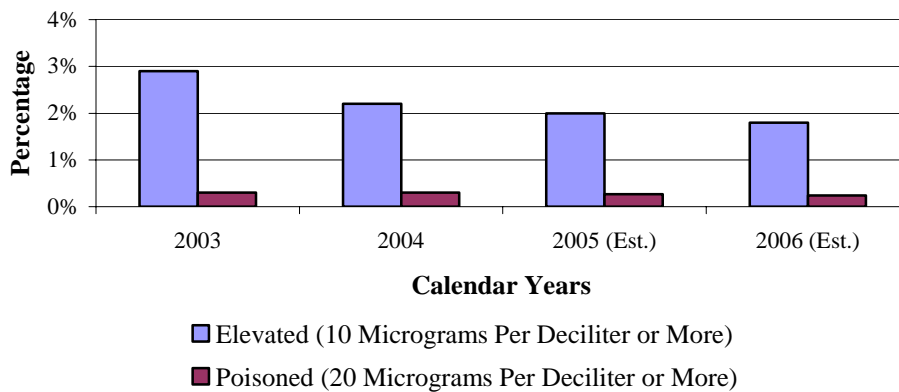
Exhibit 1
Marylander’s Served by Public Water Systems in Significant Compliance with All Rules Adopted as of 2002



Maryland Population Living Areas Not Meeting Air Quality Standards



Children Tested for Blood Lead

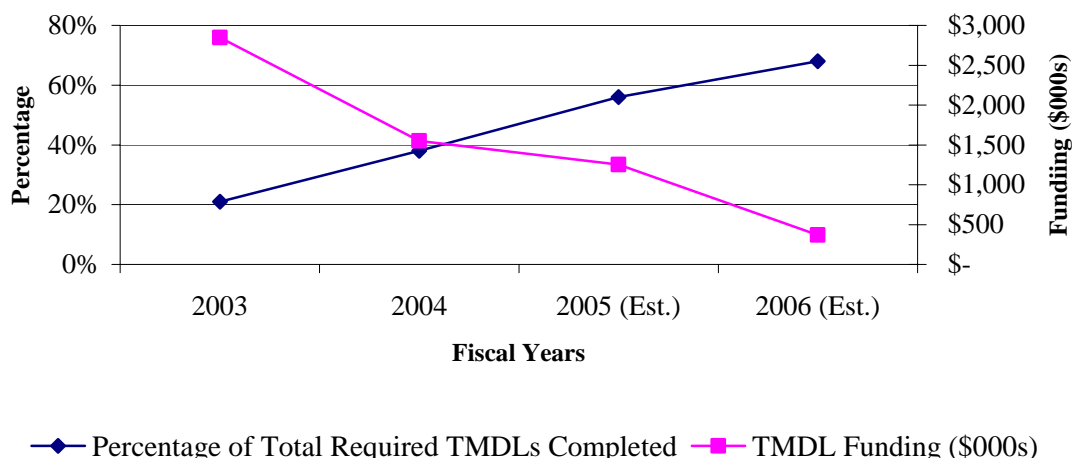


Source: Budget Books, fiscal 2005 and 2006

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A Total Maximum Daily Load (TMDL) is a calculation of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. As part of its water quality programs, MDE develops TMDLs. However, State funding for TMDLs has decreased over the past two years. In fiscal 2005, program funding was reduced by 14%, or \$200,000. The fiscal 2006 allowances reflects a 70%, or \$882,576 decrease in funding for TMDLs. As illustrated in **Exhibit 2**, in spite of these funding decreases, MDE's Managing for Results indicates that the number of completed TMDLs will nearly double between fiscal 2004 and 2006. **MDE should discuss why funding reductions do not appear to be hindering program performance.**

Exhibit 2
Total Required Total Maximum Daily Load Models
Completed and Associated Funding



Source: 2006 Budget Book

Governor's Proposed Budget

Exhibit 3 indicates that MDE's fiscal 2006 allowance is \$2.45 million, or 2.6% less than the fiscal 2005 working appropriation. This overall decrease in funding reflects significant reductions in general and federal funds, being partially offset by an increase in special funds.

MDE's \$4.6 million, or 12.2% general fund decrease reflects two reductions that are contingent upon the enactment of legislation: \$440,220 in matching employee deferred compensation funds and \$1.0 million in the Water Pollution Control Program. Other general fund decreases include \$882,576 for TMDL contracts, \$171,000 due to closing the Prince Frederick Field Office, and \$375,000 for the Baltimore City lead poisoning grant. Overall, MDE re-assigned numerous general funded positions to special and federal fund sources in order to meet cost containment in fiscal 2006. MDE advises that approximately \$1.6 million in personnel costs switched from general funds to special and federal funds.

**Exhibit 3
Governor's Proposed Budget
Department of the Environment
(\$ in Thousands)**

How Much It Grows:	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
2005 Working Appropriation	\$37,192	\$26,469	\$28,047	\$4,327	\$96,035
2006 Governor's Allowance	33,813	30,865	26,095	4,252	95,025
Contingent & Back of Bill Reductions	<u>-1,172</u>	<u>-124</u>	<u>-126</u>	<u>-18</u>	<u>-1,440</u>
Adjusted Allowance	\$32,641	\$30,740	\$25,969	\$4,234	\$93,585
Amount Change	-\$4,551	\$4,271	-\$2,078	-\$92	-\$2,450
Percent Change	-12.2%	16.1%	-7.4%	-2.1%	-2.6%

Where It Goes:

Personnel Expenses

10 new positions	\$389
8 abolished positions	-480
Increments and other compensation	1,223
Employee and retiree health insurance	55
Retirement contribution cost increase	510
Turnover adjustments	299
Other adjustments implemented through budget amendment	613

Other Changes

Improving and protecting Maryland's water quality

Grant funds for Total Maximum Daily Load computer modeling	-883
Reduce the Water Pollution Control Program contingent upon enactment of fee legislation.....	-1,000
Ballast water program.....	-50

Reducing Maryland citizen's exposure to hazards

Scrap tire clean-up in Morgan/Mechanicsville, St. Mary's County	1,500
Reduce Brownfields Pilot Cooperative Agreements due to low demand for loans.....	-400
Delete general funds for lead poisoning prevention grants to Baltimore City	-375

Ensuring the air is safe to breathe

Completion of efforts to retrofit diesel powered school buses in Anne Arundel, Prince George's, and Montgomery counties.....	-600
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<i>Other</i>	
Close the Prince Frederick field office	-171
One-time federal indirect cost recovery funds for EEMS implementation appropriated in fiscal 2005	-2,647
Reduce motor vehicle replacement	-287
Other adjustments	-146
Total	-2,450

Note: Numbers may not sum to total due to rounding.

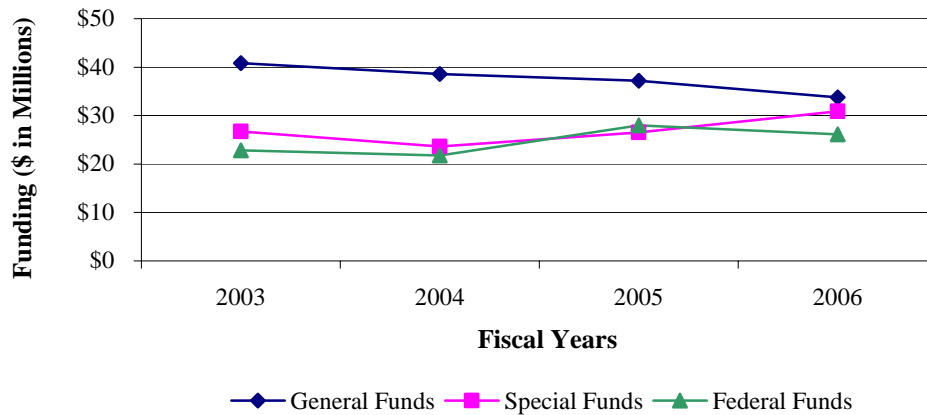
MDE’s special fund allowance increases by 16.1%, or \$4.3 million primarily due to increased or new fee revenue. MDE projects the following special fund increases: \$1.9 million in Tire Recycling Funds to cleanup the Morgan/Mechanicsville scrap tire stockpile, \$605,225 in Bay Restoration Funds (BRF) to administer efforts to upgrade wastewater treatments plants, \$322,712 for the Brownfields Voluntary Cleanup Program (VCP), \$237,325 for oil disaster cleanup and containment programs, and an \$835,098 increase for special fund related indirect costs. The significant increase in tire recycling funds is due to the Board of Public Works increasing the tire recycling fee from \$0.40 per tire to \$0.80 per tire, effective April 1, 2005. The additional BRF and VCP funds are the result of legislation enacted in 2004 that increased associated fees.

MDE’s fiscal 2006 federal fund allowance is \$2.1 million, or 7.4% less than the fiscal 2005 working appropriation. This federal funding decrease is primarily due to a one-time fiscal 2005 transfer of \$2.6 million in federal indirect cost recovery fund balances to implement the third phase of Enterprise Environmental Management System development.

Impact of Strategic Budget Reductions

While MDE made a substantial contribution in efforts to reduce reliance on the general fund, the agency avoided significant structural budget changes by relying heavily upon available special funds. MDE’s increasing reliance on special funds is illustrated in **Exhibit 4**. Some of the general fund reductions reflected in the agency’s fiscal 2006 allowance may have significant programmatic repercussions in the future, as discussed in a subsequent issue concerning TMDLs.

Exhibit 4
MDE Budget Trends by Fund Source
Fiscal 2003 – 2006



Source: Department of Legislative Services

Impact of Contingent Reductions

The fiscal 2006 allowance reflects the elimination of \$440,220 (subobject 0172), the appropriation for matching employee deferred compensation contributions up to \$600, contingent upon enactment of a provision in budget reconciliation legislation.

In addition, a \$1.0 million reduction in general funds in Water Pollution Control is assumed contingent upon the enactment of legislation increasing wetland services permit fees. House Bill 154 of 2005 establishes a Wetlands and Waterways Program Fund, with the primary revenue source being an application fee for various wetlands and waterways permits and licenses. The legislation stipulates that fees may not be collected in any fiscal year for which the Wetlands and Waterways Program receives a general fund appropriation of less than \$1.9 million. If the proposed \$1.0 million contingent reduction is implemented, the Wetlands and Waterways Program may receive less than \$1.9 million in general funds, triggering an inability to collect fee revenue. However, MDE may be able to apply the \$1.0 million reduction to other programs located within Water Pollution Control and/or shift funds via budget amendment to provide sufficient general funds for the Wetlands and Waterways Program to allow the collection of fees.

Issues

1. Cloudy Skies in Maryland

Background

Air pollution contributes significantly to the Chesapeake Bay’s total pollution load, and it threatens human health. As a result, the federal Clean Air Act Amendments of 1990 set limits on the amount of air pollution allowed across the nation. While Maryland has made some progress in meeting clean air goals, compliance with several air quality standards has been challenging, especially for the pollutants known as ozone and fine particulate matter. Ozone, commonly known as smog, is a colorless gas formed by chemical reactions prompted by heat and sunlight in the summer months. Particulate matter includes dust, soot, and emissions from all types of combustion, including motor vehicles, power plants, and some industrial processes. Both ozone and particulate matter can prompt short term as well as chronic health conditions, such as eye/ear irritation, asthma, and cancer.

MDE seeks to address air pollution issues through programs administered by the Air and Radiation Management Administration (ARMA). ARMA operates an air monitoring network; develops plans to attain and maintain health-based national ambient air quality standards; and promulgates regulations to implement these plans. MDE’s fiscal 2006 budget allowance provides \$13.3 million for ARMA, significantly less funding than is provided to the Waste (\$19.5 million) and Water (\$27.4 million) administrations.

Meeting New National Ambient Air Quality Standards

Ozone

On April 15, 2004, the U.S. Environmental Protection Agency (EPA) charged 14 Maryland counties and Baltimore City with violating the new eight-hour National Ambient Air Quality Standard for ozone, as shown in **Exhibit 5**. This new standard is more protective of public health than the previous one-hour standard that had been in place since 1979. These so called “nonattainment areas” are required to meet several clean air requirements, which include:

- transportation conformity (demonstrating that regional long-range transportation plans will not negatively impact air quality – with a potential sanction of a cut in federal highway funds);
- reduction in pollution by certain percentages each year and employment of stricter pollution control measures; and
- New Source Review permitting requirements to ensure that new or modified power plants and industrial operations are compatible with air quality standards.

Exhibit 5
Eight-hour Ozone Nonattainment Areas in Maryland
(April 2004)

<u>Area</u>	<u>Cities/Counties</u>	<u>Classification*</u>	<u>Attainment Date</u>
Baltimore	Baltimore City; Anne Arundel, Baltimore, Carroll, Harford, and Howard counties	Moderate	June 2010
Kent and Queen Anne's counties	Kent and Queen Anne's counties	Marginal	June 2007
Hagerstown	Washington County	**	December 2007
Philadelphia (PA)/ Wilmington (DE)/ Trenton (NJ)	Cecil County	Moderate	June 2010
Washington	Calvert, Charles, Frederick, Montgomery, and Prince George's counties	Moderate	June 2010

* There are five main classes of nonattainment severity: marginal, moderate, serious, severe, and extreme.

** Washington County is participating in an Early Action Compact, which allows areas to avoid penalties but requires attainment by December 2007.

Source: Maryland Department of the Environment

Fine Particulate Matter

The new ozone standards are being implemented concurrently with EPA's first regulation of fine particulate matter. In December 2004, EPA found that 11 of the 15 ozone nonattainment areas (except Kent, Queen Anne's, Cecil and Calvert counties) were also noncompliant with the National Ambient Air Quality Standard for fine particulate matter (see **Exhibit 6**). These 11 areas are now required to develop a plan for reducing this pollution or face federal penalties such as the loss of highway funding. Although local emissions from vehicles and power plants play a significant role, over 50% of Maryland's particulate matter comes from regional upwind states. Through more aggressive controls at power plants, the Vehicle Emission Inspection Program, and reformulated gasoline requirements, the State has been able to reduce particulate matter levels approximately 25% since the early 1990s.

Exhibit 6
Fine Particulate Matter Nonattainment Areas
(December 2004)

Anne Arundel County	Baltimore County
Carroll County	Charles County
City of Baltimore	Frederick County
Harford County	Howard County
Prince George's County	Montgomery County
Washington County	

Source: Maryland Department of the Environment

To achieve the new air quality standard for ozone and fine particulate matter, Maryland will be required to develop and fund strategies that will meet federal standards over time. While a precise estimate of the cost is not possible at this time, the future cost will be potentially significant. For example the Maryland Department of Transportation has budgeted \$63 million in the fiscal 2005 – 2010 Consolidated Transportation Plan to reduce mobile source emissions. It is likely that millions of dollars will be spent on associated implementation strategies. Stricter controls will likely be placed on three categories of air pollution: stationary sources (e.g., power plants), consumer products (e.g., paint), and mobile sources (e.g., cars).

MDE should brief the committees on the short- and long-term impacts that the new National Ambient Air Quality Standard for ozone and fine particulate matter will have on the State, as well as specifically on MDE and the private sector. Also, describe the impact these standards may have on proposed and potential development and transportation projects in the State. Finally, the agency should describe how EPA's proposed changes to New Source Review regulations, which govern pollution from major stationary sources, will impact Maryland's efforts to improve air quality.

2. Maximizing MDE's Reliance on Fee Revenue

Competition for limited, State general funds has forced MDE to become increasingly reliant on other sources of revenue. Approximately 33% of MDE's fiscal 2006 allowance is comprised of special funds. MDE relies on these special funds to support many core programs, such as oil disaster cleanup, used tire cleanup, and air pollution prevention. In recent years, MDE has sought to establish new fees and increase existing fees in order to cover the rising costs of program implementation. However, few of these fee proposals have passed. Consequently, many specific fee levels set in statute do not necessarily cover actual program implementation costs. However, in fiscal 2006, MDE will benefit from increased revenue from fees associated with the Used Tire Cleanup and Recycling Fund, Bay Restoration Fund, and Brownfields Voluntary Cleanup Fund.

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The General Assembly requested additional information about fees from MDE in the fiscal 2005 budget bill. Specifically, the bill language required MDE to submit a report providing information about structural changes and new or existing fees that could support under-funded programs and reduce the agency's reliance on the general fund. MDE responded to this information request by providing a two-page response conveying the following information:

- Restructuring Fees – Restructuring existing fees, which may include increasing fees or expanding the scope of use of fee revenue, should be linked to providing improved services to the regulated community.
- Calibrating Fees to Indexes to Realize Long-term Structural Budget Benefits – Utilizing the Consumer Price Index as a means to increase fees may result in unnecessary charges, as not all program costs increase over time. MDE recommends that restructuring be based on individual program requirements rather than utilizing a more global approach.
- New Fees to Reduce MDE's General Fund Reliance – In recognition of the need to provide more timely permit decisions and approvals in the Wetlands and Waterways Program, a permit fee has been proposed (House Bill 154).
- MDE does not recommend implementing fees to support the administrative or scientific/technical support activities performed in the following MDE units: Administrative and Employee Services, Technical and Regulatory Services Administration, and the Coordinating Offices.

Overall, MDE's response to the budget committees request for information was minimal if not insufficient. Specifically, MDE failed to provide (1) information about a variety of new fees that may help mitigate MDE's reliance on the general fund; and (2) descriptions of existing fees that could be increased to substantially reduce MDE's general fund reliance using a review of sample fee schedules compared to program implementation costs.

MDE should be prepared to discuss its findings and why it did not fully comply with the fiscal 2005 budget bill language.

3. Enterprise Environmental Management System (EEMS) Development Underway

Background

To address data and system inefficiency issues, MDE has initiated implementation of an EEMS that will provide on-line permit application; data submission for compliance reporting; permit and process status tracking information; and a single point of reference for environmental information. MDE advises that these benefits are anticipated to result in a reduced burden on regulated industries, improved accountability and project management, and better data quality and public access. As shown in **Exhibit 7**, the first two phases of EEMS were completed in mid 2004, and phase three is currently underway.

Exhibit 7
EEMS Project Implementation Schedule
(As of February 2005)

<u>Phase</u>	<u>Cost</u>	<u>Description</u>	<u>Approximate Time Period</u>
1	\$616,157	System acquisition	February – March 2004
2	476,625	Detailed analysis for program migration and configuration	Spring 2004
3	*5,433,106	Prioritization of program migration	Fall 2004 – Fall 2007 Program migration occurring via four, distinct task orders.
	*258,125	Operations and maintenance	Fall 2004 – Fall 2007
	\$6,784,000	Total	

* Projected cost.

Source: Maryland Department of the Environment

Current Status

MDE is executing EEMS through several fixed price, deliverable based, task orders. This task order approach should help MDE to improve management of project scope, functional requirements, and specific deliverables. The first EEMS task order release is scheduled for March 1, 2005, and will support the Hazardous Waste Program's controlled hazardous substance permitting efforts. The second task order is scheduled to begin immediately thereafter and include the following programs: the balance of the Hazardous Waste Program, Air and Radiation Management Administration's Stationary Sources and Monitoring programs, the Water Management Administration's Water Discharge Program, and the Waste Management Administration's Restoration Program. A third and fourth task order will address the remainder of MDE's programs.

EEMS Implementation Issues

While MDE and the Department of Budget and Management (DBM) appear to be proceeding in a strategic yet prudent manner, several issues concerning implementation of EEMS are still of concern.

- **Potential Fiscal Impact:** According to MDE, annual cost savings will outpace EEMS project expenditures during the third year of implementation. However, while efficiency savings were anticipated in fiscal 2005, MDE's fiscal 2005 budget did not reflect any personnel reductions to

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reflect these savings. Generally, MDE argues that savings represent time spent by multiple non-informational technology (IT) staff on IT work and full implementation of EEMS will theoretically allow these positions to finally focus on their core programmatic responsibilities. However, MDE advises that it did abolish two IT positions in the fiscal 2006 allowance partially due to EEMS implementation related efficiencies.

- ***Project Management:*** A December 2004 Office of Legislative Audits (OLA) assessment of State IT projects noted that MDE appeared to be implementing best practices for IT project management. Overall, this OLA assessment determined that IT project success is primarily dependent on the quality of the project personnel. Therefore, it is important to note that MDE lost its Chief Information Officer to DBM – Greg McKibbin is the new Deputy State Chief Information Officer – and there has been some realignment in EEMS project management. These personnel shifts suggest that project management may be deficient at this time.
- ***Independent Verification and Validation (IV&V):*** To date, an IV&V assessment has not been completed on the EEMS Project. However, MDE is currently evaluating IV&V proposals from several contractors.
- ***Estimated Cost:*** While MDE and DBM have provided verbal assurance that \$6.8 million over three years is a firm project cost estimate, costs may creep. This possibility is underscored by the fact that many non-essential programmatic requirements will not be achieved due to limited available funding. Of the total amount required for this project, MDE has secured \$4.1 million, or 60%. Funding for the remaining \$2.2 million would be required in fiscal 2006 through 2008. The fiscal 2006 allowance includes \$100,000 in federal funds for EEMS, and MDE intends to dedicate direct federal funds and associated indirect federal funds recoveries to pay the remainder of the EEMS contract.

The Department of Legislative Services (DLS) recommends that MDE discuss the status of EEMS project management and when an IV&V report is anticipated. Furthermore, DLS recommends budget bill language expressing the General Assembly’s continued intent regarding EEMS implementation and requiring a status report by December 1, 2005, or prior to initiation of the third task order, whichever occurs first.

4. Improper Fiscal 2004 Budget Closeout Transactions

According to a January 2005 OLA report on the fiscal 2004 budget closeout, MDE improperly retained special funds totaling approximately \$240,000 in a suspense account used to record miscellaneous receipt activity from a number of sources. The General Accounting Division’s year-end closing requirements state that special fund balances are subject to transfer to the General Fund unless there is specific legal reference or authority for the amount to be forwarded (retained) to the subsequent year. No reference or authority existed for the aforementioned miscellaneous funds retained in the suspense account. Therefore, this balance should have been transferred to the General Fund.

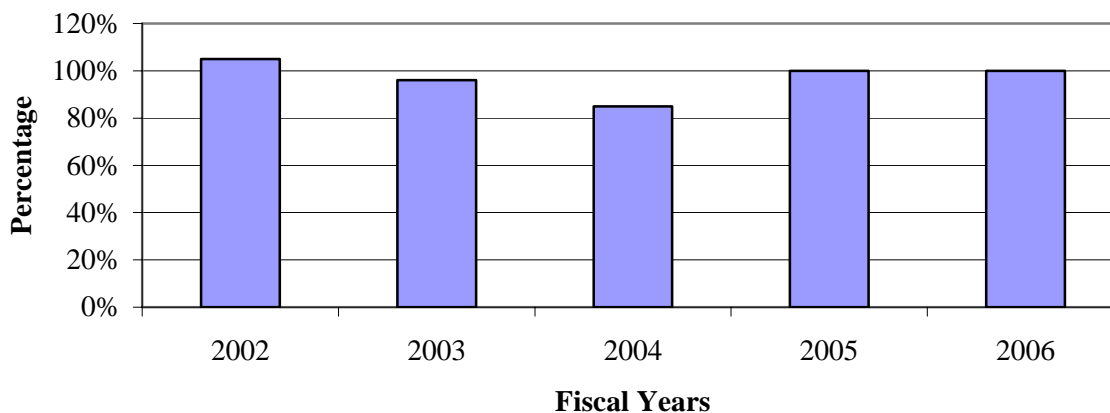
MDE should be prepared to discuss the current status of these special funds as well as the procedures the agency has put in place to prevent similar transactions in the future.

5. Reduced Funding for Total Maximum Daily Loads

Sections 303(d) and 303(e) of the federal Clean Water Act require states to develop a TMDL for all impaired waterways. A TMDL is the maximum amount of a given pollutant that a water body can tolerate without violating water quality standards, and they are used to implement State water quality standards. MDE will potentially establish 655 TMDLs affecting 133 water bodies in Maryland. The establishment of each TMDL requires a rigorous scientific study to determine the amount of a given pollutant that a body of water can assimilate without violating water quality standards.

MDE signed a memorandum of understanding (MOU) with EPA in 1998, which was recently revised, outlining the State's Clean Water Act obligations with regard to TMDLs. In the MOU, MDE agreed to a schedule for completing TMDLs within 13 years from the date they are listed impaired. As shown in **Exhibit 8**, MDE is not currently on schedule, but the agency projects that the program will be back on schedule in fiscal 2005 and 2006. However, a revised list of impaired waterways is likely in 2006 that may require the completion of additional TMDLs and prompt schedule adjustments.

Exhibit 8
Percentage of Total Maximum Daily Loads Submitted on Schedule
Fiscal 2002 – 2006



Source: Budget Books, Fiscal 2005 and 2006

Funding for TMDLs

MDE's annual funding for TMDL contracts has averaged \$1.7 million over the past four years. However, the fiscal 2006 allowance provides only \$369,400 for TMDL contracts, an \$882,576 decrease from the fiscal 2005 working appropriation. Under the Clean Water Act, the EPA is ultimately responsible for the TMDL program. The fiscal 2006 allowance includes some federal funds for administering the program; however, this funding does not cover the total cost of the program. Completing TMDLs is an expensive endeavor, and some states have opted to have EPA completely assume this responsibility. According to MDE, having EPA complete the TMDLs may result in reduced flexibility to work with industries and local governments to find feasible allocations, less rigorous science, and fewer opportunities for public involvement.

MDE should be prepared to brief the committees on how the reduced fiscal 2006 funding will impact the State's ability to achieve the TMDL goals set forth in the MOU, the amount of State funding this program will require in the future, and whether the federal government should assume responsibility for this program in light of the limited fiscal 2006 allowance.

Recommended Actions

1. Add the following language:

It is the intent of the General Assembly that not more than \$6,784,000 in total is expended for Enterprise Environmental Management System (EEMS) project implementation. Provided further, the Maryland Department of the Environment (MDE) shall not expend funds for the third task order associated with phase three of EEMS implementation until a status report is submitted to the budget committees after completion of the second task order associated with phase three or December 1, 2005, whichever occurs first. The status report should include the latest EEMS implementation budget estimate and schedule, the results of an independent verification and validation report on EEMS, and updated estimates of specific MDE annual operating cost savings resulting from EEMS implementation. The budget committees shall have 45 days to review and comment upon the report. Further provided, it is the intent of the General Assembly that not more than the \$100,000 in federal funds be expended for EEMS in fiscal 2006, unless additional funding is sought via budget amendment or a deficiency budget.

Explanation: This budget bill language expresses the General Assembly’s intent with regard to implementation of EEMS. Specifically it notes that not more than \$6.8 million in total should be dedicated to EEMS implementation and not more than \$100,000 in federal funds should be dedicated to EEMS in fiscal 2006, unless funds are brought in via the budget amendment or budget deficiency process. Finally, this language requires MDE to submit a status report on EEMS prior to initiating the third task order associated with third phase of EEMS implementation or by December 1, 2005, whichever occurs first.

Information Request	Authors	Due Date		
EEMS Status Report	MDE Department of Budget and Management	December 1, 2005, or prior to the third task order		
			<u>Amount Reduction</u>	<u>Position Reduction</u>
2. Delete a vacant Public Affairs Officer position (PIN 015258) in the Office of the Secretary. With this reduction, three Office of Communications staff would remain.			\$ 71,028 GF	1.0
3. Delete an Assistant Secretary position (055541). Since none of the Maryland Department of the Environment’s six organizational units report to this Assistant Secretary, this position is not essential.			122,306 GF	1.0

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4. Amend the following language to the general fund appropriation:

, provided that this appropriation shall be reduced by ~~\$1,000,000~~ \$1,500,000 contingent upon the enactment of legislation to increase fees for wetlands services within this program.

Explanation: Legislation has been proposed (House Bill 154) creating new fees that would generate an additional \$3.6 million in special funds for efforts to manage, conserve, and protect Maryland’s wetland and waterway resources. This proposed budget bill language reduces the general fund appropriation for Water Pollution Control by an additional \$500,000, for a total reduction of \$1.5 million. If this reduction is implemented entirely within the Wetlands and Waterways Program, \$886,188 in general funds would still be provided. This reduction would be implemented contingent upon enactment of legislation that provides special fund fee revenue for the program.

	<u>Amount Reduction</u>		<u>Position Reduction</u>
5. Delete funds for the Noise Control Program. This issue is better handled by local jurisdictions for two main reasons. First, most issues have their origin in zoning and permitting decisions, and secondly, response to the often brief and variable nature of events can most readily be handled by local responders.	50,000	GF	
6. Reduce funding for cleanup of the Morgan/Mechanicsville scrap tire stockpile. With this reduction, the project would still receive \$750,000. This project may be funded over two years.	750,000	SF	
7. Delete a new geologist position in the Voluntary Cleanup Program. This would still leave two new geologist positions. In accordance with the Spending Affordability Committee report, new positions should be offset with abolitions elsewhere in the State budget. Since Maryland Department of the Environment’s fiscal 2006 allowance provides for a net increase of two positions, deleting this position is recommended	43,391	SF	1.0
8. Delete a new environmental compliance specialist position in the Lead Poisoning Program. This would	33,401	GF	1.0

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still leave two new environmental compliance specialist positions. In accordance with the Spending Affordability Committee report, new positions should be offset with abolitions elsewhere in the State budget. Since the Maryland Department of the Environment’s fiscal 2006 allowance provides for a net increase of two positions, deleting this position is recommended.

9.	Delete a vacant Administrator position (PIN 072487) in the Coordinating Offices' Office of Communication. Sufficient communications staff exists in the Office of the Secretary.	45,886	SF	1.0
	Total Reductions	\$ 1,116,012		5.0
	Total General Fund Reductions	\$ 276,735		
	Total Special Fund Reductions	\$ 839,277		

Updates

1. 2004 Enforcement and Compliance Report

Last fall, MDE published its eighth annual report on all enforcement and compliance programs in the Air and Radiation, Technical and Regulatory Services, Waste and Water Administrations, as well as the Attorney General’s Environmental Crimes Unit. This report summarizes MDE’s fiscal 2004 enforcement accomplishments and challenges. The report notes that MDE provided regulatory oversight for 178,534 regulated entities – a 5% increase over last year. The department spent nearly \$8.8 million on salaries and support for 149.2 enforcement personnel to provide that oversight. On average, each MDE inspector was able to inspect 1,196 regulated entities.

Exhibit 9 provides performance data for fiscal 2003 and 2004 that is presented in the report. This data indicates the following changes between 2003 and 2004:

- a 6% decrease in the issuance of permits and licenses;
- a 31.4% increase in the number of sites inspected;
- a 19.7% decrease in the number of enforcement actions; and
- a 23.3% decrease in the amount of penalty revenue collected.

Overall, the enforcement actions and penalties data indicates a rising rate of compliance in the regulated community.

Exhibit 9 MDE’s Enforcement and Compliance Performance

	<u>Fiscal 2003</u>	<u>Fiscal 2004</u>	<u>% Change</u>
Permitted Sites/Facilities			
Permits/licenses issued	11,988	11,264	-6.0%
Permits/licenses in effect at year end	69,831	75,729	8.4%
Inspections			
Sites inspected	33,048	43,434	31.4%
Inspections, audits, and spot checks	98,550	106,845	8.4%
Enforcement Actions			
Compliance assistance actions rendered	14,120	18,646	32.1%
Enforcement actions taken	2,311	1,856	-19.7%
Penalty amount obtained (\$)	\$2,321,563	\$1,781,526	-23.3%

Source: Maryland Department of the Environment

Current and Prior Year Budgets

Current and Prior Year Budgets Department of the Environment (\$ in Thousands)

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2004					
Legislative Appropriation	\$41,308	\$25,612	\$24,242	\$4,459	\$95,621
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	-180	3,022	5,922	8,485	17,249
Cost Containment	-2,522	0	0	0	-2,522
Reversions and Cancellations	-9	-4,995	-8,366	-5,649	-19,019
Actual Expenditures	\$38,597	\$23,639	\$21,798	\$7,295	\$91,329
Fiscal 2005					
Legislative Appropriation	\$36,857	\$25,519	\$24,223	\$4,327	\$90,926
Budget Amendments	335	950	3,824	0	5,109
Working Appropriation	\$37,192	\$26,469	\$28,047	\$4,327	\$96,035

Note: Numbers may not sum to total due to rounding.

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Fiscal 2004

The significant decrease in general funds was mainly due to cost containment actions under the provisions of Section 7-213(a) of the State Finance and Procurement Article (Budget Amendment No. 37-04). MDE implemented \$2,521,660 in reductions, as detailed below:

- \$917,660 in air quality, radiological health, State superfund, groundwater, wastewater, and water supply program funding was reduced and replaced with available special and federal funds;
- \$625,000 for contracts with vendors developing TMDL standards for pollutants in waterways;
- \$251,000 for four positions in Technical and Regulatory Services;
- \$214,000 for four positions in the Administrative and Employee Services Administration;
- \$172,000 for an Assistant Attorney General and Smart Growth position (these positions were not abolished);
- \$160,000 for a whole effluent toxicity testing contract;
- \$112,000 for one administrative support position and the funding for one special projects position in the Water Management Administration; and
- \$70,000 for the Anacostia Watershed Restoration Commission and other boards and commissions.

General funds were also impacted by the transfer of \$167,299 in unnecessary Water Quality Revolving Loan Fund (WQRLF) administrative funds to the capital budget to use for WQRLF construction projects.

Special funds dedicated to operating functions decreased by \$1,972,945. The following funds were added via budget amendment:

- \$1.4 million in indirect cost recovery funds for personnel costs and contractual services at year-end closing;
- \$672,392 for water quality infrastructure studies conducted within the Water Pollution Control Program;
- \$400,000 for soil cleanup associated with oil tank spills that occurred during Tropical Storm Isabel;

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- \$238,700 for solid waste cleanup activities associated with landfills; and
- \$250,803 to cover salary and fringe benefit costs related to Drinking Water Revolving Loan Fund activities and the Air and Radiation Management Administration.

These increases were offset by \$5.0 million in special fund cancellations in several programs, including \$1.5 million in Hazardous and Oil Control Compliance and Cleanup, \$946,514 in Water Pollution Control, \$804,864 in Air and Radiation Management, \$616,688 in the Coordinating Offices and \$525,904 in Technical and Regulatory Services.

Federal funds dedicated to operating functions decreased by \$2,443,640. Budget amendments increasing the appropriation included:

- \$1,703,937 for ground and surface water quality studies;
- \$800,000 in indirect cost recovery funds for personnel costs and contractual services at year-end closing;
- \$773,000 for the Kempton/Laurel Run restoration project, acid mine remediation, and water infrastructure projects;
- \$554,500 to procure fine particulate matter ambient air monitoring equipment;
- \$408,887 for the Lead Poisoning Prevention Program to complete blood surveillance reports, and conduct a multimedia campaign targeted at areas with high rates of childhood lead poisoning and other education and outreach activities;
- \$330,000 for groundwater, mining, sewer planning, and water conservation programs;
- \$274,142 for the department's air monitoring programs, beach monitoring program, conferences and seminars for local health departments, and development of a website, telephone hotline, and database information tools;
- \$172,660 for a contract with the Maryland Center for Environmental Training; and
- \$120,070 to address soil contamination remediation damage from Tropical Storm Isabel.

These increases were offset by federal fund cancellations in several programs, including \$3.6 million in Water Pollution Control, \$1.7 million in Hazardous and Oil Control Compliance and Cleanup, \$862,714 in the Coordinating Offices, \$649,624 in Technical and Regulatory Services, and \$446,456 in the Administration and Employee Services Administration.

Reimbursable funds increased by \$2.8 million, largely due to the receipt of funds from the Maryland Emergency Management Administration for damage mitigation associated with Tropical Storm Isabel.

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Fiscal 2005

General funds increased by \$334,430. This increase is primarily due to allocation of the cost-of-living adjustment general fund appropriation to State agencies as authorized in the fiscal 2005 budget bill (Budget Amendment 006-05).

Special funds increased by \$950,000, to reflect receipt of \$600,000 to retrofit diesel-powered school buses in Anne Arundel, Prince George's, and Montgomery counties to reduce pollution, and \$350,000 for lead poisoning prevention activities.

Federal funds increased by \$3.8 million, with \$2.6 million of this increase from indirect cost recoveries to implement the third phase of EEMS. Also, a \$1,070,000 budget amendment increased funds for efforts to promote local involvement in, and ownership of, the development and maintenance of flood hazard maps produced for the National Flood Insurance Program.

Audit Findings

Audit Period for Last Audit:	March 1, 1999 – August 31, 2001
Issue Date:	June 2002
Number of Findings:	14
Number of Repeat Findings:	6
% of Repeat Findings:	46%

- Finding 1:** MDE prematurely transferred State matching funds from the general fund, which resulted in a \$2.0 million loss in interest income.
- Finding 2:** MDE did not directly deposit \$135.0 million in federal funds in the State Treasury.
- Finding 3:** MDE failed to adequately reconcile federal grant records.
- Finding 4:** MDE failed to submit adequate indirect cost recovery plans in a timely manner, which resulted in \$29,000 in lost income.
- Finding 5:** MDE’s insufficient record keeping restricted its ability to monitor permits, inspections, and penalties.
- Finding 6:** MDE recorded unsubstantiated closeout transactions totaling about \$859,000.
- Finding 7:** MDE did not adequately reconcile special fund records with corresponding records of the Comptroller of the Treasury.
- Finding 8:** MDE did not have adequate security over certain critical network servers.
- Finding 9:** MDE had insufficient security controls over one critical information technology application.
- Finding 10:** MDE did not have an adequate information technology contingency recovery plan.
- Finding 11:** MDE failed to obtain supporting documentation for contractor invoices and grant payments.
- Finding 12:** MDE failed to establish proper internal controls concerning purchasing and disbursement activities.
- Finding 13:** MDE had insufficient controls over cash receipts and non-cash credits.
- Finding 14:** MDE failed to consistently process contracts in accordance with State law and regulations.

*Bold denotes item repeated in full or part from preceding audit report

**Object/Fund Difference Report
Maryland Department of the Environment**

<u>Object/Fund</u>	<u>FY04 Actual</u>	<u>FY05 Working Appropriation</u>	<u>FY06 Allowance</u>	<u>FY05 - FY06 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	951.00	954.00	956.00	2.00	0.2%
02 Contractual	15.60	46.00	43.50	-2.50	-5.4%
Total Positions	966.60	1000.00	999.50	-0.50	-0.1%
Objects					
01 Salaries and Wages	\$ 59,493,680	\$ 59,498,186	\$ 62,546,960	\$ 3,048,774	5.1%
02 Technical & Spec Fees	555,742	1,422,028	1,399,103	-22,925	-1.6%
03 Communication	702,020	989,828	937,106	-52,722	-5.3%
04 Travel	372,122	578,995	521,275	-57,720	-10.0%
06 Fuel & Utilities	341,949	407,871	505,671	97,800	24.0%
07 Motor Vehicles	1,341,311	1,268,678	1,036,670	-232,008	-18.3%
08 Contractual Services	5,818,307	12,756,036	11,217,873	-1,538,163	-12.1%
09 Supplies & Materials	1,125,156	1,256,110	1,169,636	-86,474	-6.9%
10 Equip - Replacement	1,038,344	953,193	1,004,083	50,890	5.3%
11 Equip - Additional	1,339,547	543,671	615,769	72,098	13.3%
12 Grants, Subsidies, and Contributions	15,045,835	11,725,526	9,832,905	-1,892,621	-16.1%
13 Fixed Charges	4,154,882	4,185,158	4,188,023	2,865	0.1%
14 Land & Structures	0	450,000	50,000	-400,000	-88.9%
Total Objects	\$ 91,328,895	\$ 96,035,280	\$ 95,025,074	-\$ 1,010,206	-1.1%
Funds					
01 General Fund	\$ 38,596,629	\$ 37,191,691	\$ 33,813,000	-\$ 3,378,691	-9.1%
03 Special Fund	23,639,174	26,469,407	30,864,574	4,395,167	16.6%
05 Federal Fund	21,798,106	28,047,414	26,095,192	-1,952,222	-7.0%
09 Reimbursable Fund	7,294,986	4,326,768	4,252,308	-74,460	-1.7%
Total Funds	\$ 91,328,895	\$ 96,035,280	\$ 95,025,074	-\$ 1,010,206	-1.1%

Note: The fiscal 2005 appropriation does not include deficiencies, and the fiscal 2006 allowance does not reflect contingent reductions.

**Fiscal Summary
Maryland Department of the Environment**

<u>Program/Unit</u>	<u>FY04 Actual</u>	<u>FY05 Wrk Approp</u>	<u>FY06 Allowance</u>	<u>Change</u>	<u>FY05 - FY06 % Change</u>
01 Office of the Secretary	\$ 1,766,031	\$ 1,824,923	\$ 1,874,541	\$ 49,618	2.7%
02 Administrative and Employee Services	7,293,496	7,162,855	7,346,092	183,237	2.6%
01 Water Pollution Control Program	22,981,600	24,046,997	24,265,953	218,956	0.9%
02 Water Supply Program	4,408,727	4,605,767	4,672,450	66,683	1.4%
01 Technical and Regulatory Services	15,644,700	11,544,949	11,330,065	-214,884	-1.9%
01 Solid Waste Permitting, Compliance and Enforcement	5,192,058	4,933,707	6,708,256	1,774,549	36.0%
05 Hazardous and Oil Control, Compliance and Cleanup	10,471,735	13,646,068	14,125,185	479,117	3.5%
07 Lead Poisoning Prevention Program	3,862,683	4,245,932	3,713,265	-532,667	-12.5%
01 Air and Radiation Management Administration	13,278,677	13,408,453	13,397,888	-10,565	-0.1%
01 Coordinating Offices	6,429,188	7,868,589	7,491,379	-377,210	-4.8%
02 Major IT Development Program	0	2,747,040	100,000	-2,647,040	-96.4%
Total Expenditures	\$ 91,328,895	\$ 96,035,280	\$ 95,025,074	-\$ 1,010,206	-1.1%
General Fund	\$ 38,596,629	\$ 37,191,691	\$ 33,813,000	-\$ 3,378,691	-9.1%
Special Fund	23,639,174	26,469,407	30,864,574	4,395,167	16.6%
Federal Fund	21,798,106	28,047,414	26,095,192	-1,952,222	-7.0%
Total Appropriations	\$ 84,033,909	\$ 91,708,512	\$ 90,772,766	-\$ 935,746	-1.0%
Reimbursable Fund	\$ 7,294,986	\$ 4,326,768	\$ 4,252,308	-\$ 74,460	-1.7%
Total Funds	\$ 91,328,895	\$ 96,035,280	\$ 95,025,074	-\$ 1,010,206	-1.1%

Note: The fiscal 2005 appropriation does not include deficiencies, and the fiscal 2006 allowance does not reflect contingent reductions.

Fiscal 2006 Cost Containment Actions
As Submitted by the Agency
Estimated FY 2006 Savings
Compared to FY 2005

<u>Cost Saving Action/Efficiency Measure</u>	<u>Program Code</u>	<u>General Funds</u>	<u>Positions Reduced</u>	<u>Impact of Action</u>
Reduce Total Maximum Daily Load contracts	U00a0501	-1,000,000	0	
Close Prince Frederick Field Office	U00a0401	-171,000	0	
Abolish 8 PINs	various	-415,000	-8	
Delete lead enforcement grant to Baltimore City	U00a0607	-375,000	0	
Reduce funds for boards and commissions	U00a0401	-50,000	0	
Fund adjust salaries and operating costs to non-general funds	various	-1,607,000	0	
Eliminate ballast water program	U00a0501	-50,000	0	

Source: Maryland Department of the Environment