Date: March 6, 2015

Bill: SB 695 – Maryland Public Information Act (General Provisions - Public Information Act – Enforcement, Fees, and Exemptions)

Committee: Senate Education, Health and Environmental Affairs

Position: Support Filed on behalf of Maryland Clean Agriculture Coalition (MCAC) partners:

Anacostia Riverkeeper; Audubon Naturalist Society; Assateague Coastal Trust; Blue Water Baltimore; Chesapeake Climate Action Network; Clean Water Action; Environment Maryland; Environmental Integrity Project; Gunpowder Riverkeeper; League of Women Voters of Maryland; Lower Susquehanna Riverkeeper; Maryland League of Conservation Voters; Maryland Pesticide Education Network; Mid-Atlantic Regional Center; Potomac Riverkeeper; Sierra Club, Maryland Chapter; South River Federation; Waterkeepers Chesapeake; and West/Rhode Riverkeeper.

Pass SB695 to Update Maryland’s Public Information Act And Reduce Pollution

Marylanders expect transparent government. This transparency is essential across all sectors of government and industry, including agricultural waste management. Without access to this information, local communities and citizens cannot be assured that these operations are not polluting the water that Marylanders rely on for drinking, swimming, and fishing.

Recent polling data shows that more than three-quarters of respondents supported eliminating the exemption that makes agriculture pollution control plans secret. Seventy-seven percent would support legislation to make agricultural pollution control plans available to the public, including 71 percent of respondents in rural counties. Marylanders believe this information is important and should be made available to the public and are asking you to do that for them.

As currently written, Agric. § 8-801.1, a provision of the Maryland Water Quality Improvement Act, requires most farms to follow Nutrient Management Plans and annually submit a Plan summary to the Maryland Department of Agriculture (MDA). These plans are not written by the farmers themselves, but with the support of professional planners who are paid for with our public dollars. The law requires MDA to “maintain a copy of each summary for 3 years in a manner that protects the identity of the individual for whom the nutrient management plan was prepared” (emphasis added). Agric. § 8-801.1(b)(2).

Although this provision seems to only affect MDA’s disclosure of identifying information, such as the owner’s name and unique plan ID number, from the plan summaries themselves, recent
court decisions have dramatically expanded the scope of this exemption. Specifically, although agencies are required to interpret exemptions narrowly, Maryland courts have read this provision as requiring MDA to redact information from any related documents if information in other records (such as publicly funded cost-share documents or pollution-related enforcement records) could potentially create a linkage to a specific plan summary.

Protecting the names of thousands of nutrient management plan holders poses real obstacles to public oversight and transparency. MDA is tasked with ensuring that these operators comply with their plans and use public resources to do so. Access to operator names enables citizens to track public funding of conservation projects, compliance with pollution control plans, and the effectiveness of MDA’s oversight program.

This proposed change is in no way groundbreaking. There are strong precedents and sound policy reasons to disclose the names of plan holders. As required by the federal Clean Water Act, large livestock operations with Clean Water Act discharge permits must also follow site-specific nutrient management plans and submit annual summaries, but these documents go to the Maryland Department of the Environment, not MDA, and they must be made publicly available to ensure that the public can participate in the permitting process and thereby protect water quality.

Consequently, the public already has full access to plans and summaries for several hundred large livestock operations in Maryland (except for truly sensitive information such as social security numbers). We do not, however, have access to the same basic information for thousands of other agricultural operations whose nutrient management plans are held by MDA, not MDE.

Citizen analyses of these nutrient management summaries held by MDE have revealed widespread reporting failures and excessive phosphorous applications – broader access to such information for all farms is critical to promoting additional policies to restore local waterways and the Chesapeake Bay. We simply seek the same access to plans held by MDA—plans developed with our public dollars for agricultural operations that receive public dollars through subsidies and tax credits to help control their pollution.

Maryland’s public information laws were not designed to shield any industry from disclosure about how it treats and manages its pollution. It’s time to move Maryland away from protecting the state’s high degree of secrecy regarding agricultural pollution and to embrace what the citizens have asked for by an overwhelming 77% - transparency for agricultural waste management plans.

We respectfully request that you support these critical reforms by passing Senate Bill 695.

For more information, contact: Dawn Stoltzfus, coordinator, Maryland Clean Agriculture Coalition, at 410-990-0284 or dawn@thehatchergroup.com

The Maryland Clean Agriculture Coalition is working to improve Maryland waterways and protect public health by reducing pollution, and increasing transparency and accountability, from agriculture and other associated sources of water degradation. More information: www.marylandcleanagriculture.org @CleanerMDfarms