October 20, 2014

Mr. Horacio Tablada
Director, Land Management Administration, Maryland Department of the Environment
1800 Washington Blvd., Suite 610
Baltimore, Maryland 21230
Via email at Horacio.Tablada@maryland.gov

RE: The General Discharge Permit for Animal Feeding Operations, NPDES # MDG01, State Discharge Permit # 09AF (GD Permit).

Dear Mr. Tablada:

Members of the Maryland Clean Agriculture Coalition including: the Anacostia Riverkeeper, Audubon Naturalist Society, Assateague Coastal Trust, Blue Water Baltimore, Chesapeake Climate Action Network, Clean Water Action, Common Cause Maryland, Environmental Integrity Project, Environment Maryland, Gunpowder Riverkeeper, League of Women Voters of Maryland, Lower Susquehanna Riverkeeper, Maryland League of Conservation Voters, Maryland Pesticide Network, Mid-Atlantic Regional Center, Potomac Riverkeeper, Sierra Club - Maryland Chapter, South River Federation, Waterkeepers Chesapeake and the West/Rhode Riverkeeper, are pleased to submit these comments on the General Discharge Permit for Animal Feeding Operations. Rena Steinzor, President, and Anne Havemann, Policy Analyst, Center for Progressive Reform also sign on to these comments. We are pleased that the proposed permit does address some of our concerns about the current permit and its compliance with the federal Clean Water Act. However, there remain parts of this proposed permit that must be significantly changed to ensure the contamination of our Maryland waters is reduced and public accessibility to the information required with the permit is increased.

With the recent signing of the new Chesapeake Bay Watershed agreement, Maryland and the other Bay watershed states stated: "One of the most important lessons the partners have learned from the past three decades is that although watershed-wide partnerships can help to coordinate and catalyze progress, implementation happens locally. Local governments are key partners in our work, as are individual citizens, businesses, watershed groups and other non-governmental organizations. Working together to engage, empower and facilitate these partners will leverage resources and ensure better outcomes." The agriculture sector – farms and the corporate industry – needs to be the cornerstone of the local effort to reduce phosphorus in Maryland's local waterways.

Phosphorus pollution continues to rise and the progress Maryland has made to reduce this contaminant is threatened. The science-based Phosphorus Management Tool (PMT) would

reduce pollution by limiting the use of manure applied to farm fields already contaminated with excess levels of phosphorus. The rule would improve water quality, reduce harmful algae blooms and protect public health. Since this permit is not based on the science behind the PMT, but on out-of-date data, it is inhibiting the state's ability to meet federal phosphorus reduction goals. Our partner organizations question whether or not permits for new facilities should be allowed until which time the PMT can be implemented.

Even the agriculture industry acknowledges that there is too much manure. One of the major complaints of the industry to the PMT is what will we do with all the excess manure? Given this problem, why is Maryland permitting more chicken houses which will generate more manure? The cumulative impacts of tons more manure from additional chicken house into a system already unable to manage the existing levels of manure is unsustainable.

In order to ensure that the general discharge permit for animal feeding operations (AFOs) is as effective as possible, the Coalition has recommendations for necessary changes to the permit.

I. Key Recommendations – In Brief

Permit Fee

- *I.A.5.B.* – It is imperative that the fee for this permit no longer be waived. The Maryland Department of the Environment (MDE) is unable to adequately inspect AFOs, which include Concentrated Animal Feeding Operations (CAFOs) and Maryland Animal Feeding Operations (MAFOs), ensure their compliance with MDE regulations, or efficiently and quickly process these permits without additional funds and resources. As a result, more than $400,000 is not being collected each year. The Coalition respectfully requests that, as with other permits, applicants and permit holders be charged the necessary fees to ensure the success of the AFO program.

Clarify language

- *I.B.2.* – MDE never defines a 25-year, 24-hour storm event and needs to do so. MDE should rely on current climate data, not the extremely outdated National Weather Service (NWS) rainfall atlas that the Environmental Protection Agency (EPA) says to use. This ensures the most accurate and timely data to prevent the flooding of contaminants into local waters.
- *IV.A.4.* – MDE should define "imminent storage failure," "catastrophic," and "dire emergency" to limit exceptions to the prohibition on spreading on frozen ground. MDE has indicated that they are referring to guidance on their website of this issue. The language from that guidance should be written into the permit here. Less confusion will result in less manure spread on frozen ground where it will melt into the ground after melting and then runoff into local waters.

- *II.B.* – In order to ensure clarity and less confusion, MDE should ensure that definitions of animal waste and poultry litter are adequately inclusive.
- *II.M.* –MDE should clarify the definition of frozen ground to ensure it is adequate and compare it to the definition in other states.
- *IV.A.1.a.* – (1) and (2) are vague and somewhat contradictory here. MDE needs to clarify requirements for litter stockpiles.
- *IV.B.8.* – Floodplain should be further defined to indicate the 100 year floodplain since it has a legal definition and maps from the Flood Insurance Rate Map program.

Plans for CAFOs must be publicly accessible

- *Part III.B.* – Prior to Department approval of the required plan(s), each Notice of Intent (NOI), Comprehensive Nutrient Management Plan (CNMP), Nutrient Management Plan (NMP), and Conservation Plan (CP) submitted to the Department will be available for public comment consistent with applicable public participation requirements in COMAR 26.08.04.09N(3), including public access to all submitted plans and opportunity to comment on all plans and NOIs.
- NMPs are excluded from public access under Maryland law. Md. Code Ann., Agric. § 8.801.1(b) (2) but not under the federal Clean Water Act delegated permitting scheme.
- **MDE must clarify that NMPs submitted by CAFOs are fully and completely accessible at any and all times.**

Weekly inspections of manure sheds

- *Part IV.A.6* – The proposed permit changes the requirement for farmers to inspect animal waste storage areas and storm water routing structures from once a week to once a year.
- *40 C.F.R. 412.37(a) (1)* – Federal regulations require routine visual inspections of the CAFO production area, which include manure storage sheds, including "[w]eekly inspections of the manure . . . impoundments.
- Given the fact that agricultural pollution remains the primary source of nutrient pollution to the Bay and Maryland waters, there is no justification for this proposed weakening of the inspection requirements. It is also inconsistent with the new Chesapeake Bay Program Best Management Practices (BMP) verification guidelines, which establishes the need for increased levels, not decreased levels, of verification of continued BMP operation.
- **Operators must be required to inspect storage sheds weekly.**

Keep propose-to-discharge language

- *Part I.A.* – MDE's proposed General Permit for CAFOs and MAFOs covers certain AFOs that discharge or "propose to discharge" pollution.
- In *National Pork Producers Council v. EPA*, 635 F.3d 738 (5th Cir. 2011), the Fifth Circuit vacated the portion of EPA's federal 2008 CAFO rule that required facilities that "propose to discharge" to obtain an NPDES permit.

- States are not precluded from modifying federal regulations to impose more stringent requirements. 40 C.F.R. § 123.25(a). Maryland has full authority under its state law to require any and all facilities, regardless of the likelihood of discharge, to require a permit and should do so. Again, given the role of agricultural pollution in the Bay cleanup effort, there is no reason for weakening the existing permitting requirements.
- In addition, eliminating coverage of facilities that propose to discharge pollution would create what is effectively a "catch me if you can" approach to permitting operations that would cause confusion among the regulated community and impose an added burden on already-stretched MDE staff. With 2–3 inspectors, MDE does not have the resources to regularly visit AFOs that did not seek a permit to ensure that they are not discharging.
- **Continue to regulate AFOs that "propose to discharge"**

Co-permitting

- In EPA's proposed CAFO rulemaking in 2001, it defined co-permitting as: "Any person who is an ''operator'' of a CAFO on the basis that the person exercises substantial operational control of a CAFO (see § 122.23(a) (5) (ii)) must apply for a permit. Such operators may apply for an NPDES permit either alone or together as co-permittees with other owners or operators of the CAFO." 66 Fed. Reg. 3136 (Jan. 12, 2001).
- To determine whether an entity exercises "substantial operational control" over the facility, EPA proposed considering "whether the entity: (1) Directs the activity of persons working at the CAFO either through a contract or direct supervision of, or on-site participation in, activities at the facility; (2) owns the animals; or (3) specifies how the animals are grown, fed, or medicated." 66 Fed. Reg. 3024 (Jan. 12, 2001).
- **MDE should clearly specify that an entity that has substantial operational control over a CAFO constitutes an "operator" and is thus subject to the state's CAFO permitting requirements. "Substantial operational control" should include consideration of whether the entity: (1) directs the activity of persons working at the CAFO or MAFO either through a contract or direct supervision of, or on-site participation in, activities at the facility; (2) owns the animals; or (3) specifies how the animals are grown, fed, or medicated.**

Track manure once it is exported

- Maryland does not track manure once it leaves a CAFO or MAFO, leaving MDE and the public in the dark about how most of this waste is utilized and its impact on water quality.
- **MDE must require that CAFOs and MAFOs transferring waste off-site for application on land not under their control obtain the end user's nutrient management plan and annual reports, and submit those documents with their own AIRs.**

Right of Entry

- **MDE must retain right of entry to permitted operations in order to ensure compliance with the GP.**

E-reporting

- **MDE should develop a system that both allows CAFOs to submit annual reports online and makes them publicly accessible online.**

Stronger, clearer reporting requirements

- The current annual reporting requirements allow MDE and concerned citizens to see how a farm has operated over the course of the year. The reporting requirements in the proposed new GP are vague and much weaker than those required by the current GP.
- **MDE must strengthen the requirements in the proposed permit to, at a minimum, meet those contained in the current General Discharge Permit. In addition, it must correct the problems noted below. In summary, MDE needs to make substantial changes to the reporting requirements.**
- The proposed permit requires reporting "on a form provided or approved by" MDE but contains no sample form. The list of reporting requirements contained in the proposed do not appear to require reporting on a number of necessary aspects, including:
- The integrator—important to understand the structure of the industry in Maryland
- Nutrient analyses of manure—important to determine the composition of waste that is land-applied and required by federal law
- Manure imported
- Soil phosphorus tests—important to determine whether fields are saturated with phosphorus and required by federal law

II. Key Recommendations – Detailed

Permit Fee

MDE should begin to collect fees from CAFOs and MAFOs. Since the current permit came into effect in late 2009, MDE has waived annual fees for the nearly 600 CAFOs in the state. Maryland law does not afford MDE the discretion to waive these fees. It requires MDE to adopt regulations that "set a reasonable application fee in an amount designed to cover the cost of the permit procedure."[1] MDE's regulations comply with this requirement, stating that a "CAFO shall pay an annual permit fee."[2] The agency does not have the legal authority to waive these fees and, with the issuance of this proposed General Discharge Permit, it must immediately begin to collect annual fees from CAFOs.

Not only is MDE legally required to assess fees from CAFOs, but these fees would also improve the efficacy of the agency's AFO program. A failure to collect fees means that funding for the AFO program must come out of MDE's general budget, which is appropriated by the General Assembly from tax revenue. Assessing fees ensures that a facility that pollutes the Bay shoulders the cost of regulating its operations—including permit-processing and inspecting it for compliance with the law—rather than foisting the cost onto the taxpaying public. With nearly 600 CAFOs in the state, the fees can make a significant difference to the understaffed and underfunded AFO program. Accordingly, MDE must begin to assess CAFO permit fees when this proposed GP comes into effect.

Moreover, the existing fee regulations are not burdensome to the regulated industry. The fees are appropriately structured on a sliding scale so as to place the least financial burden on the smallest operations. To further alleviate any burden, when an integrator exercises sufficient control over a CAFO so as to qualify as an "operator," the integrator should share the cost with the grower.

Finally, we see no rational reason to impose a fee on CAFOs and not MAFOs. MAFOs are permitted based on discharges to groundwater,[3] the source of some drinking water and 40 percent of the nation's average annual stream flow.[4] MDE is charged with monitoring and controlling groundwater pollution,[5] which requires resources just like any other regulatory program. As such, the fee requirements should apply to CAFOs and MAFOs.

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[1] MD. CODE ANN., ENVIR. § 9-325.
[2] MD. CODE REGS. 26.08.04.09-1(J).
[3] Proposed Permit Part I.B.3.
[4] Envt'l Protection Agency, Ground Water and Ecosystems Restoration Research: Concentrated Animal Feeding Operations, http://www.epa.gov/ada/gw/cafos.html.
[5] *See* Senate Joint Resolution No. 25 of 1985 (requiring MDE to report on the implementation of a Comprehensive Groundwater Protection Strategy).

Propose to Discharge

Agriculture remains the largest contributor of nutrient and sediment pollution in Maryland and the Chesapeake Bay,[6] and the state must continue to do more than the bare minimum required under federal law to regulate AFO pollution. Therefore, the commenters strongly support MDE's proposal to maintain the requirement that all CAFOs that "propose to discharge" must obtain a National Pollutant Discharge Elimination System (NPDES) permit.[7] States are not precluded from modifying federal regulations to impose more stringent requirements.[8] The Md. Court of Special Appeals considered the current Permit in 2011 and did not question the "propose to discharge" provision.[9] Requiring every CAFO that is designed, constructed, operated, or maintained in such a way that it will discharge pollutants into waters of the state is essential if Maryland is to reduce poultry industry pollution and make progress towards restoring local water quality and the Chesapeake Bay.

MDE must also continue to subject MAFOs, which do not propose to discharge, to basic waste management requirements to ensure they will remain non-discharging operations. Requiring MAFOs to comply with state permits comparable to CAFO NPDES permits also keeps the burden of compliance on the operator, rather than placing responsibility for identifying unregulated AFOs that contribute to surface water pollution and require additional oversight on MDE and citizens. Amending these provisions to narrow the universe of CAFOs and/or MAFOs subject to permit requirements would further strain MDE's limited inspection resources and create a disincentive for CAFO operators to seek a permit.

Similarly, we strongly support the provisions in the Proposed Permit establishing that a MAFO that experiences a discharge or proposes to discharge automatically becomes a CAFO,[10] and that a medium AFO that fails to submit a Certificate of Conformance automatically becomes a MAFO.[11] However, MDE should clarify and broaden the circumstances in which a MAFO proposes to discharge and thereby becomes a CAFO; specifically, any MAFO that stockpiles waste in a field without a cover and a pad proposes to discharge, and should be required to apply for a CAFO permit.

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[6] Donald Boesch *et al.*, Why We Need the Phosphorus Management Tool (PMT) (Jan. 7, 2014) [hereinafter Scientists' PMT Letter], available at http://www.umces.edu/sites/default/files/Why%20We%20Need%20the%20Phosphorus%20Management%20Tool%20Updated.pdf

[7] Proposed Permit Part I.A.

[8] 40 C.F.R. § 123.25(a).

[9] *Assateague Coastkeeper v. MDE*, 200 Md. App. 665 (Md. Ct. Spec. App. 2011).

[10] Proposed Permit Part I.A.5.b.

[11] Proposed Permit Part I.A.5.a.iv.

Regional scientists have studied the risks of runoff from stockpiled, or field-staged, poultry litter, and have found that "[t]he available data suggests that while any stockpiled litter presents a potential for nutrient loss to the environment, the majority of this risk occurs within the first days of litter pile construction."[12] Not surprisingly, "[t]he concentration of nutrients in [] runoff [is] always highest for the first runoff event."[13] The Natural Resources Conservation Service (NRCS) has adopted the common-sense recommendation that "manure removed from poultry houses should be stored in a covered shed until it can be applied to crops or otherwise utilized," and has identified manure piled outside of sheds as a potential environmental problem to avoid.[14] While even "properly" stockpiled litter poses a threat to surface water quality, "[i]mproperly stockpiled poultry litter dramatically increases the potential for nutrient loss to the environment."[15] MDE does not have capacity to oversee stockpiling practices at hundreds of Maryland AFOs and ensure that each pile is perfectly built for maximum nutrient retention, and cannot reasonably assume that every litter stockpile will be constructed and maintained perfectly. In fact, MDE itself has found that "there are water quality impacts resulting from storage of litter in the field and those impacts are highly variable."[16]

Because all exposed stockpiles of litter are likely to result in discharges of pollutants in the first few days after construction, MAFOs with uncovered litter stockpiles on bare ground inherently propose to discharge and should be required to apply for CAFO permits; following the same logic, because the only way to minimize the potential transport of nutrients to surface waters is to ban uncovered stockpiles of manure on bare ground, MDE should prohibit this practice at all CAFOs and MAFOs for any period of time because it does not comply with EPA's requirements to "ensure appropriate agricultural utilization"[17] of nutrients and land application rates that "minimiz[e] nitrogen and phosphorus movement to surface waters."[18]

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[12] Poultry Litter Experts Science Forum, Chesapeake Research Consortium - Maryland Environmental Finance Center Science Forum (Oct. 2008), available at http://www.chesapeake.org/pubs/litterforumfactsheet.pdf.
[13] Gregory D. Binford and George Malone, Evaluating BMPs for Temporary Stockpiling of Poultry Litter, submitted to the Delaware Nutrient Management Commission and the Natural Resource Conservation Service, at 12 (Dec. 22, 2008, updated Nov. 30, 2009).
[14] NRCS, Environmental Checklist for Poultry Operations (Jan. 2008), available at http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs144p2_025247.pdf.
[15] Poultry Litter Experts Science Forum, Chesapeake Research Consortium - Maryland Environmental Finance Center Science Forum (Oct. 2008).
[16] *Assateague Coastkeeper, et al. v. Maryland Dep't of the Environment*, 200 Md.App. 665, 695 (Sept. 6, 2011).
[17] 40 C.F.R. § 122.42(e)(1)(viii).
[18] 40 C.F.R. § 412.4(c)(1).

CNMP Requirements

As noted above, EPA's CAFO regulations and effluent guidelines require CAFO NPDES permits to include technical standards for nutrient management that minimize the potential for nutrient runoff from land application fields. Until Maryland adopts the PMT, however, CAFO NMPs cannot meet these federal requirements or adequately prevent water pollution resulting from CAFO waste application.

MDE, the Maryland Department of Agriculture (MDA), and University of Maryland scientists have thoroughly assessed the effectiveness of the current Phosphorus Index in keeping land-applied phosphorus on the field, and have come to a science-based determination that the Phosphorus Index is outdated and inadequate.[19] The Index allows for far too much phosphorus application on some fields and soils that are already saturated with the nutrient and where further application is likely to cause runoff into surface waters. While wastewater treatment has dramatically reduced phosphorus pollution from other sectors over the past three decades, phosphorus runoff from agriculture has barely declined and now accounts for an estimated 64% of phosphorus inputs to the Chesapeake Bay from human sources.[20]

MDA's analysis of the agricultural sector's Bay TMDL Phase II Watershed Implementation Plan progress further indicates that current nutrient management practices are inadequate to prevent nutrient runoff from CAFO and MAFO land application. Between 2011 and 2012, agricultural nitrogen and phosphorus pollution actually increased statewide. The most notable increase in agricultural pollution took place on the Eastern Shore, which accounts for the majority of statewide agricultural nutrient contributions to the Bay.[21] Although statewide adoption of the PMT in farm NMPs has been delayed, MDE must advocate for immediate adoption of the PMT if CAFO NMPs are to meet minimum federal requirements.

Public Participation

MDE should remove the language added in the Proposed Permit providing that a MAFO that becomes a CAFO must only submit its notice of intent, CNMP, and fee within a certain number of days "of being designated by the Department."[22] With this added language, basic requirements will only be triggered upon action by MDE; if MDE fails to designate a MAFO

[19] *See* Scientists' PMT Letter.
[20] *Id*.
[21] John Rhoderick, Maryland Dep't of Agric., Maryland's TMDL Process and the Role for Agriculture: WIP Phase II Summary (April/May 2013), available at http://www.mde.state.md.us/programs/Water/TMDL/TMDLImplementation/Documents/Regional_Meetings/Spring2013/Agricultural_Progress_and_Assistance.pdf.
[22] Proposed Permit Part A.5.b.

as a CAFO, it is unclear whether and when the CAFO must submit these documents. This will also delay or prevent public review of the CAFO NOIs and required plans, which must be available prior to permit approval and issuance. Because MDE must also review and approve NOIs prior to permit coverage to ensure that applicants meet all requirements and have provided adequate information, it should also amend the Proposed Permit's Registration Process section to require "receipt *and* review" of NOIs, not "receipt and/or review" of NOIs.[23]

Weekly Inspection Requirements

The Proposed Permit completely eliminates the important and common-sense requirement that CAFO and MAFO permittees "conduct weekly inspections of the animal waste storage areas and storm water routing structures."[24] MDE must restore this requirement to comply with minimum federal requirements. EPA's ELGs for large poultry, dairy, swine, and beef CAFOs require "[a]t a minimum, the following must be visually inspected: (i) [w]eekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structure."[25]

Moreover, EPA's regulations require these CAFOs to conduct "[w]eekly inspections of the manure, litter, and process wastewater impoundments" that include recordings of waste levels in liquid impoundments using a depth marker.[26] This requirement appears to be absent from the Proposed Permit, which instead requires only a monthly report of available freeboard in the Annual Implementation Report (AIR),[27] and MDE must require weekly inspections in the final permit.

Water Quality Monitoring Requirements

The Proposed Permit contains wholly inadequate monitoring requirements that cannot assure compliance with permit requirements or assist MDE in determining which best management practices (BMPs) best prevent production and land application area discharges from CAFOs and MAFOs. Rather than require effluent monitoring at CAFOs and MAFOs, as MDE does with virtually every NPDES permit scheme it administers, the Proposed Permit only requires CAFOs and MAFOs to analyze the nitrogen and phosphorus content of manure annually and the phosphorus content and pH of soil samples from land

[23] Proposed Permit Part III.B.1.
[24] Proposed Permit Part IV.D.
[25] 40 C.F.R. §§ 412.37, 412.47.
[26] *Id*.
[27] Proposed Permit Part V.C.e.

application fields every three years.[28] This information is helpful in attempting to determine an agronomic rate for waste application, but does not provide any information relevant to the CWA's requirement that NPDES permits must ensure compliance with water quality standards or EPA's CAFO ELG requirements to prevent production area discharges and minimize the potential for nutrient pollution from land application fields.

At a minimum, MDE should require all CAFOs and MAFOs regulated under the Proposed Permit to conduct annual water sampling for nitrogen and phosphorus, at downstream sites and during time periods identified by the facility's certified nutrient management planner. EPA's CWA regulations for state NPDES programs require that "each NPDES permit shall include" monitoring requirements "[t]o assure compliance with permit limitations," including "[t]he mass (or other measurement specified in the permit) for each pollutant limited in the permit; [t]he volume of effluent discharged from each outfall; or [o]ther measurements as appropriate."[29]

Moreover, Section 308 of the CWA provides that "whenever [it is] required to carry out the objective" of the CWA, a permitting agency "(A) shall require the owner or operator of any point source to . . . (iii) install, use, and maintain such monitoring equipment or methods . . . as may reasonably be require[d]." 33 U.S.C. § 1318(a)(1)(A)(iii). Maryland CAFOs and MAFOs are point sources subject to this provision, and persistent pollution from these sources has demonstrated that facility-level effluent monitoring on or adjacent to production and land application areas susceptible to contaminated runoff is necessary to meet the objectives of the CWA. The Proposed Permit expressly states MDE's authority to require such monitoring at CAFOs and MAFOs on a case-by-case basis,[30] but even broad use of this provision by MDE will not establish whether permits are effective state-wide. At the least, the list of pollutants the Department may require a facility to monitor pursuant to this section should include total phosphorus.

Existing data on agricultural BMPs and nutrient management planning is inadequate to gauge the effectiveness of current permit program, and only very local water quality monitoring can fill this information gap.

MDE Right of Entry is Mandatory

MDE must retain the Right of Entry provisions in the final permit[31] regardless of opposition from permittees. Pursuant to EPA's requirements for state NPDES programs, MDE must "have authority to enter any site or premises subject to regulation or in which records

[28] Proposed Permit Part IV.B.7.
[29] 40 C.F.R. § 122.44(i).
[30] Proposed Permit Part V.A.
[31] Proposed Permit Part VII.B.

relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with the State program including compliance with permit."

Stronger Clearer, Reporting Requirements/Electronic Reporting

The annual report requirements must be expanded. The annual report submitted by each CAFO and MAFO are among the most important compliance assurance and enforcement tools available to MDE, and by extension, the communities affected by CAFO and MAFO operations. The annual reporting section of the Proposed Permit arbitrarily removes substantial reporting requirements in the current permit, sets out different reporting requirements for CAFOs and MAFOs, and impermissibly omits the reporting of specific information required under federal law. Because the proposed permit creates separate requirements for CAFOs and MAFOs we discuss the relevant deficiencies separately. To bring CAFO reporting into the 21st century and reduce costs for the regulated community and the agency, MDE must also provide for electronic reporting.***1. CAFO Requirements***

Proposed reporting requirements are significantly weaker than in the current permit. For the most part, the annual report requirements that remain in the Proposed Permit track the minimum federal requirements for CAFO annual reports. However, EPA specifically requires all CAFO annual reports to include:

> [t]he actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with paragraphs (e)(5)(i)(B) and (e)(5)(ii)(D) of this section, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with paragraph (e)(5)(ii) of this section, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with paragraph (e)(5)(ii)(D) of this section, and the amount of any supplemental fertilizer applied during the previous 12 months.[32]

The fact that some of this information is included in the example AIR form provided by MDE does not cure this defect, as that form still omits certain required information, and use of that form is optional. The final permit itself (not just an example reporting form that is not part of the permit) must require annual

[32] 40 C.F.R. § 122.42(e)(4)(viii).

reporting that meets federal minimum requirements; further, MDE should create an AIR form that includes all of this information and require all CAFO and MAFO permittees to use it.

Failing to establish clear reporting requirements in the permit and a standardized form detailing the same required information invites noncompliance, which is already a significant problem within Maryland's CAFO community. According to data from Dorchester, Caroline, and Talbot counties, obtained through a Maryland Public Information Act (PIA) request, Maryland CAFOs and MAFOs have high rates of non-reporting, incomplete reporting, and inaccurate reporting in their AIR forms. For example, assuming that all submitted AIRs in Dorchester and Caroline counties were provided as requested, a significant proportion of registered facilities did not submit AIR forms at all in 2012. In Caroline County, where there are 111 registered facilities, 31 CAFOs – or 28% – failed to submit an AIR. Of the 51 registered facilities in Dorchester County, 12 – or roughly 24% of all registered facilities – failed to submit a form. Those CAFOs and MAFOs that do report also frequently omit required pieces of information and fail to attach required lab forms. Clearly, the solution to flawed annual reporting and widespread noncompliance is not to restrict reporting requirements and collect less information. MDE should instead pursue reporting violations and encourage complete and accurate reporting by creating, and requiring the use of, a clear and detailed annual reporting form. The standardized form must also ask CAFOs to list an integrator, similar to the AIR form now in use. Information on integrators is necessary for MDE and the communities affected by CAFO operations to monitor the structure of the poultry industry in Maryland. The federal Environmental Protection Agency (EPA) requires information on integrators when CAFOs apply for permits.[33] In lieu of changing MDE's application procedures (*i.e.*, MDE's Notice of Intent form), the standardized reporting form that MDE distributes should include a field for the integrator.

The proposed GP changes the requirement for CAFO operators to provide data about the amount of waste applied from a monthly to an annual basis.[34] Application rates vary by season, however. Land application of manure is generally prohibited in the winter, for example[35] Monthly application data will allow regulators to ensure that CAFOs are spreading the appropriate amount of manure for the season. CAFOs must be required to provide data on waste application on a monthly basis.

2. MAFO requirements

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[33] U.S. Environmental Protection Agency, Form 2B, Application for Permit to Discharge Wastewater for Concentrated Animal Feeding Operations, *available at* http://www.epa.gov/npdes/pubs/cafo_fedregstr_form2b.pdf.
[34] Proposed Permit Part V.C.2(c).
[35] *Maryland Nutrient Management Manual* § 1.D (Nutrient Application Requirements)

The deficiencies in the MAFO requirements are even more concerning. Under the terms of the proposed GP, a MAFO must only submit portions of the AIR form.[36] The MAFO form does address several of the elements that the proposed GP requires CAFOs to detail. Most glaring, it does not require MAFO operators to provide any data about field-level nutrient applications to crops, target and actual crop yields, soil phosphorus test results, manure test results, total land application of animal waste, recipients of exported animal waste, and unpermitted discharges.

We see no rational reason to impose different annual reporting requirements on CAFOs and MAFOs. MAFOs are allegedly permitted based on discharges to groundwater.[37] Information about the manure and soil phosphorus levels—which the annual reports should contain—is critical to determining the likelihood of groundwater discharges and resultant contamination. Therefore, there is no reason to shield MAFOs from any of the reporting requirements that apply to CAFOs. In addition, all of the elements that we believe should be added to CAFO annual reports should also be included in MAFO annual reports.

3. Electronic reporting

With dwindling resources, MDE must be more strategic than ever about how it uses resources. Annual reports submitted by CAFOs provide MDE with critical compliance information but also generate mountains of paperwork. The reports arrive by mail and MDE staff must enter all this information into a database, an error-prone process that can takes the agency up to three years to complete. Allowing permittees to submit their reports electronically not only makes sense in the 21st century but would also make management, monitoring, and enforcement of NPDES permits more effective and efficient. With ready access to a more complete and accurate set of performance data, MDE could do a better job of making sure Maryland's waterways are clean.

Electronic reporting would significantly enhance transparency and accountability by providing the public with timely information on potential sources of water pollution. CAFO annual reports are available through the Maryland PIA process but it takes MDE over three months to redact the required information and shifts scarce resources away from processing permits and inspecting CAFOs. By accepting reports electronically, MDE could make information on facility and government performance available to the public in a much more timely fashion.

Electronic reporting would save everyone money, including CAFO permittees. The EPA is currently working on an electronic reporting rule that it estimates would save states up to

[36] Proposed Permit Part V.C.1.
[37] Proposed Permit Part I.B.3.

$28.5 million annually.[38] Under this proposed rule, the regulated community is estimated to save $1.1 million by spending less on paper and postage. By allowing CAFOs to submit reports online, MDE and the regulated community would realize a portion of these projected savings. To encourage states to develop 21st century solutions such as electronic reporting, EPA is providing specific funding through its E-Enterprise for the Environment Initiative. MDE should take advantage of these cost savings and the available federal funds and develop a platform for electronic submission of reports.

Alternatively, even if MDE will not require electronic reporting by CAFO and MAFO operators, it should begin maintaining all of the NOIs, CNMPs, NMPs, Conservation Plans, and AIRs available on both the MDE website and in EPA's Enforcement and Compliance History Online database.

III. Conclusion

The state must make an important decision about how to regulate manure generated by large poultry and dairy farms that pollute the Chesapeake Bay and Maryland waters. Manure waste, like sewage and toxic air emissions, is regulated because it causes harm by contaminating our water.

The reality is that our pollution-reduction practices have not done enough and phosphorus pollution – of which more than 50 percent comes from manure –is rising. Maryland's animal farms produce an enormous amount of poultry waste; enough to fill M&T Bank Stadium two times – annually.

With layer after layer of manure being spread on fields already oversaturated with phosphorus pollution, the state needs the strongest permit possible.

The latest data provided by farmers to the United States Department of Agriculture and MDE and compiled by the Environmental Integrity Project shows that manure from poultry farms on the Eastern Shore is being over applied to farmland and, even when exported from our animal farms, it usually does not leave the County where it originated. The manure is staying locally on our land and running into our local rivers and streams. We need to better protect public health and clean water by ensuring accuracy and transparency on manure reporting and compliance with current regulations.

When the new permit was approved five years ago, it assumed that farming operations would pay a fee, with the funds generated used to inspect CAFOs and ensure they are in compliance. But despite a serious lack of resources, Maryland has yet to charge for these permits, leaving more than $400,000 of resources to keep our water clean unclaimed that would support efforts to protect the environment. These permit fees are simply the cost of

[38] 78 Fed. Reg. 46,006, 46,008 (July 30, 2013).

doing business.

But costs should not fall on the farm operator alone. After all, the chickens are being raised for a corporation – with the corporation's equipment and the corporation's standards imposed. The big agriculture corporations, that make billions of dollars in profits, should pay their fair share for this permit fee to ensure their chickens are being raised on a clean farm that protects our waters.

The main goal of the CAFO permit is to protect public health by keeping manure from contaminating our local rivers, streams and Chesapeake Bay. This permit is a standard for farmers to follow the same way we have a speed limit for drivers. Most farmers abide by these rules, but they are in place to keep us all safe.

The Maryland Clean Agriculture Coalition strongly urges the Maryland Department of the Environment to carefully review all of the public comments submitted and make the necessary changes to achieve that goal.

This is the first time this permit has come up for renewal, and we won't get another chance for another five years. For the sake of clean water and our public health, we can't wait.

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.

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

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