



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Response to Public Comments

Regarding

General Discharge Permit for Animal Feeding Operations

General Discharge Permit No. 09AF, NPDES Permit No. MDG01

December 31, 2008

**MARYLAND DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION**

RESPONSE DOCUMENT

General Discharge Permit for Animal Feeding Operations (General Discharge Permit No. 09AF, NPDES Permit No. MDG01)

On November 10th, 12th, and 13th, the Maryland Department of the Environment (MDE) held public hearings regarding MDE's September 12, 2008 proposed regulations and tentative determination to revise and reissue a general permit for animal feeding operations, including requirements for concentrated animal feeding operations (CAFOs). Prior to these hearings, MDE conducted a series of public meetings in March 2008 to discuss a previous draft of the permit. A revised draft permit was then made available to the public in May 2008, and a third draft was then published as MDE's tentative permit determination. MDE received formal testimony at the hearings in November and written comments were received through the end of the comment period (the close of business on November 20, 2008). MDE has considered all of the comments received and has made a final determination to reissue the permit.

Note: Any person adversely affected by the Department's final permit determination may request a contested case hearing in writing no later than January 20, 2009 at Water Management Administration, MDE 1800 Washington Blvd, STE 455, Baltimore, Maryland 21230, Attn: Patsy Allen. The request must include the name, address, and telephone number (home and work) of the person requesting the hearing, and the name of any other party whom the person requesting the hearing may represent. The request must also include factual allegations which demonstrate that the person is aggrieved by the final determination, and that it is: (1) legally inconsistent with any provisions of law applicable to the final determination; or (2) based upon an incorrect determination of a relevant and material fact. Failure to request a hearing by January 20, 2009 will constitute a waiver of any right to a contested case hearing on this final determination.

A summary of the changes to the permit and the Department's responses to other significant comments related to the proposed permit and regulation are provided below. The implementing regulations which were also proposed on September 12, 2008 have been adopted with nonsubstantive changes as published in the Maryland Register on January 2, 2008 (see enclosed unofficial copy of the Notice of Final Action).

The large animal feeding operation (AFO) size category for chickens (other than laying hens) with dry manure handling includes those operations that are greater than or equal to 125,000 animals or 100,000 square feet. This change is to clarify that MDE's 100,000 square feet criterion was based on the assumption that this is the area required for 125,000 animals, which is the number of animals specified in the federal rule.

Permit references prohibiting discharges of animal waste have been changed and now refer to discharges of pollutants to be consistent with the Federal Act.

The permit reference to a facility design requirement for a 10-year storm event for horse and sheep AFOs has been revised to require a facility design for a 25-year storm event.

The required application submittal date for an AFO newly designated as a CAFO, including poultry CAFOs, has been changed to February 27, 2009 to be consistent with the final federal rule.

The final permit clarifies that the required submittal of a notice of intent for a CAFO must include a comprehensive nutrient management plan (CNMP) and that a CAFO will not be registered for coverage under the permit prior to completion of the public participation process specified in COMAR 26.08.04.09N(3).

The date by which a new AFO that meets the definition of a Maryland animal feeding operation must submit an application has been changed in the final permit from 180 days in advance of beginning operation to at least 90 days in advance of beginning operation. The requirement for new CAFOs continues to be 180 days consistent with the federal rule.

Buffer requirements for manure storage structures have been clarified in the permit to allow protective alternatives for pre-existing storage facilities.

Field storage time frames for CAFOs and MAFOs have not changed, but the permit text has been updated to more clearly present the applicable requirements.

References to the University of Maryland College of Agriculture and Natural Resources have been removed from the permit (and the implementing regulation).

A requirement for the permittee to notify the local Environmental Health Director regarding spill events has been added to the permit.

The permit has been revised to be transferable provided the new owner or operator agrees in writing to implement the existing required comprehensive nutrient management plan, or the nutrient management plan and conservation plan, according to the terms and conditions of the permit.

The permit now includes more specific references to the Maryland Department of Agriculture (MDA) Nutrient Management Manual and authority.

The permit includes the additional clarification, consistent with the final federal rule for CAFOs, that any large AFO whose land application of animal waste is not in accordance with a nutrient management plan is a CAFO that is discharging or proposing to discharge to surface waters of the state.

Additional reporting requirements have been included in the permit consistent with the final federal rule for concentrated animal feeding operations, and the reporting form has been revised.

Permit language has been added to clarify record keeping and related reporting requirements for liquid manure MAFOs.

Other technical language in the permit has been updated consistent with the final federal rule for CAFOs.

Finally, typographical errors have been corrected, including the correct State permit number (09AF), and other minor text clarifications have been made consistent with the final Maryland regulation.

The following summary of comments and Department responses are presented in outline form. Bold text indicates comments received, followed by the Department's response. Roman numerals introduce broad categories of related comments. Some categories of comments include a single response by the Department applicable to the group of comments. Other categories of comments include specific responses to each subcategory of comments.

I. This isn't necessary.

A. You're duplicating what MDA's doing. MDE is responsible for environmental protection, and enforcing the federal Clean Water Act. MDA has encouraged and assisted farmers in the development and implementation of nutrient management planning, but MDE cannot delegate its environmental responsibilities to MDA.

B. Farms aren't polluting. How is MDE sure that CAFOs and MAFOs are causing water quality problems? There is little direct evidence linking water pollutants from animal waste to specific health or environmental impacts. The Department is convinced that CAFOs and MAFOs are a significant potential source of nutrients, especially in the Eastern Shore region. The surface water surrounding the Eastern Shore of Maryland contains large quantities of nutrients. According to the Chesapeake Bay Program models, agriculture still contributes about 40% of nitrogen and phosphorus to the Bay.

C. Buffers aren't necessary. Let the crops take up the nutrients near the water (corn uses more N than anything else). The vegetation in a buffer will be thicker and less uniform, discouraging gullying, buffers are far easier to see and verify than setbacks.

D. This is already being done by the federal government. MDE implements federal NPDES regulations in the permitting program. If MDE fails to regulate Maryland farms, EPA will do it directly.

E. At one time this was needed, currently it is not (since the cost of nutrients has risen and farmers are more aware of the water quality implications). We may have over applied manure in the past, when spreaders weren't calibrated, but now we don't. The pollution research cited is outdated and not relevant. We're following nutrient management plans. MDE applauds farmers and the Maryland Department of Agriculture for working to reduce nutrients contributing to ground and surface water farms. While pollutants from many sources have been reduced considerably, we have not yet met our nutrient reduction goals, and must continue to pursue nutrient reduction in all areas. The permit will allow MDE to more readily track and enforce correction of problems that may be contributing to water quality

problems.

F. Why permit now and then start studying (manure piles) rather than studying first, then permitting? Determine the impact of nutrient management regulations before doing anything else. See I.E, above.

G. Governor O'Malley says we're doing our part to protect the Bay. The Chesapeake Bay Foundation has decided that agriculture is the Bay's best friend. MDE agrees that maintaining farmland is an important approach to protect water quality in the Bay. We are continuing to ask more of all residents in the watershed to protect water quality, and must include farmers in the effort to reduce pollutants.

H. The Bay didn't get polluted overnight. Allow some time for the changes we've made recently (in nutrient management) to work. The Bay is a biological system, and has some potential to recover, but it has been very stressed for a very long time. While MDE is working with the owners and operators of sewage treatment plants, private septic tanks, industries, and developers, water quality problems persist, and we must address every potential source of pollutants. The required permit conditions will ensure that AFOs are taking all appropriate pollution control actions.

I. You implement discharge permits, but we're not here to discharge.

Potential pollutants, including nutrients, are generated at animal feeding operations, and are released to the farm environment, typically through land application. Nutrient management plans and conservation plans are designed to make sure these constituents are properly used and minimize any potential for escape into Maryland's surface or ground waters.

J. Unlike fertilizer and sludge that import nutrients, poultry and corn don't, they cycle nutrients. Corn does use a large amount of nitrogen, but phosphorus continues to be imported to Maryland's eastern shore, where many of the soils are already high in phosphorus.

K. You haven't proven how these regulations will improve water quality. Government officials representing the Eastern Shore should fully disclose and define "How the proposed permit and regulations will improve water quality, along with the submission of evidence to back up such an expensive, cumbersome, and complex set of regulations on one working class segment of our society. Farmers don't pollute. Without evidence of pollution from each CAFO how can a permit be required?"

The level of improvement is difficult to project, particularly because we do not have a good measure of nutrients lost using current practices. The industry represents a significant potential source of nutrients and the permit requires reasonable steps to minimize any potential for impacts to the Chesapeake Bay.

L. MDE is taking these actions only because of public perception, not any real problem. The media says the farmers are the bad guys. The permitting process seems to be pushed by special interests or a political agenda.

MDE, and the federal government, consider large animal feeding operations to be a significant potential source of pollutants.

II. The proposed rules are necessary.

A. We don't know how many nutrient management plans are in effect today, or a decade ago, because that information is not public.

B. MDE is responsible to make sure farmers aren't polluting the Bay, so they need access to nutrient management plans.

C. The Clean Water Act allows citizens to enforce laws when the government

cannot.

D. Take a stand for the Bay, and stick with the proposed regulations, they are reasonable and not onerous.

E. Discharges from land application areas significantly impair water quality.

F. In one agricultural watershed a new confinement animal operation (CAFO) has increased N and P concentrations by a factor of 2 since the '80s.

The Department is convinced that CAFOs and MAFOs present a significant source of nutrients, especially in the Eastern Shore region. The proposed permit requires that these facilities account for the handling of manure generated, and will reduce their impact upon water quality.

III. We're not being treated fairly compared to other farmers.

A. This puts us at a disadvantage compared to other farmers. The permit prohibits the application of manure near streams, but not the application of commercial fertilizers. MDE is working with MDA on a review of existing nutrient application guidelines with these issues in mind.

B. Why are you singling out certain farmers because of their size? There are grain farmers that use more manure than I'm producing. The farmer I give my manure to doesn't have to worry about the permit, doesn't have to do the same things I have to do. Our goal is to regulate the manure generated at the largest farms, to reduce the amount of nutrients lost to ground or surface water.

C. Sludge isn't subject to the same requirements. Sludge requirements are different in several respects. Class A sludge is not required to be permitted, but is required to be treated thoroughly to reduce pathogens, and must be tested for a large number of constituents, including metals. Class B sludge requires less treatment, and is subject to permitting, including the submission and implementation of a nutrient management plan, which includes buffers.

D. New regulations / permit should parallel COMAR 26.04.09 regulations for human sewage sludge on agricultural lands. The regulations apply to any amount of sludge or septage, and include no exceptions. See III.C., above

IV. We're not being treated fairly compared to other dischargers. MDE received a number of comments about other pollutant sources, and whether the proposed permit for animal feeding operations is equivalent to those for other dischargers. The other pollutant source most often cited was sewage treatment plants.

A. Sewage treatment plants spill raw sewage, you should be worrying about them instead of us (>22M gallons of raw sewage in 2008, a "good" year). A number of sewage treatment plants in Maryland are under Administrative or Judicial orders, most including substantial penalties as well as stipulated penalties if they fail to meet schedules for treatment plant and collection system improvements.

B. Septic systems, development, golf courses, and other point and nonpoint sources are significant sources of pollutants. The belief that other potential sources of nutrients exist does not change the fact that the Department, as well as the federal government, considers large animal feeding operations to be a significant potential source of pollutants. MDE is pursuing nutrient reduction in all areas, including storm water management, erosion control, critical areas, growth management, waste water treatment plants, septic systems, air emissions, and agriculture.

C. The permit allows no discharge. Most permits allow some discharge of

pollutants. How will MDE measure a discharge? Why is there a stricter standard for poultry farms? The permit requirements and restrictions were developed consistent with the federal rules.

V. MDA should regulate the farms, not MDE

A. We prefer working with MDA, they have backgrounds in water quality. I don't trust or respect EPA or MDE. You people don't understand farming, you don't understand the real world. MDE has worked with MDA, Maryland Cooperative Extension Service, and NRCS, and spoken to a large number of farmers to attempt to understand the impact our regulations will have upon them. We have incorporated mechanisms the agricultural community is already using to make the regulatory process as easy as possible for the agricultural community.

B. We prefer voluntary nutrient management plans. The Water Quality Improvement Act isn't adequately enforced. Why does MDE have to review a plan written by a certified plan writer? Farmers that aren't following existing regulations should be held liable for their actions without penalizing farmers who are responsible. Voluntary nutrient management plans have been in use for many years, and have not been entirely effective in reducing nutrient discharges. MDE is the regulatory agency charged with environmental protection, and the requirement for a permit will raise the level of enforcement of the regulations.

C. MDE should develop guidance for the coordination of nutrient management plans and conservation plans, and formally advise NRCS and MDA of the minimum requirements The CNMP requirements have been developed by NRCS, and NRCS offers training on the development of CNMPs. Specific water quality protection items that need to be included in the conservation plan are listed in Part IV.A.1.a of the permit. MDA and NRCS have had input into MDE's permitting process, and understand the objectives. MDE will continue to work closely with NRCS and MDA and will provide any further guidance as necessary.

D. MDE requirements need to be consistent with MDA regulations as far as application, timing, and manure storage. See response to III.A. above.

E. Why does MDE have to be more stringent than EPA? MDE is mandated to protect ground water quality as well as surface water quality. Maryland together with all of the other states in the Bay watershed, needs to reduce pollutants from all potential sources to improve the water quality in the Chesapeake Bay.

VI. You shouldn't (should) limit field storage of manure

A. NRCS standard practice 633 does not have specifications on piles of litter, please reference the MDA's nutrient management manual. MDE has made this addition, and have kept the NRCS reference since that reference may be updated to provide more detail in the near future.

B. Stored poultry litter doesn't cause pollution, covers or a time limit aren't necessary if manure is correctly piled. The worst losses to the environment are during the first fourteen days. Use the science on the piles and buffers. There are a number of studies on poultry manure piles, with several different conclusions.

C. We haven't seen evidence of excess nutrients, such as seeing a crop over stimulated or killed whether it's piled one month or two or three months. You don't see algae on the ditches; you would if the water in there were high in nutrients. MDE does not

agree with the assertion that AFOs do not present a significant potential for impacting water quality.

D. The construction and siting of storage sheds is difficult. The proposal to line and cover manure isn't practical. The permit allows each grower to determine how to handle the manure generated at his/her farm. Transport of manure is an option if on-site storage at a specific site is not workable.

E. The time limits for outdoor storage of manure are not enforceable. MDE requires record keeping to verify manure handling, and will be able to compare those records to site conditions upon inspection.

F. Require a 14 day limit for uncovered manure and litter stockpiles. A stockpiling limit "complimentary" to EPA's 14 days should be implemented. The difference between the federal limit and Maryland's limit will put Maryland farmers at risk of noncompliance. For farms that do not believe they are a CAFO that will discharge, the MAFO permit with its controls, including the Nutrient Management Plan and Conservation Plan, reduces the risk of noncompliance..

G. The state should consider all peer-reviewed and scientifically validated studies available in the assessment. MDE needs to look at research from any university. MDE agrees.

H. Require 100' setback of stockpiles from surface water and field ditches. The permit requires a setback of 100' or a 35' vegetated buffer from waters of the State, The 35 foot vegetative buffer is an approved alternative to a 100' setback.

I. Don't allow stockpiling of crust out manure, it has more moisture and cannot be piled to meet requirements. Specify stockpile removal requirements (removing topsoil). These provisions may be considered in future NRCS standards, and in the study MDE will be funding.

J. Permission to build additional houses to expand poultry growing should be tied to additional storage for litter. Significant expansion will trigger additional permit application or review requirements.

K. Whole house clean-outs should be timed for optimum litter use. While this is beyond the scope of the permit, we agree this would be ideal, and the requirements of this permit may help to move the industry in this direction.

VI. This won't work

A. You need to guarantee your turn around time. Permit coverage should begin on the date the NOI is submitted. MDE's time to respond should be limited. A 180 day lead to apply for permits will make loan approvals more difficult. We ask the Department to specify a turn around time of no more than 7 days to confirm permit coverage. MDE has reduced the lead time to 90 days for new MAFOs, and will complete our reviews as quickly as possible. It is not realistic for the Department to guarantee the same turnaround time for all facilities.

B. Older facilities should be grandfathered in. Make the permit transferable. MDE has added language that allows the transfer of the permit provided the new owner agrees to follow the nutrient management plan submitted with the notice of intent (NOI).

C. The timing of the application and storage is unworkable. A fourteen day storage time is unworkable in the real world. MDE has incorporated the federal guidance for CAFOs of 14 days, and we understand that it has been used for CAFO permits in other states, such as

PA.

D. The timing of nutrient management planning is unworkable. It's unlikely a grower can get a CNMP within 90 days; provide more time. Unfortunately the federal rule for CAFOs now specifies a deadline of February 27, 2009, a deadline that MDE has no authority to extend. It is well known that federal CAFO requirements for CAFOs including poultry growers were final in 2003, and Maryland's preliminary draft renewal permit with a CNMP requirement was made public 12 months ago.

E. Public access to plans is not viable. We want our privacy. If these regulations are put into place, MDE should look at our nutrient management plans, not the public. If the public has comments on an application, will that impact MDE's decision? Nutrient management plans are a big part of a farmer's business plan, and farmers compete to be efficient - are NPDES permits public?

Public participation is required for all discharge permits. All State and NPDES discharge permits and related applications and plans are also public documents.

F. We don't want people coming onto our property unannounced. The critical areas regulations require approval to enter someone's property. We don't want just anyone coming onto our farm, they may have a questionable background. Surprise inspections on farms by MDE is heavy handed and shouldn't be directed at the entire industry since most farmers are doing their jobs.

Access requirements are standard for all discharge permits issued by the State.

G. A lot of people are upset that the permit will allow personnel (from the University of Maryland) to collect data from the farm without their permission. Farmers will work with researchers voluntarily, you don't need to require that in the permit. The reference to the University Of Maryland College Of Agriculture has been removed from the permit.

H. MDE received a number of comments to the effect that the permit will discourage farming, causing a loss of jobs and quality of life. MDE has tried to strike a balance to apply appropriate environmental controls while considering these issues. This permit language has been refined through a large number of discussions with many members of the agricultural community.

I. The Department should not require an applicant to place a copy of the NOI and required plans in the public library. This is an unnecessary burden, and unless the Maryland Department of the Environment requires this for all of their water discharge permits program applicants, it should be deleted. MDE does require this in other cases, and is not changing this regulation.

VII. Farmers can't afford to comply with these proposals. This is a difficult time, and you're putting a tidal wave on me. The opportunity for public comment could ruin the chicken growers financially.

A. Twelve hundred dollars is a lot of money for a permit. How much will this discharge permit cost us? The majority of farms in Maryland will not be required to pay a permit fee.

B. Chickens have been taken away by the integrators. MDE understands that the current economic climate is damaging many industries (including state government).

C. New producers will be discouraged. New producers who know the requirements before building chicken houses will know the environmental restrictions, will be in a position to

plan accordingly, and will not enter the industry if they are not able to make money from it.

D. You shouldn't put an additional economic burden on us. Farms are disappearing from Maryland already. The poultry industry is failing. More rules will hurt the farming community; the average age of Maryland farmers is 57.

See the response to VI.H, above.

E. The economic impact statement doesn't account for the affect the regulation will have on farms. The state has to make money available for pads on the ends of houses and manure sheds. It costs a lot of money to build manure storage sheds, and the state of Md won't give it to us. The impact statement does estimates the money needed for farms to install buffers, improve manure storage facilities, and make other capital improvements. It projects farmers' out of pocket costs as well as cost share funds for MDA to provide to farmers.

F. This isn't the right time for the regulations. Wait until all potential discrepancies between the federal program and Maryland's program have been addressed. Maryland has already waited several years for EPA's program to be complete, and we believe we have appropriately addressed the final federal rule to enable us to move forward at this time.

G. Part V.A. of the permit states: "To evaluate the effectiveness of the CNMP, NMP, or Conservation Plan, the Department may notify the permittee and require submittal of a sampling plan to determine whether there is a discharge to waters of the state from land application areas or production areas". It is unreasonable to believe that a permittee has the expertise or financial resources to develop a sampling plan much less determine whether there is a discharge to waters of the state. If sampling will be required, the Department should determine the sampling point and the parameters to be sampled. If a farmer is in this situation it would be in the best interests of the farmer to contact the local Soil Conservation District or the NRCS for help. The Department can mandate a sampling plan but it may not be as effective or efficient as a site specific plan developed by a conservation specialist familiar with the affected AFO.

VIII. Setbacks and Buffers

A. Setbacks won't be effective [in preventing nutrients from entering the Bay,] incorporation of manure will. MDE disagrees. Setbacks are a proven BMP alternative.

B. Buffers should be in conservation plans and nutrient management plans so that they can be site specific. Site specific buffers will be included in the nutrient management plans, but current nutrient management regulations do not require buffers, so they are included in the permit as a specific requirement.

D. Extend the vegetated buffer to all surface waters - federal requirement is in effect for all waters - setback or vegetated buffer. There are many areas of the shore where a 100' setback would take almost all fields out of production. A setback of 100' doesn't prevent the application of chemical fertilizer in that area, and is less protective than a 35' vegetated buffer, or even a 10' vegetated buffer. MDE has established requirements that are achievable and protective.

E. MDE should work more with MDA and NRCS to encourage the installation of buffers. MDE agrees and we will continue to work with MDA and NRCS to encourage continued development and implementation of effective BMPs, including buffers, beyond the category of facilities that are required to comply with this permit.

IX. Reporting is burdensome.

A. Growers are already required to keep detailed records about what goes on at their farms (by the integrators). This will add more paperwork. The reports supplied by farmers to integrators are not available to MDE.

B. The annual report duplicates some of what's in the initial application. MDE has agreed to accept the annual reports for nutrient management developed and used by MDA for MAFOs. For CAFOs, we have developed the shortest possible form that includes the essential information needed to verify permit compliance.

C. The reporting requirements and fines seem threatening. The requirements and not intended to be threatening as this type of language is included in all of MDE's wastewater permits.

X. Require more monitoring / reporting

A. Require joint grower - integrator reporting of the total clean out date for litter. This would require a co-permittee approach and would likely be rejected by the legal system (see response to XVII.E below).

B. Require reporting of the locations of outdoor stockpiles. MDE does not see the utility of this information. Inspectors will be looking at the entire facility, not just locations identified by the farmer.

C. MDA's nutrient management plan annual implementation report should be augmented to include more information about the manure storage system and disposition of excess manure. MDE is not making any changes at this time, but plans to work with MDA and other stakeholders about possible revision of the annual implementation report.

D. Part IV.A.2 should be specific about whether or not it is required of MAFOs as well as CAFOs. If so, are weekly monitoring logs also required of the MAFOs? The permit language has been clarified, and the monitoring is required for MAFOs as well as CAFOs.

E. You haven't included enough water quality monitoring, you're ignoring ground water pollution [where there's a direct hydrologic connection to surface water]. The installation of monitoring wells in fields is problematic, since heavy equipment is used on farm fields and could easily damage well casings. A damaged well casing provides a direct conduit for nutrients, fertilizers, and pesticides to ground water. MDE agrees that monitoring wells provide valuable information, but prefers that they be used as part of a carefully monitored study.

F. Monitoring should be required for every noncompliant discharge. MDE has the authority to request additional monitoring where necessary.

G. Require monitoring for arsenic and pathogens. MDE has based the AFO program on the federal regulation, and will continue to look at available information on the need for limiting additional parameters in the future.

H. MDE should require more specific odor control measures.

The wastewater discharge permit condition regarding odor gives our wastewater compliance staff sufficient flexibility to take enforcement action as necessary.

XI. This permit will expose us to a lot of frivolous lawsuits

D. You're opening a door for lawsuits, which can be threatening and costly to a farmer. If a farmer obtains and complies with the applicable permit, the risk of a frivolous lawsuit will be substantially reduced compared to the risks of discharging without a permit in violation of State and federal laws.

F. Manure currently stored shouldn't be on the CAFO reporting form, nor should the questions about feed storage or the questions on the conservation plan. MDE has removed the questions about the conservation plan and feed storage since they are unlikely to change. We do need to know the amount of manure stored at least on an annual basis, and have kept it in the report.

XII. This will cost (the state) a lot of money. How much will this cost, and where will the money come from?

A. How many more people will MDE need? How much will this program cost?

MDE is not planning on additional staff in order to implement this program.

B. You should use the money to fix the problems, not make more regulations (study funding). The documents say this will cost a million dollars, I don't see anyone giving this money to the farmers. A majority of the money is for cost share. The study has been requested to further respond to questions raised at MDE's meetings with the farming community.

XIII. Permit more farms

A. All operations >75,000 ft² should be permitted. The certification of conformance is not beneficial, since it will not protect farmers from legislation, nor subject them to the same inspection and compliance as a permit. MDE does not agree. The certification will require and result in the implementation of additional significant environmental controls.

B. Eliminate MAFO category - you're making it unlikely that additional facilities will be permitted, and encouraging crowding animals. The decision to classify poultry operations based on house size rather than animal [size] numbers is problematic because it can be easily manipulated by farmers seeking to avoid regulation. The use of house sizes in the permit simplifies tracking for the Department, allows a farmer to know whether or not a permit is required, and circumvents the potential biosecurity difficulties in verifying animal numbers.

C. Why doesn't MDE's requirement for a Certificate of Conformance cover all medium operations defined by EPA? The certification of conformance is not required of medium operations under the federal rule, and our certification was not intended to cover that entire category.

D. Regulations should cover all land disposal of animal waste - most poultry operations will not have to change any current practices under these regulations, maintaining the status quo for 75% of poultry operations. The Department and MDA are considering options to address this issue.

E. Require comprehensive nutrient management plans for all agricultural lands receiving animal waste or litter. The current permit addresses the largest generators of manure, and should accomplish significant reductions in nutrient losses. The majority of elements of a CNMP that are not in an NMP do not apply to land application areas. The Conservation Plan required with the nutrient management plan addresses manure storage, which together address the pollutant potential posed by land application sites.

XIV. Provide more resources for farms

A. State investment in agricultural conservation practices must increase. This is outside the scope of the regulations and permit.

B. Poultry sheds should be larger so field storage is less necessary . Reduced time

between whole house cleanouts would reduce the amount of litter generated. The regulation anticipates more cost share money to provide more and larger manure sheds.

XV. The permit is not stringent enough to protect water quality. You're being less stringent than EPA.

A. MDE's proposed AFO regulations could be a step backwards in the state's clean water efforts, by sanctioning the discharge of animal nutrients into Maryland's waters for a fee.

MDE does not agree that the permit sanctions pollution. The AFO program this is being adopted in Maryland is more comprehensive than the required federal program.

B. A MAFO may operate for 2 years without an NMP or Conservation Plan. No, they must operate in accordance with their existing NMP in the interim.

C. You're institutionalizing pollution by allowing outside storage longer than 14 days. Virginia requires manure to be covered if it's stored outside for more than 14 days. Pennsylvania requires manure to be stacked on a pad. Maryland's requirements for CAFOs are consistent with those in Pennsylvania and Virginia. MDE believes our overall CAFO/AFO program will be at least as protective as the programs that were implemented in VA and PA.

D. MDE must establish a presumption that large AFOs discharge, and are therefore CAFOs. MDE has chosen a permitting scheme which requires all large AFOs to be permitted, some as CAFOs and some as MAFOs, all with nutrient management plans and conservation plans, and all subject to public participation. MDE's regulation and permit meet the requirements of the final federal program, which requires permits for all large AFOs that discharge or propose to discharge.

E. The P index may not be sufficient to prevent excess application of nutrients. There is high soil P on Delmarva. The Department is participating in MDA's review of nutrient management standards. The inclusion of the MDA regulations in our permit means that any changes to the nutrient management standards automatically become part of the permit.

F. The number of CAFOs under this proposal will be small. The number of CAFOs and MAFOs will be significant - at least 200 facilities. The permit duty to apply is consistent with the federal rule (and the federal rule is just as unpredictable in terms of how many will seek CAFO permits).

G. It will be difficult to determine whether a farm is a MAFO or a CAFO. The alternative of not having a MAFO program and the farm then evaluating whether it needs a CAFO permit or no permit at all is equally difficult and would not include the environmental protection provided through the MAFO permit.

H. The permit should include more transport measures. It is MDE's policy to require results rather than any particular means of achieving those results. MDA's manure transport program does encourage farmers to use manure on their farms if it is compatible with their nutrient management planning.

XVI. Include more in the permit:

A. NMPs do not address feed management, manure handling or storage, land application of manure, land management, record keeping or pollutants other than nutrients. Nutrient management plans address land application of manure and record keeping, and conservation plans address manure handling and storage.

B. Maryland should require manifests when manure is transferred to another farm

to make sure that manure is used properly. The proposed permit doesn't require either the recipient or the CAFO/MAFO operator to claim responsibility for the "environmentally acceptable use of the waste." Maryland requires that any transfer of manure be accompanied by an analysis of that manure, and Maryland's nutrient management program requires that all manure be land applied in accordance with a nutrient management plan.

C. MDE must meaningfully restrict land application of manure during times when runoff and leaching pose the greatest threats. Prohibit land application to saturated grounds. The permit appropriately restricts seasonal application and application to saturated soils, through the nutrient management plans, applicable NRCS standards, and MDA regulations. Nutrient management plans are subject to MDE review and public comment.

D. Prohibit land application of manure and wastewater during high winds (> 10 mph). MDE directly restricts land application of process wastewater. Permittees may need to restrict application of litter during periods of high wind to comply with the buffer and setback requirements.

E. Require incorporation of animal waste within 24 hours of application. This is not possible for "no til" land.

F. Require certification on all lands receiving animal waste through soil tests that they can absorb the nitrogen and phosphorus,

The application of manure requires a nutrient management plan, which includes soil testing

G. The permit should provide for a response to violations of water quality standards. The permit does not limit MDE's authority to take any necessary enforcement action, or to require the permittee to take immediate measures to address violations.

H. The proposed permit must ensure compliance with Maryland's Antidegradation Policy. The permit addresses a new class of dischargers previously unregulated in Maryland, many of which have been operating for generations, and requires strict accountability for the handling of manure, including specific no discharge requirements. This permit will reduce the impact from these facilities and is consistent with MDE's antidegradation policy.

I. Detail how MDE will inspect and enforce requirements. MDE's inspection and enforcement procedures are not a part of any NPDES permit, other than site access provisions.

XVII. Miscellaneous

A. For every mention of nmp and conservation plan, "coordinated" should be inserted. This requirement is already incorporated into the definition of a Soil Conservation and Water Quality Plan and does need to be inserted throughout the permit.

B. Will MAFOs be covered under the general permit while plans are being developed? Yes, if they comply with the application requirements.

When will the public be notified of the availability of nutrient plans, and how much time will be available for review and comment on the plans? The public will be notified of the availability of nutrient management plans as soon as possible on our website and through direct notification if they are on the interest list. The public will be provided with at least a 30 day review period.

C. Why are there different criteria for horses and sheep than for other animals? This criterion has been removed so that is the same for existing sources.

D. We're concerned about your reliance upon NRCS designs, which aren't based on EPA criteria. MDE has reviewed the NRCS standards cited, and has added permit conditions where necessary to supplement the NRCS standards. As NRCS standards improve to reflect new knowledge and new practices, the improvements will become part of the permit through the

incorporation of the standards.

E. Equity and economic efficiency demand that integrators be co-permitted with poultry AFOs. The Clean Water Act does not identify integrators as needing permit coverage as they are not point sources. The commenter is aware of MDE's unsuccessful historical attempt through the judiciary system to require co-permits with integrators.

F. Plans have limited enforceability mechanisms (how will MDE know they're being followed?) Setbacks and buffers can't be verified. Plans and annual reports can be reviewed. Vegetated buffers and setbacks can be verified during site inspections and a careful review of records at the farm.

G. Why does the permit differentiate between spray irrigation by a pressurized sprinkler and a truck or tanker? Because a tanker isn't self propelled, and a farmer won't irrigate with a truck or tanker if it's wet (but a spray system could inadvertently be left on in bad weather).

H. "annual discharge fee" should be changed to annual "permit" fee for consistency with the regulations. Agree

I. In Part IV.B.7, nitrogen should be included in the list of required constituents for manure analysis. Agree.

J. Part IV.B.8 states that "Animal waste shall not be applied at a rate higher than agronomic requirements", which seems to suggest something different from current regulations which allow....we are concerned that the permit language could be read as contradictory to existing nutrient management regulations. Please clarify.

MDE has amended the sentence to read "Animal waste shall not be applied at a rate higher than agronomic requirements in accordance with the Maryland Nutrient Management Manual"

K. Please clarify Part IV.B.8.c (3) for field ditches. Is the requirement a 10 foot or 35 foot vegetated filter strip in the final 35 linear feet of a field ditch prior to adjoining receiving waters or reaching property boundaries? Does this setback for field ditches also apply to other forms of fertilizer such as commercial compounds and biosolids? The picture on page 16 may clarify the configuration of the necessary vegetative buffers. The 35 feet adjoining receiving waters will be a vegetative buffer or a setback (the setback must be 100 feet). That means any field ditch emptying into a stream must be vegetated the 35' prior to reaching the stream. The sides of the field ditch, further than 35' from the stream, require a 10' buffer.

L. Make the definition of a medium AFO in the proposed regulations and the permit consistent MDE agrees.

M. No discharges of animal waste from production areas are authorized for MAFOs under this permit - you seem to have omitted "to waters of the State" - please insert. MDE agrees.

P. Waters of the state is defined to include public ditches and public drainage systems. The definition is used in all State and NPDES discharge permits, and in Maryland regulations, without further delineation.

Q. Applicants may not be able to find the latitude and longitude. Not all applicants have the resources to obtain the latitude and longitude of the production area, we ask the Department to accept a suitable ADC county map reproduction... ADC maps do include latitude and longitude, and will be acceptable.

R. Part IV.A.1. is confusing. This section of the permit has been revised to be more

accurate.

S. Divert clean water from the production area to keep it separate from process wastewater. This should be left to the plan writer.

It is left to the plan writer. This text in the permit has been revised to include “as appropriate” which is also more consistent with the federal regulatory text.

T. How will this impact right to farm ordinances that some counties have? (Queen Anne's, Frederick). Maryland's right to farm law does not limit MDE's authority to require environmental safeguards.

U. NRCS waste storage facilities for dry poultry litter are not designed to contain all process wastewater including runoff and direct precipitation, they are designed to keep direct precipitation and runoff out of the structure. That type of design is consistent with the permit requirements and the permit language has been clarified. The definition of “contained” has been removed and the appropriate text has instead been incorporated directly into the body of the permit.

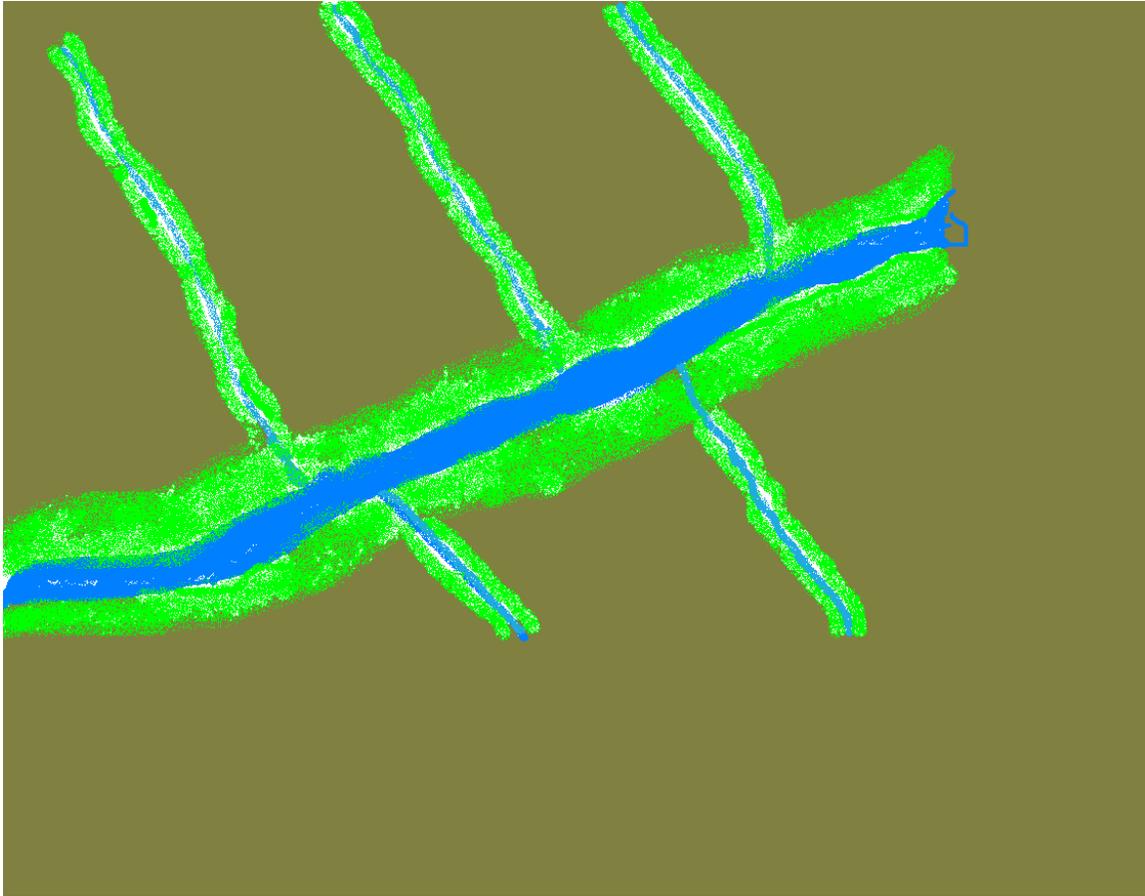
V. The regulation addresses appeal rights but the permit does not. It would be easier if that were in the permit. The Department should at least include a summary of the appeal process in the permit. The permit appeal process will be outlined in the Department’s notice of final approval of the required plans for an individual AFO.

W. You've cited COMAR 26.08.09-1F, which isn't in our version of COMAR. This was intended to be a citation of our proposed regulations, and should be 26.08.03.09F.

X. A group of scientists and other well-informed groups must evaluate these regulations. A number of scientists at the Maryland Department of Agriculture, the Agricultural Extension Service, and the Natural Resources Conservation Service have had extensive input into this permit.

Y. Other adjoining states don't require a permit. Both Virginia and Pennsylvania permit discharges from large animal feeding operations.

Z. Include options for farmers who can prove that they don't discharge or intend to discharge. MDE has required permits of all CAFOs since 1996. The Certificate of Conformance is an option for some farmers who do not intend to discharge, but not for animal feeding operations in the large category.



Buffer Requirement Illustration