



Maryland
Department of
the Environment

Wes Moore, Governor
Aruna Miller, Lt. Governor

Serena McIlwain, Secretary
Suzanne E. Dorsey, Deputy Secretary
Adam Ortiz, Deputy Secretary

Response to Public Comments

Regarding

**General Discharge Permit for Animal Feeding Operations
Maryland Discharge Permit No. 25AF, NPDES Permit No. MDG01**

May 8, 2026

RESPONSE DOCUMENT

General Discharge Permit for Animal Feeding Operations

Maryland Permit No. 25AF, NPDES Permit No. MDG01

On October 3, 2025, the Maryland Department of the Environment (MDE) published a Notice of Tentative Determination to reissue the General Discharge Permit for Animal Feeding Operations (GD Permit), Maryland Permit #25AF, NPDES Permit # MDG01 which includes requirements for concentrated animal feeding operations (CAFOs). MDE held five public hearings regarding the Tentative Determination on following dates:

October 15, 2025
October 21, 2025
October 29, 2025
October 30, 2025
November 18, 2025

Responses to Comment Categories

Due to the substantial number of comments received by MDE on the Tentative Determination to reissue the GD Permit, the majority of which were either similar or identical and/or discussed the same or similar subjects, MDE has set forth in Roman Numeral format the broad public comment categories in bold text below, followed by MDE responses to each comment category in plain text. Some categories of comments include a single response by MDE that is applicable to the group of comments, while others include specific responses to each subcategory.

- I. **Court Decision and Legal Analysis**
 - A. **MDE v. ACT, FWW vs. EPA, Effluent Limitations in other NPDES General Permits: During judicial review of MDE's prior AFO General Permit, the circuit court disagreed with Maryland's stance that they could not regulate ammonia and ordered MDE to fix the problem, but they neither fixed the problem nor continued this fight on appeal. In FWW vs. EPA, the Ninth Circuit Court of Appeals stated that Idaho's NPDES GD permit for AFOs was inadequate without monitoring of Waste Contaminant Structures for ground water discharges. Why has MDE included standards in other GPs and stormwater permits including impervious surface restoration standards in MS4 permit and industrial stormwater GP but not in the AFO permit. A "zero discharge permit" requires monitoring to be effective even if MDE hopes and believes that Best Management Practices (BMPs) adequately prevent discharges.**

The Supreme Court of Maryland upheld MDE's final determination to reissue the General Permit for Animal Feeding Operations, MD Permit 19AF / NPDES Permit

MDG01 (“General Permit”). See *Maryland Dep’t of the Env’t v. Assateague Coastal Trust*, 484 Md. 399 (2023). In its decision, the Supreme Court held, among other things, that: MDE has the authority to regulate the emission of gaseous pollutants in accordance with Title 9, Subtitle 3, of the Environment Article; it was reasonable to require permitted poultry implement site-specific BMPs to control ammonia emissions; and the General Permit properly implemented the “zero discharge” effluent limitation.

In *Food & Water Watch v. U.S. Env’t Prot. Agency*, 20 F.4th 506, 517 (9th Cir. 2021), the 9th Circuit reviewed an Environmental Protection Agency (EPA)-issued CAFO general permit for the state of Idaho that is factually distinguishable from MDE’s General Permit. Its decision does not bind Maryland courts, but more importantly, the Maryland Supreme Court’s decision in *MDE v. ACT* was issued more recently and more directly reviewed MDE’s CAFO permitting approach. In its decision, the Maryland Supreme Court acknowledged and upheld the sufficiency of the General Permit’s monitoring provisions.

Industrial facilities and municipal storm sewer systems are subject to different general permits issued and administered by MDE. These general permits implement different effluent limitations that are expressed as a restoration requirement for impervious surfaces. This General Permit instead implements a “zero discharge” effluent limitation from all authorized entities.

B. Government Takings and undue burdens on farmers: *Lucas vs. South Carolina Coastal Council*-Takings by gov't must be compensated. Can some of the results of the regs be classified as a takings?

Under the legal standards set by the U.S. Supreme Court, a temporary delay in reissuing Maryland’s General Permit is unlikely to be considered an unconstitutional “taking” of property. In *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), the Court held that temporary moratoria on land use do not constitute a categorical taking under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). Instead, temporary delays are analyzed under the balancing test prescribed in *Penn Central Transportation Company, et. al. v. City of New York*, 438 U.S. 104 (1978). The *Penn Central* test weighs the economic impact of a regulation on a claimant, the extent to which the regulation interferes with distinct “investment-backed expectations,” and the character of the governmental action.

Maryland law allows for the administrative extension of expired permits, and as such, existing CAFOs may continue operating under the terms of the expired permit. The economic impact on a temporary delay in reissuing the General Permit would therefore be minimized. Moreover, Maryland CAFOs have long been regulated under General Permits and administrative delays in reissuing those permits is a common and foreseeable part of the regulatory landscape. Finally, the underlying government

action - protecting water quality and implementing the federal Clean Water Act (CWA) - serves a significant public interest which reviewing courts would likely uphold, even if it resulted in a frustrating delay on behalf of the regulated community.

C. Contested Case Hearings: Part III.C.3 MDE does not have the statutory authority to subject permittees to Contested Case Hearings (CCH). The Maryland General Assembly changed the law and eliminated the CCH process as a method for challenging MDEs discharge permit as of January 1, 2010 (Envir. section 1-601 (a)(3), (b) and (c)). Remove all references to CCH in permit and stop subjecting farmers to this costly and lengthy process.

MDE must follow the judicial review provisions set forth in Title 1, Subtitle 6, of the Environment Article when issuing certain permits, including those to discharge pollutants to waters of the state issued under § 9-323 of the Environment Article. MDE issues the General Permit in accordance with § 9-323 of the Environment Article, and as such, it must comply with these judicial review provisions.

However, the Required Plan that a CAFO owner or operator must submit to MDE for coverage under the General Permit is not a permit. Accordingly, MDE's approval of a Required Plan is not subject to Title 1, Subtitle 6, of the Environment Article. Instead, MDE has promulgated regulations that require it to publish notice of every application for coverage under the General Permit as well as each Required Plan submitted in accordance thereto. *See* COMAR 26.08.04.09N(3). Any interested person who may have concerns about a particular facility seeking coverage under the General Permit has the right to request a contested case hearing before that facility can begin operating.

In summary, judicial review of the issuance of the General Permit itself must be heard directly by Maryland circuit courts in accordance with Title 1, Subtitle 6, of the Environment Article. However, review of MDE's determination to issue coverage to a specific CAFO in accordance with the General Permit may be heard by the Office of Administrative Hearings in accordance with COMAR 26.08.04.09N(3).

II. Compliance and Program Resources

A. BMPS For Manure/Mortalities and Chemical Handling: The standards for mortality management, especially for large animals (nonpoultry) are inadequate and unsafe practices like burials and uncovered static piles are allowed. There needs to be enhanced enforcement for Best Management Practices (BMPs) for mortality, manure and additional contaminants such as bacteria, sediments, salts, pesticides, pharmaceuticals, heavy metals along with GW monitoring particularly after closures. This is especially important in resource sensitive areas such as the Paleochannel. Incorporate the NRCS Nat'l Engineering Handbook on composting mortalities which has guidance on managing vermin.

MDE considers manure, mortality, and chemical management a priority, and the control of these sources of pollution is required under Part IV.B of the General Permit and 40 C.F.R. § 122.42(e).

Part IV.B.1 of the General Permit requires all permittees to ensure adequate storage capacity for manure by designing, constructing, operating, and maintaining the production area and all animal waste storage structures to contain all animal waste removed from the animal confinement areas in accordance with Maryland Natural Resources Conservation Service (NRCS) Practice Standard 313.

Part IV.B.2 of the General Permit requires all permittees to ensure the proper management of mortalities in order to prevent the discharge of pollutants into waters of the State. Permittees are prohibited from disposing of mortalities in animal waste or other storage or treatment systems that are not specifically designed to treat animal mortalities. Mortalities must not be disposed of in any liquid manure or process wastewater system.

Part IV.B.5 of the General Permit requires all permittees to ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants. No pesticides, fertilizers, cleaning agents, or fuels shall be stored in any animal operation area, unless directly necessary for animal care and public health.

Compliance inspectors evaluate a permittee's compliance with manure, mortality and chemical handling requirements in the General Permit. MDE has the authority to require monitoring if needed and enforce restrictions by requiring the implementation of BMPs to address CAFOs located in sensitive resource areas. MDE concludes that the BMPs used to reduce nutrient discharge will also result in preventing other types of contamination such as that from bacteria, sediment, salts, pesticides, pharmaceuticals, and heavy metals.

B. STOCKPILES: All stockpiles should be underlain by plastic or a concrete liner and equipped with a leachate collection system. Stockpiled manure contributes to SW and GW contamination especially those situated in areas where the GW table is within 4 feet of the surface and in areas that have elevated nitrate levels.

The permit addresses stockpiling in the guidance in Part IV. B (6)- under the Nine Minimum Measures: Conservation Practices to Control Nutrient Losses. Stockpiled manure must either be stacked in compliance with an appropriate NRCS practice standard and applicable Maryland Department of Agriculture (MDA) stockpiling requirement or have plastic liner and cover at least 6 ml thick if left greater than 14 days for a CAFO and longer than 30 days for a MAFO. This is a Nutrient Management regulation.

No-land CAFOs are not allowed to stockpile and Land CAFOs stockpile for a limited amount of time. A leachate collection system for manure stockpiled for a short period of time would be cost prohibitive. Temporary Field Storage of Dry Poultry Litter: CAFOs, in accordance with EPA's NPDES Permit Writers Manual for CAFOs, a CAFO may stockpile dry poultry manure in the field where the manure will be applied under a Nutrient Management Plan (NMP).

Dry poultry manure may be field stockpiled for less than 14 calendar days. However, it may be field stockpiled for greater than 14 days only in accordance with one of the following options: (1) The manure may be stacked in compliance with an appropriate Maryland NRCS practice standard and applicable MDA nutrient management stockpiling requirements; or (2) The manure may be separated from ground water and stormwater by a plastic liner and cover at least 6 mils thick, or an equivalent method approved by NRCS and MDE that meets Federal requirements to prevent leaching or runoff of pollutants.

C. Manure Transport Program: MDE should both promote transparency and enhance the capacity of the Manure Use and Export and Manure Transport Program by distributing reference materials to AFO owners and seek increased investment from the private sector. The CESR report found that “appreciable reductions in nutrient loads cannot be achieved unless regional mass imbalances are successfully addressed”. When manure is transferred to a third party what assurances exist that land application is within the effluent guidelines?

Chapter 760, 2019 Laws of Maryland (SB 546) requires MDA to develop a manifest tracking system of animal manure exported by farm operations to alternative use facilities or other farm operations in Maryland, along with other information. Farm operations subject to Ch. 760 would include certain CAFOs. The revised 2019 annual implementation report (AIR) reflects these additional requirements. Under the General Permit, CAFOs are required to disclose any land application of manure, litter, or process wastewater on site in the AIR, and provide information on the destination of any manure exported off site. Exported manure must be accompanied by an analysis of that manure. Moreover, Maryland's nutrient management program and the General Permit require that all manure be land applied in accordance with a nutrient management plan.

The Nutrient Management Plans require that the receiving entity of exported manure be listed, and the manure is sampled and test results are provided to MDE and the public. The receiving entity is required to have a nutrient management plan that is reviewed by MDA (for non-AFOs) and MDE (for CAFOs). If using the Manure Transport Program, CAFO operators can apply for the Manure Transport Program at the appropriate soil conservation district. Manure brokers need to apply with MDA directly. Please refer to MDA's manure transport site: https://mda.maryland.gov/resource_conservation/pages/manure_management.aspx

- D. Compliance Issue Focus: Most of the public comments are not with the language in the permit but with follow-up inspections to ensure compliance. MDE's compliance inspection schedule of once every five years for each farm is not sufficient. The compliance inspection data is not readily available on the public information tool and fines for noncompliance are minimal. Additional resources for compliance and enforcement are needed especially if the number of AFOs are increased as was the case in 2015.**

MDE's policy requires all compliance inspection reports to be available to the public through "Open MDE". If you believe an inspection report is unavailable, please contact MDE. Also, (Public Information Act (PIA) requests for additional information are an option. MDE recently added additional resources to the Compliance Section of the CAFO Program with a total of three compliance inspectors plus one supervisor. EPA requires at least a 20% inspection rate which results in a visit to each farm at least once in the five-year permit cycle. MDE has met and exceeded this requirement. MDE has the authority under § 9-334 through § 9-343 of the Environment Article to seek enforcement of any violation of the General Permit and ensure compliance with its requirements, including the issuance of civil penalties of up to \$10,000 per day of violation.

- E. AFO Program Resources: Increase Resources to the AFO program. There are insufficient staff to carry out the required compliance inspections and enforcement of the new permit.**

MDE has increased the number of compliance inspectors to three plus one supervisor. Inspections, violations, and enforcement actions are publicly available and can be found on "Open MDE" (see answer to question on Compliance).

- F. Nuisance Odors: Part IV.A.b). v. pg16- Please strike "If a CAFO chooses to use composting to manage mortalities, the CAFO shall use a recipe that minimizes leachate, odors and other nuisances, and is consistent with MDA guidelines." This is redundant to the prior lines in the same paragraph that composting must be done in accordance with NRCS practice standards. Who will determine what is considered "minimized odor or other nuisances," especially considering this is an agricultural practice that is protected under the Right to Farm laws in the state of Maryland.**

MDE will change "MDA Guidelines" to "MD NRCS guidelines" since MD NRCS guidelines are the ultimate source for the agreed upon composting/mortality management/waste storage guidelines.

MD NRCS guidelines are the generally accepted practices for composting/mortality management/waste storage, and these guidelines are intended to minimize leachate, odors, and other nuisances.

Though MDE understands the right to farm, the growers have a responsibility to do all they can to minimize leachate, odors and other nuisances. Complaints of such issues are reported to MDE and subsequently investigated.

III. Air Pollution (Odors/Particulate/Ammonia)

A. Nuisance Odors and Pests: Why are AFOs exempt from Air Regs given that they generate odors, pest-related infestations, diseases such as bird flu and other nuisances that are of particular concern for adjacent properties? Does MD have an odor mgmt. and if so, who determines if there is a violation given the right to farm laws.

EPA does not regulate odors or air quality through its CAFO permitting program. See generally 40 CFR 122.23. While MDE derives much of its NPDES permitting authority from EPA and the CWA, it is authorized, as a delegated program, to impose requirements that are more stringent than what is required by the CWA or EPA's regulations. Therefore, MDE included in the draft General Permit provisions that require CAFO owners or operators to implement BMPs in order to reduce nuisance odors and address any air quality resource concerns using appropriate NRCS Practice Standard(s). See General Permit at Part IV.D.1-2. Odors: The facility shall be operated at all times to minimize nuisance odors associated with process wastewater treatment and storage operations from escaping the facility boundaries. Though MDE understands the right to farm, the growers have a responsibility to do all they can to minimize leachate, odors and other nuisances. Complaints of such issues are reported to MDE and subsequently investigated.

B. Air Pollution Impacts from AFO Farms: AFOs discharge each year millions of pounds of ammonia that is deposited in air, water, wetlands and homes. MDE assures its regulating this through the use of BMPs. Which specific AFOs have BMPs to control these emissions and collectively what is being done to reduce air and water deposition? Can the use of buffers and scrubbers be required to reduce air pollution? What protections exist to prevent chemicals from industrial facilities from spreading to neighboring properties. Does MDE enforce incinerator laws? Please explain transferable air permits from one part of the county to another.

BPMs that reduce air emissions from Animal Feeding Operations (AFOs) are included in the Required Plan's "implementation schedule section" for many of our permitted facilities. All "Required Plans" are placed on MDE's website for a 30-day public comment period prior to registration. Following registration, the Required Plans are available through "Open MDE".

While the Clean Water Act does not limit ammonia emissions from CAFOs, MDE regulates gaseous emissions in accordance with its water pollution control authority under Maryland law. MDE accomplishes this in the General Permit by requiring

CAFOs to implement various BMPs if ammonia or other gaseous pollutants are determined to be a resource concern. MDE provides public notice of every CAFO's Required Plan when it is submitted for coverage under the General Permit. Any member of the public may review these Required Plans to determine whether they implement the requirements of the General Permit.

There are several Natural Resources Conservation Service ("NRCS") practice standards that can be implemented by CAFO operators to reduce gaseous emissions and other pollutant discharges from poultry houses. The BMPs with a high effectiveness for controlling Airborne Reactive Nitrogen are Conservation Practice #591 "Amendments to Ag waste;" Conservation Practice #372 "Combustion Systems Improvement;" Conservation Practice #592 "Feed Management;" Conservation Practice #590 "Nutrient Management;" Conservation Practice #380 "Windbreaks and Shelterbelt Establishment and Renewal;" and Conservation Practice #422 "Hedgerow Planting." The BMPs with high effectiveness for controlling dust and feathers are Conservation Practice #380 "Windbreaks and Shelterbelt Establishment and Renewal" and Conservation Practice #422 "Hedgerow Planting." MDE's Air and Radiation Administration (ARA) continues to monitor activities within the animal husbandry industry as well as EPA's ongoing efforts to evaluate environmental impacts and possible regulatory initiatives. Contact ARA for additional information on Clean Air Act (CAA) regulations addressing chemicals and particulate matter discharged from neighboring facilities and transferable air permits.

ARA requires all incinerators that have not been exempted to receive a permit. It is important for each farm with an existing incinerator or considering using an incinerator to handle mortalities, to check with ARA to ensure compliance. (See section on BMP effectiveness).

C. CAFO is a Water Permit Only: The AFO permit is a water permit and there should be no mention of feathers/particulate matter/indoor air quality and there is no definition for how the farm violates air pollution concerns.

While MDE derives much of its NPDES permitting authority from EPA and the CWA, it is authorized, as a delegated program, to impose requirements that are more stringent than what is required by the CWA or EPA's regulations. Moreover, MDE's authority under Title 9, Subtitle 3, of the Environment Article is broader than its federally delegated regulatory authority under the CWA. Under Maryland law, MDE regulates the emission of gaseous pollutants that are discharged into waters of the State as part of its discharge permitting program. As such, Part IV.D.1-3 of the General Permit requires all permittees to implement BMPs in order to reduce nuisance odors and address any air quality resource concerns using appropriate NRCS Practice Standards. If feathers, particulate matter, or outdoor air quality are determined to be a resource concern, then appropriate Maryland NRCS Practice Standards should be installed to address the concern.

D. Data and Studies Verifying Air Quality Impacts: Data shows that without controls for ammonia, nitrogen from poultry houses, manure storage areas, and land application, AFO management results in millions of pounds of nitrogen discharged into waters of the State. At least 15 million pounds of ammonia would be emitted from poultry houses each year. This estimate does not include emissions from house cleanouts, flock removal, windrowing practices or manure storage. Workshop modeling results confirm there are millions of pounds of controllable water pollution attributed to ammonia emissions. A geospatial examination of best available hydrologic data shows how strong the hydrologic connection is between any pollution sources on the Eastern shore and the Chesapeake Bay, thus demonstrating why pollution from AFOs on the eastern should be a strategy to restore the Chesapeake Bay. Why has MDE included standards in other GPs and stormwater permits including impervious surface restoration standards in MS4 permit and industrial stormwater GP but not in the AFO permit.

MDE already looks at geospatial data, as it relates to the resource concerns identified by the plan writer, when reviewing the Required Plans for registration under the General Permit. ARA continues to monitor near real-time concentration of ammonia (NH₃), fine particulate matter (PM-2.5) and coarse particulate matter (PM-10) measured at the two Lower Eastern Shore (LES) monitoring stations.

MDE administers several other general permits as a part of its federally delegated NPDES permitting program. In accordance with federal requirements, these general permits authorize pollutant discharges from different types of facilities, including industrial facilities and municipal separate storm sewer systems (“MS4s”). The general permits that apply to these facilities implement different effluent limitations. The effluent limitations for stormwater discharges associated with industrial facilities and MS4s are expressed as a restoration requirement for impervious surfaces. This General Permit instead implements a “zero discharge” effluent limitation from all permitted operations.

E. BMPS For Air Quality: Ammonia controls are among the cheapest and easiest BMPs available to catalyze nutrient pollution reductions for the Chesapeake Bay and Maryland waters. The omission of controls for ammonia, particulates, and other airborne water pollution from AFOs from this permit is particularly unfortunate because the solutions are so promising. Two primary solutions are buffers and litter amendments. Control of ammonia, particulates, and other airborne water pollution in the permit is an exceptionally cost-effective way for the State to meet its statutory clean water obligations while protecting public health.

See response III.B. above.

IV. Water and Air Monitoring, Sampling

- A. Water Quality Monitoring: It is nearly impossible to ascertain if the current AFO permit is protective of waters of the State without sufficient monitoring of ground or surface waters. NPDES has very specific guidance on monitoring that MDE should incorporate. Require monitoring for runoff, leaks, and effluent and make public the results of quarterly GW monitoring at all land application sites for nitrate-nitrogen, ammonia-nitrogen, total phosphorus, and total dissolved solids with three monitoring locations; one upgradient and two downgradient as is the case in New Mexico. Monitoring locations should be identified on a map. Also, there should be monitoring wells for wastewater storage lagoons. A "zero discharge permit" requires monitoring to be effective even if MDE hopes and believes that Best Management Practices (BMPs) adequately prevent discharges. FWW vs. EPA the Ninth Circuit Court of Appeals stated that Idaho's NPDES GD permit for AFOs was inadequate without monitoring of Waste Containment Structures for GW discharges. Without this there is no way to determine accurately if GW is being protected. Monitoring identifies the few bad actors, so all are not "punished" for the actions of a few. Does signing the permit grant permission for MDE to install monitoring wells?**

The federal Clean Water Act (CWA) requires a permitting agency to require a point source operator to "install, use, and maintain such monitoring equipment or methods...and provide such other information as [it] may reasonably require" whenever this is "required to carry out the objective of the" CWA. 33 U.S.C. § 1318(a)(1)(A)(iii)—(iv). The federal regulations require NPDES permits to include certain conditions "when applicable." Among these are monitoring requirements "to ensure compliance with permit limitations including the "mass (or other measurement specified in the permit) for each pollutant limited in the permit," the "volume of effluent discharged from each outfall," and "other measurements as appropriate..." 40 CFR §122.44(i). However, because CAFOs are largely prohibited from discharging any pollutants under the General Permit, water sampling downstream from permitted facilities is not "required to carry out the objective" of the CWA or to "ensure compliance with permit limitations."

Unlike water quality-based effluent limitations, the General Permit primarily implements technology-based effluent limitations in the form of BMPs to adequately protect water quality at CAFOs. This reflects the approach to CAFO permitting taken in the federal regulations. Rather than including numeric effluent limitations, the federal regulations for CAFOs lay out BMPs along with a zero-discharge requirement. 40 CFR Part 412. These BMPs are included in site-specific plans. The BMPs and NMPs required by the General Permit are adequately protective of the environment without the need for downstream water sampling for all permittees. In almost every instance, if MDE determines that a CAFO has discharged pollutants into waters of the State, that constitutes a violation of the General Permit, not an

authorized discharge subject to numerical effluent limitations. That being said, the General Permit authorizes MDE to impose water quality-based effluent limitations or require additional monitoring if it is determined to be necessary to protect water quality.

Once covered by the General Permit, MDE has the authority to require a permittee to install monitoring wells if there is a need to do so. This would be in the case of suspected contamination and would be the exception rather than the rule and on a case-by-case basis. Part V.E of the General Permit provides guidance on what the permittee must do in the event of a noncompliance such as a spill. Any discharge of manure, litter, process wastewater, or other pollutants to surface or ground waters of the State that is not in accordance with Part I.B of this permit is prohibited and shall be reported to MDE by telephone, within 24 hours of discovery of the noncompliance at (410) 537-3314 and within 5 calendar days a description of the violation and a proposed action plan describing what will be done to prevent, correct and mitigate the noncompliance including any water quality monitoring if deemed necessary. The permittee shall provide this in writing to MDE: cafopermits.mde@maryland.gov or Maryland Department of the Environment Land and Materials Administration Resource Management Program, 1800 Washington Boulevard, Suite 610, Baltimore, MD 21230-1719. MDE does not have the resources, nor would it be feasible for farmers to require monitoring of all waste containment structures. Such monitoring would be on a case-by-case basis.

- B. Well Installation and Due Process Concerns: Part VII.B.6. There is no authority for MDE to require a permittee to expressly consent to unfettered and unspecified future monitoring well installations, monitoring obligations and unquantified remediation. Instead of following the statutorily prescribed enforcement route where MDE has ample authority to bring an enforcement action, these AFO GP provisions force the permittee to waive their due process and property rights to raise chickens.**

As written, to conduct a legal farm operation today, the farmer must waive their due process and property rights and allow MDE to act at will in perpetuity. Part VII B.8. obligates the permittee to allow research projects of unknown size, scope or duration, for unlimited types of BMP's (whether existing at the farm or installed by researchers) conducted by persons not known by the property owner. These cannot be requirements for AFO GP coverage.

This kind of anticipatory subjugation is unprecedented. MDE has no authority to demand that farmers waive their due process rights, surrender control of their real estate and agree to unlimited financial obligations to earn a living. The fact that it chooses to make such demands of farmers, many of whom have facilities designed to have NO DISCHARGE is shocking. Sewage treatment plants discharging millions of gallons per day as well as manufacturers and industrial facilities with ACTUAL discharges are not required to waive their due process rights to obtain their NPDES permits.

Monitoring well installation may be appropriate to address a specific problem at some future date. If MDE can articulate that problem and identify a purpose for well installation, State and federal regulators have ample enforcement authority for such a requirement - regardless of the permit terms. Each of these provisions involves invasive and permanent actions affecting the farmer's real property and financial survival. MDE does not have the legal authority to require these permit conditions. Further, this exposes the farmer to significant costs while stripping them of any oversight or control. Installation of a single monitoring well can range from \$3,000 - \$10,000. MDE provides no procedures and identifies no factors which may prompt it to demand monitoring well installations and sampling, nor any circumstances that might determine how many such wells it will install. Instead, it obligates the permittee to provide a "plan" that meets MDE's satisfaction – not as part of an enforcement action where the permittee can defend themselves and their actions, but immediately upon being told to do so – or lose the permit and the ability to operate and earn a living. This kind of obligation places a farmer at odds with financial institutions that accept the farmland as surety for loans necessary for construction and annual operations.

See response IV.A. above.

Operating a CAFO in Maryland is a voluntary endeavor. However, those who choose to do so must comply with federal and state laws, including obtaining a discharge permit from MDE. Operating a CAFO without permit coverage violates § 9-322 and § 9-323 of the Environment Article.

Operators may apply for either an individual discharge permit or coverage under the General Permit. MDE issues these permits pursuant to the Environment Article and the federal Clean Water Act. By law, the issuance process must include public review and comment periods for all permit terms. *See Md. Code Ann., Envir. § 1-601 et seq.* If, after a discharge permit is issued, any party wishes to challenge a permit's legality, they may petition for judicial review under Title 7 of the Maryland Rules. These procedures were specifically established by the Maryland General Assembly to protect citizens' due process rights.

In accordance with § 1-606(k) and Title 9, Subtitle 3 of the Environment Article, MDE is authorized to conduct property inspections and enforce permit terms in order to ensure compliance with its statutory obligations.

- C. Air Quality Monitoring Supporting CAFO Related Air Quality Issues: About 1/3 of N pollution to the Bay occurs through air deposition (Reference-US EPA Chesapeake Bay TMDL) and 40% of emitted ammonia from CAFOs are redeposited 1.5 miles from the source and 70% are deposited 31 miles from the source (Reference-3D characterization of ammonia plume) therefore MDE must address ammonia from CAFOs for this like manure is a water quality issue. Both state and federal law mandates that ammonia be regulated through**

"specific effluent limits". At a minimum, facilities 1.5 miles from SW should have ammonia controls such as acid scrubbers which reduce ammonia by 99% or biofilters that reduce ammonia by 67%.

See response III.B. above.

- D. Air Quality Monitoring Negating CAFO Related Air Quality Issues: The Lower Eastern Shore Ambient Air Quality Monitoring Project should be used to verify that AFOs do NOT cause Air Quality problems. In the past 5 years fine particulate matter in a 24 hr average value was lower in farming communities than in Baltimore city and county and coarse particulate matter was about the same. The North Carolina State Paper is inaccurate and shouldn't be used.**

ARA continues to monitor near real-time concentration of ammonia (NH₃), fine particulate matter (PM-2.5) and coarse particulate matter (PM-10) measured at the two Lower Eastern Shore (LES) monitoring stations. MDE retains the right to require additional monitoring and sampling as new information becomes available regarding potential impacts on the environment and human health. Contact ARA for the most up to date information related to this ongoing study. <https://mde.maryland.gov/programs/air/AirQualityMonitoring/Pages/Lower-Eastern-Shore-Monitoring-Project.aspx>

- E. Land Application: Land Application poses a high risk for SW and GW contamination. 2019 public records showed that 51 % of poultry operations in MD over applied nutrients. Many land application areas contain subsurface drainage systems that should be monitored. Hold No-lands accountable by tracking manure transports and land applications to receiving farms. Those receiving manure should be held accountable too. Land application amounts should be tracked. Prohibit the application of liquid waste manure in areas with shallow GW that is within two feet of the surface.**

Land application of nutrients is regulated under the state's environmental and agricultural laws and regulations, regardless of whether the nutrients originate from CAFOs or other sources. Land CAFOs that apply manure are subject to federal and state regulations. These operations are required to land apply nutrients in a manner consistent with an NMP to ensure proper nutrient uptake for maximum crop yields and to prevent excess nutrients from impacting waterways. Compliance with state environmental and agricultural laws and regulations relating to land application prevents water pollution and degradation of state waters. MDE can exercise enforcement authority to address an unpermitted discharge resulting from the land application of nutrients. Testing of manure and soil are required annually and every three years, respectively, by MDA to provide input for NMP development. This

testing is also a requirement of the General Permit to assure that a CAFO's NMP is based on current data. The manure test results are also annually reported to MDA and MDE on the AIR. The manure and soil test results are maintained at the CAFO and used by the nutrient management advisor to develop the NMP. MDE compares AIRs to the corresponding NMP in order to determine if a CAFO is land applying excess manure. If overapplication is determined to be an issue during a compliance inspection, the results of that inspection will be on "Open MDE".

F. Effluent Limitations and BMP Effectiveness: Provide a thorough response enumerating how many times MDE has used its discretionary authority to regulate ammonia through a site-specific approach. MDE changed its tune in the midst of litigation from "we cannot regulate ammonia" to "we can and do regulate ammonia" under this permit." MDE needs to demonstrate the permit does what it told the courts: effectively regulate the millions of pounds of water pollution emanating from the production areas. There is no evidence the permit is regulating ammonia on a case-by-case basis. Given the significant water quality risk, MDE should specify how many times it has exercised the discretionary authority to impose controls on ammonia through a site-specific approach or additional BMPs to protect human health and the environment. There are no pollution limits in the draft permit capable of protecting waters of the State or downwind communities from the massive amount of ammonia emitted by large poultry AFOs, as well as potentially hazardous amounts of particulate matter or any other pollutant. The new language in Part IV.D should be expanded to operate as a useful effluent limit to control ammonia and particulate matter. The language requiring the facility to be "operated at all times to minimize emissions of feathers or other particulate matter associated with the production area from escaping the production area's boundaries." has no specific requirement or guidance on how to comply. MDE appears to have never utilized this discretion, which is pertinent to meeting the Bay TMDL. Also, regular BMPs may not be sufficient for TMDL impaired waterbodies; sampling and monitoring should be required.

See response III.B. above.

G. Sampling: Composition varies at different sampling locations and guidance is required on taking grab samples or composite samples especially for liquid manure and there should be a chain of custody for the sampling. Part V.A. of the draft permit authorizes – but does not require – MDE to notify and require the permittee to submit a sampling plan to determine whether there is a discharge to waters of the State from land application areas or production areas. We urge MDE to provide a written explanation as to how many times this discretionary authority has been used to require sampling plans.

MDE will not issue a permit unless the “Required Plan” includes sampling protocols in line with the Maryland Department of Agriculture protocol.

"Soil Sampling and Testing" soil sampling is to be conducted consistently at the same time of the year; Soil sampling depth for Phosphorus (P) and Potassium (K) shall be 8 inches; pH testing sampling depth for no-till is only 4 inches. MDE requires soil sampling every 3 years.

"Manure and Wastewater Testing/Analysis" MDE requires an annual analysis of manure generated at the operation for “Land” and “No land” farms. Manure should be analyzed on an annual basis from each storage structure for: pH% Solids or % Moisture, Total N, Organic N, NH₄ or NH₃, P₂₀₅, K₂₀.

There is no specific protocol for sampling liquid manure within the MDA regs, however, the NRCS has a fact sheet on manure sampling and liquid manure sampling in particular:
https://www.nrcs.usda.gov/sites/default/files/2022-10/Sampling_Manure_for_Nutrient_Management_SD-FS-36.pdf

- H. **Bay TMDL: The public has no way of understanding what progress permitted AFOs have made toward reducing nutrient pollution in line with the Bay or local TMDLs. The draft permit is not consistent with the effort needed to ensure the state meets commitments to the Bay or Local Water Quality. Given this is a CWA permit its disappointing how little attention is given to the Bay TMDL or any other TMDL. MDE should remove the conclusory statement that the permit (Part VII.K.) requirements are consistent with TMDLs or provide a detailed substantiation for it. MDE should administer the Bay TMDL accounting for growth requirements in the permit for consistency with other Department permits and justify why it is not adhering to its pledge to offset the growth in loads from AFOs should future loads increase. MDE must explain why its MS4 permit is consistent with the TMDL load growth offset provisions and WIP, but the AFO permit is not.**

See response V.III. C.

Maryland's Phase III Watershed Implementation Plan (WIP) outlines the current strategy for agricultural sources throughout Maryland's portion of the Bay watershed. The WIP describes a suite of practices that will be implemented on agricultural lands, including CAFOs. Practices described in the WIP that will be installed at CAFOs include agricultural stormwater management and animal waste management structures, etc. Since adequate manure storage, stormwater management, preventing direct contact of confined animals with surface waters of the State, conservation practices, protocols for manure and soil testing, and protocols for the land application of manure are required in accordance with Part IV.B of the General Permit, CAFOs

regulated under this permit help MDE to meet several WIP goals under the Agricultural Strategies in the Phase III WIP. It is expected that through the stringent requirements of the General Permit, and through other incentives and regulatory programs established by the state, that the practices recommended will and are being installed. MDE also verifies the maintenance of these BMPs during compliance inspections. The results of every single one of our compliance inspections can be found on "Open MDE". The Phase III WIP models were developed based on the results of the Chesapeake Bay Phase 6 Watershed Model. The Chesapeake Bay Program is currently working on the development of the Chesapeake Bay Phase 7 Watershed Model. The watershed model simulates the nitrogen, phosphorus, and sediment loadings from all sources, including agriculture, to the Bay. MDE anticipates that in the future there will be a Phase IV WIP based on the results of this new, Phase 7 Watershed Model, but that is not a guarantee at this point. Maryland provides input to the WIP model but any subsequent changes to the model are being developed by EPA. The 19 General Permit required all CAFO applicants to identify the resident watershed and any sediment/bacteria/nitrogen/phosphorus TMDLs within that watershed.

V. Individual Permits

A. Individual Permits: for select operations such as digesters, biorefineries and other manure to energy producers. Individual permits are rare but there is a need for special protections for CAFOs in sensitive natural resource areas such as the Paleochannel with water and air monitoring.

In the draft General Permit, MDE retains the authority to require a CAFO owner or operator to obtain individual Permit coverage if deemed necessary by MDE to protect water quality. Additionally, if MDE, in its sole discretion, determines that the General Permit is not adequately protective of state waters at a particular CAFO operation, MDE may terminate General Permit coverage and require the CAFO owner or operator to obtain an individual discharge permit. Digesters, biorefineries and other manure to energy producers may require specific permits outside of the CAFO program, such as authorization to construct and operate from our Air and Radiation Administration. MDE will consider additional BMPs or individual permits on a case-by-case basis for farms located in susceptible Resource Protection Areas, farms of extensive size, farms that are particularly complex or with a greater than average propensity to pollute surface or ground water. Farms with duck operations using liquid manure or those that apply irrigated manure are required to have individual permits.

B. Anaerobic Digesters: Anaerobic Digesters create "digestate" which is more soluble in water than regular manure and may increase pollutant volatility. We request that MDE initiate separate rulemaking for these CAFOs and research

the pollution controls available to regulate them such as additional BMPs and monitoring.

A separate rulemaking is not required to address facilities with an anaerobic digester. MDE has the authority to require an individual permit for specific farms that pose a particular risk to the environment. MDE will further examine the impacts of anaerobic digesters and determine on a case-by-case basis whether additional BMPs or other environmental protections are necessary.

VI. Technical Specifications

A. Clay vs. Plastic Liners and Piping; The permit should address proper piping maintenance and piping should be included in the production area definition. Include greater specificity regarding "clay liners" not just on permeability but also include max height of liquids and liner thickness. How does MDE determine when a clay vs plastic liner is appropriate and if the earthen liners are designed correctly? What is the expected slope of the inside berm of a manure lagoon to ensure stability and reduce erosion from gravity? What is the expected slope of the outside berm of a manure lagoon to reduce gravity erosion? More specificity regarding "clay liners" is needed, not just info on permeability. Include max height of liquids and liner thickness. What is the maximum seepage volume allowed from a clay liner? How does MDE determine that the pollutant concentrations in the seepage volume will not contaminate GW? Can MDE require all manure lagoons to be lined with plastic instead of clay especially in areas with shallow GW (<10 feet) and in areas of high GW table require an above ground storage tank, leak detection system and ground water monitoring?

In accordance with Part II.BB of the General Permit, "production area" means "any part of a CAFO that includes, but is not limited to, the animal confinement area, the manure storage area, the raw materials storage area, the waste containment areas, any egg washing or egg processing operation, and any area used in the storage, handling, treatment, or disposal of mortalities." This definition is sufficiently broad enough to include any associated piping used for the transport of liquids or process wastewater related to the operation of a CAFO in accordance with the General Permit.

The suggestion to include max height of liquid and liner thickness to include with clay liners is regulated by the standards set by the NRCS, specifically Conservation Practice Standard Code 313 (Waste Storage Facility) and Code 359 (Waste Treatment Lagoon). Local Soil Conservation Districts (SCDs) use these criteria to approve the Waste Management Plans required for state discharge permits.

VII. Public Notification and Communication

A. Expand the Public Notification Process: Many permittees don't have computers or access to the internet to get on MDE's website. There should be farmer hosted meetings for the community, dashboards, plain language descriptions and the

right to file a complaint without retribution. There should have been an opportunity for greater public involvement (farmers, groups representing farmers and the general community) in the draft permit. The listening sessions did not replace the feedback sessions held in the past. The public hearings on the 25 General Discharge permit should have been better advertised. DCA only represents 50% of growers. Why don't high-level MDE personnel attend these PH meetings? They won't hear the comments. There should be additional notification beyond the NOI when applying for a permit such as notification to neighbors. The NOI should be more descriptive of the facility including how the facility was designed, constructed, the manure was generated, collected, transported, stored, treated and disposed of. Delegate Chris Adams sent a letter to the MDE Secretary and was not satisfied with the answer. Also, is the public notified when a farm changes from MAFO to CAFO? MDA says the Nutrient Management Plans are confidential, why aren't these available to the public? Does MDA know which farms MDE has permitted, there needs to be better communication among sister agencies.

All proposed permit applications are made available to the public through MDE's website. Prior to being permitted, the Notice of Intent (NOI), the Required Plan (Comprehensive Nutrient Management Plan (CNMP), Nutrient Management Plan (NMP) and conservation plan (CP)) are posted on MDE's website for a 30-day public review period prior to issuing a permit. Within that 30-day period the public has the option to submit written comments or request a public hearing if there is a concern. For members of the public without computer access, a copy of the CAFO application (NOI) and/or the Required Plans is available at the Baltimore Office.

MDA must maintain confidentiality with regards to the information in the Nutrient Management Plans, however, MDE is not bound to this. MDE publishes on its website the Nutrient Management Plans (NMP) of all farms requesting the permit after personal information such as s phone numbers, emails and social security numbers are redacted. When a farm changes from a "MAFO" to a "CAFO" this is considered a major modification and the farm is required to go through the 30-day public notification process. The listening sessions did provide an opportunity for community feedback, however, the listening sessions could have been held earlier and after a draft permit was made public. This will be considered for the next permit cycle. MDE realizes that the MDE website may not be sufficient public notice.

The permit application (NOI) along with the "Required Plan" (CNMP/NMP/CP) is available on MDE's website for a 30-day public review period prior to issuing a permit. Within that 30-day period the public has the option to submit written comments, request a public hearing if there is a concern. If the EJ score is high, then additional measures to inform the public about the proposed permit may be required. MDE is in the process of exploring additional options for public notification. Senior management from both MDE and MDA were in attendance for at least one of the public hearings for the 25 General Permit renewal. Upper-level management will play

an integral part in reviewing all comments received and responding to the comments accordingly. The public should feel comfortable reaching out again to MDE if earlier communication was unsatisfactory. A follow-up letter requesting greater clarification from Secretary Mellwain is advised. MDE works closely with MDA when reviewing our permits. MDA staff are copied on all public notice and registration letters and often MDA and UMD extension employees are responsible for preparing parts of the "Required Plans" for the regulated operations. The public information web tool allows the public access to information on farms under the General Permit. Notification of upcoming public hearings were placed on MDE's website and in the Maryland Register which span the entire state of Maryland and beyond. Notice of the public hearings ran for two consecutive weeks in local publications as is required by law.

This included the Star Democrat (Kent, QA, Talbot, Caroline, and Dorchester); Frederick News (Frederick County); Salisbury Daily Times (Worcester, Wicomico, Somerset, and Dorchester); Delmarva Farmer (MD, PA, DE and VA) and the Delmarva Chicken Association's newsletter. MDE will look into additional ways to provide public notice for CAFO permits applications. Next permit cycle in addition to publishing notices in the above-mentioned publications, MDE intends to develop a list of owner/operators for notification purposes.

- B. Simplify the Process: Too much paperwork on the AIRs and for the required plan. The permittee should pay the permit fee and be administratively renewed. This saves time and resources for MDE and the regulated community. Permit too complicated in its delivery not in plain language and no translations into other languages.**

MDE has considered ways to reduce the paperwork required by the permittee. The General Permit does not have many changes from the earlier 19 General Permit, therefore many of the existing "Required Plans" will not need to be revised or redone as was the case between the 14 General Permit and the 19 General Permit. This will save considerable time for plan writers and farmers.

To assist with helping the general public better understand the changes to the permit, MDE put together a "Fact Sheet Supplement" that summarizes the changes made to the 25 General Permit. The "Fact Sheet" and "Notice of Tentative Determination" (NOD) were translated into Spanish, Vietnamese and Korean. This "Fact Sheet" and NOD along with its translations were placed on MDE's website and copies were provided at the in-person public hearings.

- C. Permit Delay: The Permit Delay has placed a moratorium on building poultry houses. This has cost an estimated \$30 million for Eastern Shore Growers. Why is it taking up to 5 years in some cases to renew a permit even when there are no changes? This is not fair to farmers, especially given that they must pay an annual fee.**

MDE is aware of concerns surrounding the delayed renewal of the General Permit. Previous permits were administratively extended. Legislation enacted in 2019, SB546, prohibited the construction of any new CAFO or portion without first receiving coverage under a CAFO discharge permit. This change prevented MDE from approving construction of any part of a new CAFO.

However, all existing permittees have been able to continue operating under administratively extended coverage of the General Permit, as long as they submitted a Notice of Continuing Operation (NOCO) with MDE. 100% of farmers who could apply for continued coverage did so and received continued coverage.

VIII. Environmental Justice and Cumulative Impacts

A. Disproportionate EJ Impacts: Local residents have raised concerns about the lack of inclusion and involvement by industrial livestock production facilities when discussing operating procedures, permit renewals and policy changes. We urge MDE to abide by the executive order by utilizing the MDEnviroScreen tool to help prioritize AFOs that may need additional pollution controls, including and especially vegetative environmental buffers, to protect Maryland's most vulnerable communities. Did MDE consult with the Maryland Commission on Environmental Justice and Sustainable Communities (CEJSC) before issuing this draft permit? If so, please describe what actions were taken in response to that engagement and if not MDE should engage with the CEJSC and other leading researchers on the public health impacts of AFOs. This includes public health experts and leading state universities such as the University of Maryland and Johns Hopkins University. MDE should conduct meaningful outreach with concerned residents within impacted communities particularly those with vulnerable populations living in close proximity to high densities of AFOs.

MDE is committed to EJ and a policy of transparency that encompasses public notification, community engagement and the use of various screening tools. Prior to permitting a CAFO farm the NOI and Required Plans are posted for 30 days on MDE's website providing an opportunity for the public to comment and /or request a public hearing. The posted NOI has the EJ score for the tract where the CAFO is located. The public was provided with an opportunity to give input on the draft General Permit. MDE held four in-person public hearings, a remote session and prior to the public hearings in addition there were three in-person listening sessions and one online. The "listening sessions" provided an opportunity for the community to provide feedback prior to the preparation of a draft. These listening sessions and public hearings were also posted on MDE's public meeting calendar. MDE will look into additional ways to provide public notice for CAFO permits with a high EJ score.

One of the goals of CEJSC is to "Develop criteria to assess what communities in MD may be experiencing EJ issues". MDE plans to do an assessment of overburdened and underserved communities using MDE's recent EnviroScreen. MDE may consider future research projects with Maryland colleges and universities.

B. Cumulative Impacts for EJ Communities: How does the permit address cumulative impacts from multiple sources which is especially a problem in communities of color? What does MDE do with the EJ score once received? It's not enough to receive the score, what is the consequential action? The term "may" has no teeth. Intensification of industrial livestock production has direct implications for off-site migration of pollutants to water and air. Communities have expressed an overall concern that increases in livestock associated pollutant emissions to water and air have cumulative impacts on health and quality of life. There are adverse health effects of exposures to pollutants among neighbors of and those working in poultry CAFOs as well as biosecurity concerns with epidemic and pandemic spillover between poultry and humans living in rural areas of the Eastern Shore.

There is no state authority for MDE to address cumulative impacts. Cumulative impact analyses are not required by the CWA nor under the state's water pollution control law or regulations. MDE does not have authority over the siting, distribution, or density of CAFOs in each local jurisdiction and such considerations are beyond the scope of the General Permit. The siting of CAFOs is local government-controlled zoning and land use decisions. Such conditions may be determined in a county's master plan. In order to construct and operate a CAFO, the owner or operator may need to satisfy county requirements. The General Permit contains setbacks and buffer provisions, including land application setbacks from drinking water wells, to prevent the discharge of manure and wastewater to waters of the state.

Environmental Justice is referenced in the CAFO NOI form as required by state law (See Md. Code Ann., Env't 1-601.1 (a). Permittees are required to submit an EJ score that is subsequently verified by MDE. If the EJ score is over a certain number, additional public outreach measures may be taken during the public participation process to provide opportunities for public participation, education and outreach that are meaningful and consistent with applicable law. MDE is further exploring options to pursue. MDE developed a " Fact Sheet" that further describes how the EJ score will be utilized. MDE strives to integrate environmental justice into agency operations with the goal of improving the quality of life and sustainability, economic development and environmental protection for all Maryland communities.

New source guidelines require BMPs and must be designed to NRCS technical standards to mitigate pollutant delivery from new/emerging sources. These new source guidelines are stricter than the guidelines for existing sources. thereby mitigating the cumulative impacts of intensifying agriculture. For example, a CAFO that began operation after April 2003 is not allowed to have any discharges to waters of the state regardless of the level of storm event. Biosecurity measures are observed by operators, inspectors, plan writers, integrators, etc. These measures are requirements for all CNMPs.

C. New Load Growth Model: The State's concentrated animal feeding operations (CAFO) permitting program provides further means of controlling net increases in nutrients in the agricultural sector if necessary." This is a critical admission

by MDE that this permit does in fact represent the critical mechanism for offsetting at least some degree of the additional pollution attributable to this growth in animal population and associated manure and ammonia emissions. We urge MDE to complete a new load growth demonstration for the agriculture sector and, more importantly, to include a set of on-site performance standards and potential additional off-site offset options designed to fully offset the total amount of additional loads from all sources associated with any new AFO facility. It will be important for MDE staff to take a closer and independent look at the previously established BMPs at each operation to review whether older BMPs might still be adequate to control today's precipitation-based pollution events. MDE needs to require a thorough and independent evaluation of previously established BMPs at each operation to ensure BMPs are adapted to climate change.

New source guidelines require BMPs for operations built and/or expanded after April 2003. These operations must be designed to NRCS technical standards to mitigate pollutant delivery from new/emerging sources. These new source guidelines are stricter than the guidelines for existing sources, thereby helping to mitigate the cumulative impacts of intensifying agriculture. BMPs for each operation are re-evaluated each permit cycle when required plans are created, so plans can adapt to current conditions such as a changing climate.

All land use acreages and animal numbers during its 2017 Midpoint Assessment were updated as part of the Accountability Framework for implementing the Chesapeake Bay TMDL. This process of updating these numbers used the latest available data from the Agricultural Census and went through a formal partnership approval process, including the Chesapeake Bay Program's Land Use Workgroup and Agricultural Workgroup. These numbers were used to project acreages and animal populations out to 2025, and 2025 served as the basis for Maryland's Phase III WIP.

The Chesapeake Bay, and annual progress toward this goal will be tracked using the most up-to-date animal populations and land use acreages available. The Chesapeake Bay Program is currently working on the development of the Chesapeake Bay Phase 7 Watershed Model. The watershed model simulates the nitrogen, phosphorus, and sediment loadings from all sources, including agriculture, to the Bay. MDE anticipates that in the future there will be a Phase IV WIP based on the results of this new, Phase 7 Watershed Model. Maryland's Phase III WIP outlines the current strategy for agricultural sources throughout Maryland's portion of the Bay watershed. MDE is not responsible for updates to the Chesapeake Bay Model, that would be EPA along with the Chesapeake Bay Partnership decision.

IX. Transfers, Sales, Closures, Continuation of Coverage

- A. Transfers and Renewals: When the farm is sold from one entity to another what ensures that the permittee discloses new information regarding the facility or alerts the public about the sale. Do permit renewals go through the public review**

process and are renewals inspected, how often and what is the timeline to comply with any violations found?

The requirements for a transfer of authorization under the General Permit are described and provided for in Part VII.P. Information related to a transfer is available through MDE's website. MDE also provides public notice of every NOI that it receives in accordance with COMAR 26.08.04.09N(3).

The requirements to obtain permit coverage under a renewal of the General Permit are described and provided for in Parts VII.N-O. Renewal applications make up the majority of our permit universe and are processed like new facilities. Existing permittees wishing to continue their coverage under a renewal of the General Permit are required to submit an NOI and Required Plan that will identify any new information since the previous permit. The NOI and Required Plan submitted for coverage under a renewal of the General Permit are subject to the public notification and contested case hearing provisions in COMAR 26.008.04.09N(3)

MDE's policy is that new, expanding, or "land" farms require a visit by a permit writer (not to be confused with a compliance inspection) prior to permitting. Permit writers do have discretion to visit any farm prior to registration. MDE is meeting and exceeding our inspection goals given to us by EPA. Renewals are all subject to the 30-day public review period and are visited with a compliance inspection once every permit cycle (5 years). The corrective action necessary to resolve a violation will depend on the violation. Generally, if a significant violation is not resolved within 90 days, MDE may pursue an escalated enforcement action.

B. Notification of Closures and Decommissioning: Is the surrounding community notified about upcoming closures or deregulated facilities? The public should be able to provide input on any issues that may pose a problem. Why does a closure only include the removal of animals? It should also include the removal of manure, wastewater facilities, ponds, lagoons, mortality facilities, chemicals, etc., as well as subsequent ground water monitoring, soil testing and regenerative vegetation.

The surrounding community is not notified directly of upcoming closures or deregulated facilities; however, a compliance inspector visits the site prior to closure or deregulatory action to ensure that the proper conditions are met, and no manure is left on site prior to removal from the program. This information is available on our website in the form of the "inspection report". Given that a compliance inspector visits the farm and the inspection report is provided on the website, MDE does not consider a 30-day public notice for removals or deregulations necessary. The closures don't just include the removal of animals but also include the removal of manure, compost, sources of pollution, and an assessment of other resource concerns. Groundwater monitoring may be cost prohibitive for closures.

- C. Change of Ownership: The draft appears to require that a notice of intent be submitted to MDE at least 30 days prior to any changes to the permitted operation, including changes in ownership. It is unclear how this requirement would align with producer's financing needs, which are often time-sensitive and subject to shifting timelines. If no operational changes occur other than ownership transfer, we believe the 30-day notice requirement is unnecessary. How should lenders, buyers or sellers verify that the required documentation has been submitted and received by MDE?**

MDE understands that oftentimes these transactions are fluid. The transfer form should be provided to MDE with an estimated date for the transfer. If the action does not take place, inform the program via email as soon as possible. Lenders, buyers, sellers or new CAFO operators can contact the AFO Division to confirm receipt of the Required Plans. 30 days were added to make it clear that farmers should not be waiting until the last minute to notify MDE of a potential transfer.

- D. Transfers and Documentation: Documentation of Permanent Modifications (page 26): The reference to "the form" is unclear. If this refers to a Comprehensive Nutrient Management Plan (CNMP), who is responsible for submitting it to MDE? It is not feasible for a CNMP to be drafted and signed by the purchaser of a farm if the transfer has not yet occurred. A prospective owner cannot certify and sign the plan before legal ownership has been established.**

A "transfer" of an operation to a new owner should be accompanied by the following: 1. a transfer form signed by the new and previous owner, 2. An NOI completed by the new owner with the appropriate permit fee 3. Signature pages cosigned by the new owner next to that of the previous owner on the following documents: A current Nutrient Management Plan (if outdated an new NMP must be prepared for the new owner); Compliance Agreement on the first page of the CNMP; An up-to-date Implementation Schedule (located in the CNMP); and Conservation Plan. Preferably the signing of these documents would be completed during closing.

X. Climate Change, Sea Level Rise, Flooding

- A. AFOs in the Flood Plain: Many MD AFOs are in low lying areas in close proximity to flood waters at risk from inundation as well as other climate induced risks. The draft permit should apply standards regarding placement of AFOs and refuse any applications to operate a new AFO at risk of inundation and in close proximity to streams, rivers, and floodplains (many of which are fed by an extensive network of ditches) of the Eastern Shore will act as a superhighway of nutrient pollution to the Bay.**

MDE's New Source Performance Criteria for CAFO operations also requires all houses, storage sheds and composters shall be situated a minimum of 100 feet from waters of the State. Waters of the state include: The flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood frequency.

B. AFO BMPs and Climate Change: The GD permit should require MDE to do a thorough and independent evaluation of previously established BMPs at each operation to ensure BMPs are adapted to climate change and to capture data regarding localized inundation at each permitted facility. As the State continues to invest in BMPs to restore the Bay, it must carefully consider their placement to avoid areas that are at risk from the most severe climate impacts.

NRCS updates practice standards as better science becomes available. If a BMP is determined to be no longer effective, MDE has the authority to require more effective conservation practices be installed. In addition to this, the general permit is renewed every 5 years, so BMPs installed at the farm are inherently evaluated on that timescale.

MDE's New Source Performance Criteria for CAFO operations also requires all houses, storage sheds and composters to be situated a minimum of 100 feet from waters of the State. Waters of the state include: The flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood frequency.

Any discharge of manure, poultry litter, and process wastewater by a CAFO that is not in accordance with the terms and conditions of the General Permit must be reported to MDE, whether or not the discharge results from water table rise or flooding; and take steps to prevent such discharges in the future. MDE has the authority to either terminate General Permit coverage for any CAFO operation if MDE determines in its sole discretion that the General Permit is not sufficiently protective of state waters; or require individual permit coverage for any new source if MDE makes such a determination. MDE also has the authority to request that a CAFO owner or operator revise the CNMP or NMP to address any flooding concerns and/or require modifications of the permitted operation to eliminate or mitigate flood risk, up to and including the decommissioning of at-risk poultry houses.

General Permit language and current applicable law and regulations sufficiently authorize MDE to address CAFO operational changes and upsets resulting from climate or other actual or potential issues. Therefore, the draft General Permit does not need to be revised in this regard. Climate change research and projected precipitation trends may need additional research and are beyond the scope of this NPDES General Permit at this time. If there is an unexpected discharge to surface water from a flood event, the operator is required to report the event to MDE.

MDE compliance inspectors respond to public complaints regarding environmental violations. The results of all of these inspections can be found on "Open MDE". Some of these issues will best be addressed in a broader climate action plan initiative which MDE may develop in the future. MDE has non-discretionary duties with respect to NPDES permitting that it must comply with, regardless of whether climate change might, in the future, impact its permitting program. MDE's authority to

impose additional restrictions on CAFO siting is limited under law.

Also, the Permit has a reopener clause at Part VII.J. that triggers the modification or revocation and reissuance of an existing permit if an applicable effluent standard or limitation is changed or otherwise made more stringent by EPA pursuant to the CWA. There are no specific provisions in the CWA that authorize MDE to condition a permit reopener upon the revelation of new climate data, unless that data is used to formally modify an applicable effluent standard or limitations. The draft General Permit also defines the term “upset” at Part II.HH; and contains provisions regarding permittee demonstration of an upset at Part V.F

See response IV.A. above.

XI. Clarification of Terms, Miscellaneous

A. Permit Fees: We were promised a no fee permit, why fees now?

Environment Article, Section 9-325, Annotated Code of Maryland, requires MDE to set a reasonable fee. Also, COMAR 26.08.04.09-1J (1) states that "A CAFO shall pay an annual permit fee." Persons engaging in an activity covered under a general permit for which a fee or fees are charged shall submit a NOI form requesting inclusion under the general permit, accompanied by the appropriate fees, before the initiation of the activity. The required fees shall be submitted with MDE's approved NOI forms. MDE may refuse to complete processing on any NOI if the applicant fails or refuses to pay the application fee. MDE may require the retroactive payment of a general permit fee if the general permit becomes effective before the adoption of a regulation supporting this fee, if the fee was specified in the general permit at the time of general permit issuance. MDE has always had the authority to charge a fee for the General Permit. MDE also does not have the authority to waive fees per the Environment Article, Section 9-325(c)(4).

B. Additional Animals on-site: For facilities that qualify for the GD Permit, any additional animals kept on-site that are not included in the qualifying Animal Feeding Operation animal numbers should be adequately identified in the required plans and mapped to show where they are being maintained to ensure they are properly fenced to prevent access to waters of the state.

In the permit Part IV. A.1.a indicates that the Required Plan shall take into account all animal manure, chicken litter or processed wastewater associated with animal production regardless of the source of animal manure. Once the operation has been permitted, all animals on the operation are to be identified in the “Required Plan” even if their numbers are limited and are on pasture. The location of BMPs such as fences and stream crossings should be identified on a "Conservation Plan Map". The manure estimations for the “additional animals” are included in the NMP and are used by the state to determine calculations for sufficient manure storage.

C. Land vs. No Land: Not fair to farmers to change the definition of land vs no-land after they have made a financial investment based on previous MDE instructions.

CAFO operations can either be a “Land Operation” or a “No-Land Operation. “Land Operations” also have a land application area (portion of farm used to grow crops) in addition to the production area (portion of farm that raises animals) subject to the terms of the permits. The EPA defines the “land application area” as “land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied”. Land under the control of the CAFO owner or operator generally means there is an operational connection between the CAFO and the land where manure is being applied, and the CAFO owner or operator is making nutrient management decisions.

Once an operation has been deemed to be a “Land Operation”, then the fields under the control of the CAFO owner and operator need to be added to the Required Plans (Comprehensive Nutrient Management Plan, Nutrient Management Plan, and Conservation Plan) and NOI. The NOI should be signed only by the designated permittee.

MDE is also developing guidance to further distinguish between “land” and “no-land” operations.

D. Flock Size Documentation: Documenting flock size changes of 10% or more is difficult and if there is no change from small to medium to large or vice versa, then reporting the number of birds shouldn't be necessary and is private info for the grower.

MDE as the regulatory agency has the statutory authority to request flock size. A letter from the integrator indicating flock size for the year is easily attainable. This information helps with MDE's mission to protect the Chesapeake Bay and its tributaries.

E. Changes in Permitted Operations: Part IV.F.2.e. If there is no change from a medium to large or large to medium operation by a change in the number of birds, this information should not be required. It is a marketing decision between growers and the chicken companies as to what types of birds and the number of birds they may raise on the farm. Having to update that number each flock (possibly 4 – 5 times per year) when there is no impact to the operation size and no benefit for water pollution control should not be an added burden to the grower. How will MDE plan to use this information?

The permittee shall notify MDE, in writing, on a form approved by MDE, before making any permanent modifications to its operation including a change in the number of animals.

The contents of the NOI must include the following information specified in the Federal requirements under 40 CFR 122.21 and 122.28. The information includes the number and type of animals whether in open confinement or housed under roof using animal types in the table in Part I.A.9 of the General Permit. The table includes animal type and numbers of animals under small, medium and large requirements for permit coverage. This General Permit covers different animal types and is not specific to birds. MDE requires this information to be compliant with regulations and is beneficial to our compliance inspectors when verifying information during field inspections.

F. Typo: Correct typo p. 35 change to ensure.

MDE will make this correction.

G. Unauthorized Discharge vs. Upset: How does MDE distinguish between an unauthorized discharge and an upset? How is an unauthorized discharge documented and why is the facility only allowed to seek consultation with regard to remediating the discharge be limited to MRCs and SCD? The permit doesn't clarify what constitutes an upset for new source CAFOs. It is silent as to whether pipe leaks, overflowing lagoons and leakage of mortality compost juices are included; it is not clear what "operated in a prudent and workmanlike manner" means. Is the public notified of an upset? What is meant by the permittee complied with remedial measures-and who determines this? MDE should not "grant a pass" to the operation that discharges as a result of the 25-year/24-hour storm.

In accordance with Part V.F of the General Permit, an “upset” is an exceptional incident in which there is unintentional and temporary noncompliance with a permit limit because of factors beyond the reasonable control of the permittee. Upsets occur when a non-compliance event takes place in spite of the facility being operated according to the established procedures, including following the requirements in the Required Plan and Best Management Practices.

Any pollutant discharge that does not constitute an upset and is not otherwise authorized under Part I.B of the General Permit is an “unauthorized discharge.” All unauthorized discharges are violations of the terms and conditions of the General Permit and subject to enforcement in accordance with Part VI.

MDE’s compliance inspector and compliance supervisor, in consultation with the CAFO Division Chief, will determine if the facility has an unauthorized discharge. The facility will identify a violation or upset by the observation of a discharge to waters of the state. The operator should consult with NRCS and SCD but is also able to consult with other professionals such as technical service providers (TSPs). MDE conducts follow-up inspections on every unauthorized discharge, and the reports of these inspections can be accessed on “Open MDE.”

H. "No Discharge" and the "24 hour/ 25 Year Storm": There is confusion between the requirement of a "zero discharge" in the new performance standards and the allowance of a discharge only up to and beyond the 24 hour/25-year storm. Does a zero discharge apply to animal waste only or extend to runoff from the production area and flows like silage leachate? The permit and MDE New Source Performance document appear to allow sizing for containment up to "25yr/24hr storm", and additional stormwater controls (from production area) sized to 2yr/24hr. If intent is truly 'zero' discharge - this is not feasible. Current NRCS design standards require sizing for the 25Y/24H storm and is not intended for 'zero' discharge scenarios Even under NRCS Diversion (362), sizing criteria ranges from 2yr to 25yr storm maximum. True zero-discharge will be unfeasible for most producers and NRCS designs. There is no NRCS specific standard for diverting silage leachate.

The MDE New Source Performance Standards apply to CAFOs built or expanded after April 2003 and are referred to as "New Operations". Those CAFOs that were built prior to this date are referred to as "Existing Operations" and the new source performance standards do not apply. For CAFOs that existed prior to EPA's establishment of the CAFO effluent limitation guidelines under the CWA and implementing regulations, known as "existing CAFOs" (April, 2003), the discharge of animal waste, including manure, poultry litter, and process wastewater to waters of the state is allowed under the General Permit if the discharge results from a storm event greater than the 25-year, 24-hour storm and the production area is designed, constructed, operated, and maintained in accordance with certain animal waste storage and water quality protection requirements; and provided MDE is notified by the operator within 24 hours of the event. Existing CAFOs built prior to April 2003 are permitted to discharge if a storm exceeds the 25 year/24-hour storm. Existing CAFOs must have sufficient containment up to the 25-year and 24-hour storm.

New operations, built or expanded after April 2003, are not allowed to discharge regardless of the size of the storm and must be constructed to prevent any discharge. These operations are required to have "zero discharge". CAFO operators should refer to MDE's "Guidance on New Source Performance Design Criteria for CAFO operations" and seek technical assistance from one of the State's agencies such as SCS, NRCS or MDA. There is NRCS design guidance for silage leachate management. MDE's understanding is that NRCS design guidance for silage leachate in Maryland is primarily covered under Waste Storage Facility NRCS Standard (313) collection and storage. MDE also evaluates the effectiveness and maintenance of practices that are already installed. If a CAFO does not maintain the practices or improperly installed practices that are already in place, MDE may require that additional controls be implemented.

I. Integrator Responsibility: An overlooked area has been the role of the integrator. They are calling for larger farms, go big or go home. This has reduced the ability of family farms to exist and promotes large industrial

facilities. In some states there are farms with over 20 houses. Documenting flock size changes of 10% or more is difficult. If you keep increasing the regulations, family farms will be replaced with large industrial operations. The AFO program should have a limit on the number of animal units allowed for one facility.

This comment goes beyond the scope of the permit. MDE can consider facilitating a meeting with MDA, Poultry integrators and the farming community to discuss issues such as these that are impacting Maryland farmers. Local governments control zoning and MDE is limited by local zoning on the county level. County ordinances may have a limit on the number of poultry houses built by a single operation.

See response V.III. B. above.

J. Water Line Inspections: Water line inspections between flocks are too cumbersome and unnecessary. The water is cut off between flocks.

MDE will provide an alternative to this requirement as long as no regulated animals are present in the production area and the water lines have been turned off or are not in service. The daily water line inspection log sheet has been updated to reflect this change.

K. Funding: The permit must be integrated with other agricultural pollution policies to reference the funds available to assist the operator in constructing and installing all necessary conservation practices.

AFOs can access financial and technical assistance through the following programs:

Maryland Agricultural Water Quality Cost-Share (MACS) Program: Provides state-funded grants to farmers for implementing BMPs such as manure handling systems, barnyard runoff control, stream fencing, and soil and water conservation measures. Encourages both regulatory compliance for CAFOs and voluntary adoption of practices that improve water quality in the Chesapeake Bay watershed. Help offset the costs associated with constructing or upgrading facilities to meet Nutrient Management Plan (NMP) and Comprehensive Nutrient Management Plan (CNMP) standards.

Environmental Quality Incentives Program (EQIP) can subsidize installation of waste management systems, fencing, and water control facilities to reduce nutrient runoff. NRCS programs offer technical support to develop CNMPs and may provide cost-share assistance for environmental conservation infrastructure.

Soil Conservation Districts (SCDs) provide guidance, technical support, and help in navigating funding application processes and permitting requirements.

- L. Resource Concerns and Resource Concerns Checklist: No NOI should be approved until regulatory staff determine if the resource concerns have been thoroughly explained and identified on the implementation schedule. The resource concerns checklist and the review by MDE staff should be posted on MDE's website along with each NOI. This would guarantee the public an opportunity to provide localized knowledge of environmental conditions. The AFO Resource Concerns Evaluation Worksheet should be changed and not use terms such as "resource concerns", "environmental evaluation", & "environmental assessment", since those terms have other specific definitions."**

MDE will not issue a permit if the Required Plan does not have an evaluation of the resource concerns. Any resource concerns listed on the "resource concerns evaluation worksheet" should be addressed on the Implementation schedule in the "Implementation Schedule" accompanied by a completion date. If there are items on the "Implementation Schedule" that have passed their due date, MDE will request that the resource concern be addressed or a new completion date be provided. The public has an opportunity to identify any additional resource concerns for each facility prior to the issuance of the permit during the 30-day public review period. MDE may consider a broader title for the AFO Resource Concerns Evaluation Worksheet. If there are any additional questions regarding the terminology, the public is welcomed to contact the CAFO Program.

- M. Definitions of terms: Clarify Terms: "Dry Weather" "Winter Land Application" (why not just prohibit application during winter months?), "Notify MDE" (phone/or form?). Define "drawdown of liquid storage facility during frozen conditions"; Eliminate discretionary terms like "May"; Difference between: "MD NRCS guidelines vs NRCS guidelines"; "confined" and "concentrated" AFOs; "Wastewater and "Process Water";PartIV.A.f (p.16) and Table 3.e-(p.18):This record keeping should not be above and beyond any records that are required by the Maryland Nutrient Management Regulations. This is burdensome for the grower and for MDE when a sister agency already has regulations in place.**

MDE's position is that "frozen ground" definition and "winter application" requirements are clear. It is specific as to the depths at which soil must be frozen to be considered frozen ground. The General Permit prohibits land application of animal waste on frozen or snow-covered ground, except with written permission by MDE in the case of imminent storage failures or other dire emergencies. It is MDE's position that this prohibition is adequately protective of the environment. MDE wants to evaluate situations on a case-by-case basis and retain its discretionary authority. If an operator has any uncertainty regarding any MDE requirements the Department encourages them to reach out to MDE, MDA, NRCS or SCD. In the event of a transfer, owners or operators are required to notify MDE using the "transfer notification form". Notification of a significant modification requires an update to those portions of the required plan that have changed such as a revised implementation schedule, additional: land application areas/crops/ or application

amounts in the NMP. Notification of address changes can be sent in writing by mail or email. "Notification" of non-compliance such as a discharge of manure, litter, process wastewater, or other pollutants to surface or ground waters of the State is required shall be reported to MDE by telephone, within 24 hours of discovery at (410) 537-3314 and within 5 calendar days, the permittee shall also provide MDE in writing by mail or email a follow-up plan to deal with the noncompliance as is detailed in the permit. MDE wants to evaluate situations on a case-by-case basis and retain its discretionary authority.

MDE is tasked with evaluating the effectiveness of the Required Plan, including the NMP, to protect against nutrient over-application. To determine the accuracy of the NMP, MDE must evaluate whether the manure and soil samples correspond with the specific farm and dates covered in the Nutrient Management Plan. This evaluation must use an approved manure and soil testing methodology consistent with Maryland regulations and assess the specific amounts of Nitrogen (N) and Phosphorus (P) applied to fields based on crop fertility recommendations. The amount of organic and commercial nutrients recommended for each field should be clearly identified. Without this information MDE has no means to check the NMP for accuracy.

- N. AIR Clarification: How is required info in the AIR calculated such as "maximum animal numbers" and "amount of manure onsite". There should be a narrative to explain the required AIR info.**

The AIR form has an instruction sheet that provides detailed info on what is required on the form. MDA is responsible for the AIR forms.

- O. Record Keeping: How are record keeping requirements disseminated to farmers? Records for the import of manure, litter, and process wastewater should be included in the record keeping requirements (Table 3: Self - Inspection and Recordkeeping Requirements for Land Operations on page 18 and 19 of 38 and Table 4: Self - Inspection and Recordkeeping Requirements for No - Land Operations on pages 20 and 21 of 38).**

The Recordkeeping requirements for CAFO operations are identified in the permit: (Table 3: Self - Inspection and Recordkeeping Requirements for Land Operations and Table 4: Self - Inspection and Recordkeeping Requirements for No - Land Operations) and blank forms are included in the Required Plans. There are no anticipated changes. Compliance inspectors explain record keeping procedures at each visit and provide a copy of these forms to the farmer. The record keeping forms are also available on MDE's website.

- P. Setback Restrictions: Have a recommended setback for the vegetative filter strip; Does the 200 ft property line setback still hold if the neighboring property has the same owner? Must EXISTING roads be modified to meet the 50-foot-wide requirement? Permit doesn't address setbacks from facility wells-only domestic wells in the new source guide.**

CAFO are required to have a setback of at least 100 feet from surface waters of the State, as well as field ditches, other conduits, intermittent streams, drinking water wells and property lines, shall be maintained; or an approved alternative. MAFO: A vegetated filter strip at least 10 feet wide along field ditches and in the final 35 feet of the field ditches adjoining the receiving waters or the operation boundary, whichever occurs first; and a 35-foot vegetated filter strip or a 50-foot setback from all other surface waters of the State. The recommended setbacks must be maintained even if the neighboring property is under the same ownership. This would present a problem if the adjacent property were to be sold at a future date. The 50-foot-wide requirements for roads apply to "new" or "expanding" CAFO operations built subsequent to April 2003. (new source language)- All entry drives will be a minimum of 50 ft wide at the roadway narrowing to a 12 ft minimum lane width unless restricted by a local or state governing jurisdiction. Aggregate will be used to stabilize the entrance for a minimum length of 50 feet.

Q. Reference Manuals/ MD NRCS vs NRCS guidelines: Growers should be able to use NRCS standards in general and not be limited to MD NRCS. Why are outdated sources referenced such as an earlier version of MD Nutrient Management manual, the NRCS National Planning Procedures Handbook (NPPH) Part 600.60.A (1) Component Technical Guidance Subpart G Amendment 6, November 2014?

The MD NRCS guidelines are state specific to Maryland. MDE recommends that farmers consult with either MDA, MD NRCS or the Soil Conservation Service (SCS) to make sure they are in compliance with approved standards. When the Maryland Nutrient Management Manual is being referenced the latest version is implied. This is important because there are some NRCS practice standards that are not approved to be used in Maryland.

R. Out of state farms: "Part 1. A.10" requires a farm outside of Maryland to obtain a permit if the production area, land application area or animal manure storage area is located within Maryland. Can MD prohibit an out of state facility to land apply in MD without a permit? How can the public identify and report this? Should out-of-state facilities be handled by an individual permit?

A CAFO located outside of Maryland may be designated a CAFO and subject to the General Permit if animal waste or any other part of its production area or land application area is in Maryland. This is consistent with EPA's regulations under 40 CFR 122.23(c)(1)-(2)) and COMAR 26.08.03.09(D). The primary concern for a state program when determining the appropriateness of a CAFO designation is whether there are pollutants being discharged into waters of the United States. EPA retains the authority to designate CAFOs even within a state with an approved program, such as Maryland, if EPA determines that pollutant discharges are contributing to an impairment downstream in an adjacent state jurisdiction (40 CFR 122.23(c)(1)(i)). Considering the federal regulation focus on the location of pollutant discharges

relating to the operation of a CAFO, it would seem reasonable that MDE, as an EPA-approved program with delegating federal permitting authority, would also be able to regulate pollutant discharges affecting its jurisdictional waters. If an out-of-state facility does not have a permit, it can be prevented from land applying. The public can report to MDE any illegal activity that may be suspected.

S. Required Plan Components: Why are conservation plans identified separately from the CNMP? This creates unnecessary confusion.

The Required Plan is divided into 3 parts: the Nutrient Management Plan (NMP); the Conservation Plan formerly known as the "Soil and Water Conservation Plan"; and the Conservation Nutrient Management Plan (CNMP) which addresses the nine minimum measures. The Conservation Plan and CNMP are NOT interchangeable. COMAR 26.08.01.B.(13-1) defines CNMP as a "nutrient management and conservation plan that is developed in accordance with the NRCS planning policy and meets NRCS technical standards." COMAR 26.08.04.09N(3)(b) defines "Plan" or "required plan" as a CNMP, NMP, or conservation plan.

T. Potholes: Part IV. A.b. vii Is there an NRCS practice to address potholes? Potholes are routine after heavy rainfall and are not indicative of poor management on the part of the grower.

NRCS Practice code #654 addresses Road/Trail/Landings "The closure, decommissioning, or abandonment of roads, trails, and/or landings and associated treatment to achieve conservation objectives." This BMP acknowledges that improper road maintenance is associated with erosion and sediment-attached nutrient, bacterial and pathogen related delivery to surface water. MDE understands that potholes may occur after heavy rain, but they should be addressed immediately.

U. "Site" and "Other Pollutants" and "Outcropping: "Part II.FF. The proposed definition of "site" is ambiguous and unnecessarily expansive, including adjacent lands "used in connection with the facility or activity." This language could subject unrelated parcels to regulatory oversight without clear standards; Limit the scope of the term site to the actual production area as defined in federal and state regulations. Part VE. (page 30) Eliminate the term "other pollutants; p. 6-[IV.A.4] consider defining "outcropping"

The term "site" is clearly defined, and it is MDE's determination that there is no confusion created by defining this term. The General Permit also references the "site" several times.

MDE defends its use of the term " other " pollutants to protect its right to address pollutants that may pose a threat to public health and/or natural resources at a future time.

The term outcrop is clear and there is no need to further define. If there is still confusion on the term outcrop or outcropping, MDE can develop guidance providing further explanation.

V. "Public Health and Safety": Part VII.M.5.g MDE doesn't have the authority to determine public health or public safety concerns.

MDE does have the authority to protect public health and safety as it relates to contamination of a natural resource such as water.

W. WINTER APPLICATION: Under Part IV. winter application requirements: how often is there an imminent storage failure and what is done during compliance inspections or permitting to identify this ahead of time to make sure the storage facility is properly designed? There should be sufficient free boarding to prevent this. What other dire emergencies would qualify to allow the application of manure on frozen ground? Is there a restriction on the amount of manure that can be applied on frozen ground?

MDE will evaluate requests for permission to apply animal waste on frozen ground due to imminent storage failure or other dire emergency on a case-by-case basis. Further definition of these terms would limit MDE's ability to address case-specific situations. This approach is consistent with MDA guidance on nutrient application, which states that "[a]pplications required in emergency situations such as imminent overflow of a storage facility shall be managed in consultation with the Maryland Department of Agriculture. Operators in such situations shall contact the MDA regional nutrient management representative for guidance." (MDA, Nutrient Management Manual, Nutrient Application Requirements, Section III.D.3.vi.)

Therefore, no change to the General Permit is needed. In situations where there is an imminent storage failure, MDE would also like to conduct a follow up inspection to assess how such a situation occurred. If there were no recent 25-year/24-hour storm events, and normal drawdown procedures were followed, this may suggest that the facility has inadequate storage. After a full investigation, MDE may require additional manure storage to be added to the facility.

X. "Confined vs Concentrated"

"Confined" is a necessary component for determining whether a lot or facility constitutes an "AFO" under the CWA and Maryland law. For example, Part II.A of the General Permit defines "AFO" to mean "a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (1) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 calendar days or more in any 12-month period (if the animal is confined for any portion of the day, it is considered to be on the facility for a full day and the 45 days do not have to be consecutive nor the same animals

confined in any 12-month period), and (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.”

A "concentrated" AFO (otherwise known as a "CAFO") is a type of AFO that meets certain statutory criteria that requires it to obtain coverage under an NPDES discharge permit before operating. For example, Part II.F of the General Permit defines "CAFO" to mean an AFO that is designated as a CAFO in accordance with Part I.A, Sections 1 through 4, I.A.9 and I.A.10 of this General Permit.

- Y. MDE New Source: p. 1- "(A.1) [Applicability]; remove "hay " replace with: For certain operations that have pasture fields during the winter months and only confine animals during times when the pastures cannot be grazed, three months may... p. 1- "(A.3) [Applicability]; With the shortage of oyster shells due to bar restoration, remove reference to "oyster shells" and replace with "other suitable material". p. 1- "(A.4) [BMPs]; reword "on both" to "at entrances to both...p. 1- "(A.4) [BMPs]; reword "both the houses and manure storage sheds" to "both livestock or poultry housing and manure storage sheds. p. 2- "(B.3) [BMPs]; revise verbiage: "Vegetative buffers for filtering storm runoff between roofed waste storage...p. 2- "(B.3) [Standard]; Filter Strip is not to be used to treat wastewater. Include 342 Critical Area Planting for conditions where the criteria of the std. such as sheet flow entering strip and slope of contributing drainage area. (Filter strips are often an edge of field practice). p. 3- " (B.5) [BMPs]; "reduce nutrients and sediments" is not the purpose of NRCS practice 587 except where it can "Supplement a resource management system on land where organic waste or commercial fertilizer is applied." It is not the primary practice to reduce nutrients in ditches. It might be used for silt management and trapping. p. 3- "(B.7) See comment above. The Structure for Water Control could be a component of a resource management system such as a treatment wetland. p. 3- "(B.7 + others) NRCS Constructed Wetland (Code 656) is defined as "An artificial wetland ecosystem with hydrophytic vegetation for biological treatment of water." and one of the purposes is where "Water quality improvement is necessary for agricultural stormwater runoff, existing tile drainage outflow, greenhouse wastewater, or other water flows. p. 3- "(B.8) Could include but not limit to Roof Runoff Structure Code 558) in Technical Standard column. p. 3- "(B.10) establishes 2yr/24hr runoff containment for contaminated stormwater from production area. Contrary to 'zero' discharge. Clarify p. 3- "(B.7) See comment above. The Structure for Water Control could be a component of a resource management system i.e.: Wetland. p. 3- "(B.7 + others) NRCS Constructed Wetland (Code 656) is defined as "An artificial wetland ecosystem with hydrophytic vegetation for biological treatment of water." and the purpose is "Water quality improvement is necessary for agricultural storm water runoff, existing tile drainage outflow, greenhouse wastewater, or other waterflows. p. 3- "(B.8) Could include, but not limit to Roof Runoff Structure Code 558) in Technical Standard column. p. 3- "(B.10)**

**establishes 2yr/24hr runoff containment for contaminated stormwater from production area. This is contrary to 'zero' discharge. Clarity is needed on p. 4-
"(C.1) [Setbacks] reword: "All new houses, storage sheds and composters..."**

MDE is seeking comments on the draft General Permit. These comments relate to the reference document, MDE New Source Performance Design Criteria for AFO Operations, and do not relate to the permit language directly. MDE will consider your requests for clarification on future documents.