



CHESAPEAKE BAY FOUNDATION

*Environmental Protection and Restoration
Environmental Education*

Senate Bill 1074

Agriculture - Food Processing Residuals Utilization Permit – Establishment

Date: March 27, 2024

To: Environment & Transportation Committee

Position:

From:

Favorable With Amendment

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Chesapeake Bay Foundation (CBF) **SUPPORTS SB 1074 WITH AMENDMENT**. The bill prohibits the storage, hauling, and utilization of food processing residual (FPR) material without a permit issued by the Department of Agriculture (MDA). FPR is an industrially-derived sludge consisting of organic material left over from various industrial protein rendering processes, including dissolved air flotation (DAF).

FPR material has been utilized by farmers in Maryland as a soil amendment for many years. However, as the volume of material generated throughout the region has recently increased and neighboring states have adopted more comprehensive regulations, the overapplication and mishandling of industrial sludge has become a community nuisance and water quality concern.

Maryland has become a dumping ground for FPR industrial sludge. The University of Maryland estimates that in 2019 and 2020, 93.9 million gallons of FPRs were imported into Maryland, containing 4.78 million pounds of nitrogen and 1.75 million pounds of phosphorus.¹ In those years respectively, 50% and ≥62% of the FPRs applied to Maryland farms was generated in other states. In other words, more than half of the region's industrial sludge was recently applied to Maryland farms. One company estimates that approximately 85% of the FPRs applied to Maryland farms in 2019 came from out of state sources.

This is due to a lack of Maryland state oversight and regulation, which incentivizes producers from across the region to ship their FPR sludge to Maryland. While Virginia and Delaware require a permit to handle and utilize FPR sludge, Maryland does not. MDA issued only \$3,100 in fines for Nutrient Management Plan noncompliance in FY22, deterring few operators from mishandling sludge. Reporting is not required to identify which registered FPR products are transported or where they're from.

Farmers and environmentalists fought for years over how best to reduce water quality impacts from the excessive use of poultry litter on farms, eventually agreeing to a major overhaul to how Maryland regulates phosphorus in farm nutrient management plans. That progress is now being reversed by the unregulated waste disposal that again puts farms, rivers, and the Bay at risk.

In Maryland, FPR sludge generators need a discharge permit from the Maryland Department of the Environment (MDE) that regulates their wastewater treatment process. When FPR sludge gets applied to

¹ <https://extension.umd.edu/resource/animal-waste-technology-fund-assessment-report/>

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farmland, MDA – which allows the application of FPRs as a soil amendment for crops – is responsible for oversight. But there is little transparency around where it goes and what is in the FPR sludge when it is spread on land. The composition of sludge is currently analyzed by the State Chemist only once a year, from samples drawn by the FPR-producing facilities. Once the sludge material is put into trucks and sent away, there is no system that ensures safe handling.

Done properly, sludge would be applied to land only in certain quantities and during certain times of the year (for example, not during winter when dormant plants don't absorb nutrients) and quickly incorporated into soil to prevent odors and nutrient runoff into nearby waterways. Unfortunately, CBF and our partners have heard stories from across Maryland where some bad actors are applying FPR material at times and in quantities that are inconsistent with a legitimate agricultural use. In short, they are using the land for disposal, not for farming.

Handlers are also building places to store FPRs – often in giant open tanks and pits where permitting and regulatory oversight is unclear. In some counties, local officials have not been notified that FPR material was to be stored where it could be a hazard until it was too late. These sludge storage facilities harm surrounding communities and environments and potentially circumvent local land use authority. Runoff from tank spills and leaks pollutes waterways, and the stench is so foul it is becoming a public health concern.

In total, SB 1074 creates a robust regulatory regime for FPR sludge that will ensure responsible farmers are able to use the material in a manner that minimizes community nuisance, increases compliance with existing nutrient management regulations, and gives regulators the tools they need to crack down on bad actors. The bill establishes a permitting program for those who haul, store, and apply industrial sludge to land, putting Maryland on par with neighboring states that administer similar programs and closing a significant loophole that allows Maryland waters to be harmed.

CBF requests that the committee amend SB 1074 to restore language on page 8, lines 15-23 of the bill that would prohibit MDA from issuing a permit if, in the department's judgment, a permittee cannot utilize FPR sludge without causing an undue risk to the environment, or the health, safety, or welfare of the general public.² This provision gives the department authority to protect the natural environment and surrounding community from clearly foreseeable harms. Applicants who feel they are unfairly or improperly denied a permit under this provision have well-established rights and processes to appeal MDA's decision. By contrast, language adopted by the Senate would only give MDA authority to deny a permit when an applicant is the subject of an active, unresolved investigation or enforcement action by MDE and MDA for contamination of surface water, groundwater, or soil. In short, MDA is prohibited from issuing a permit *only if* an applicant is currently or has very recently been found to have improperly polluted.

CBF urges the Committee's FAVORABLE report WITH AMENDMENTS on SB 1074. For more information, please contact Matt Stegman, Maryland Staff Attorney, at mstegman@cbf.org.

² While risks to the "health, safety, or welfare" of the public are not specifically defined in the bill it is not an unusual or misunderstood concept and the phrase is common throughout Maryland code and case law, especially as related to permitting programs.