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Date: March 6, 2024
To: Members of the House Committee on Environment and Transportation
From: Holly Porter, Executive Director
Re: HB 1404 – Storage of Dissolved Air Flotation By-Products – Local Authority – Letter of Information

Delmarva Chicken Association (DCA) is the 1,600-member trade association representing the meat-chicken growers, processing companies, and allied business members on the Eastern Shore of Maryland, the Eastern Shore of Virginia, and Delaware. We would like to submit this letter of information regarding the production and use of dissolved air flotation residuals (DAF) as well as the existing authority of local legislative bodies to regulate its storage.

Dissolved Air Flotation residuals (DAF) are produced when wastewater comes from a processing or rendering plant and is put into a DAF unit tank, where it is injected with dissolved air, causing solids to bind and float to the top of the tank. From there the solids are skimmed from the top, and the remaining wastewater discharges to a treatment plant or to an on-site biological treatment plant. From there, DAF residuals can either go directly to a landfill, or to a third-party hauler for land application on farm fields.

Maryland farmers have found that this material is a cost-effective alternative to commercial fertilizer. DAF residuals are tested and regulated as a registered soil amendment with the state chemist. It has a lower nutrient content than both commercial fertilizer and chicken litter (manure) and must be applied according to a farmer's nutrient management plan submitted, approved, and verified by the Maryland Department of Agriculture through the Annual Implementation Report (AIR).

DAF residuals exist because we have succeeded, as an industry and as a state, in dramatically reducing point-source pollution into waterways. A few decades ago, the nutrients in DAF residuals would likely have flowed directly into waterways through process waste discharges. Going back to a time where we didn't have DAF would be a regression; however, matter eliminated from point source discharges doesn't disappear once it is collected.

Most of the recent controversy surrounding DAF has been associated with its storage. Storage of the material (instead of direct land application) is necessary due to best management practices and regulations preventing its application to farm fields during the winter. Because DAF material is produced year-round but can only be applied for a portion of the year, temporary storage is the only option. The ban on winter application is one of the many farm practices that have concretely reduced nutrient contributions to the Chesapeake Bay watershed from agricultural activities. In short, this legislation is attempting to address issues associated with prior measures taken to protect water quality. We are solving third-order challenges when it comes to DAF residuals because we were successful in solving first and second-order challenges previously, and the Bay is better protected as a result.



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The industry recognizes that there are certain issues associated with DAF, particularly the smell. Industry partners are addressing these issues through research on coverings, chemical additives, and misting. We believe that the long-term solution to this issue will be the widespread implementation and use of various new technologies, including anaerobic digestion, whereby DAF residuals are mixed with organic matter and converted into clean, renewable natural gas. While we know these technologies are coming, it may take several years before they are widely adopted. However, it is worth noting that between 60 and 70 farmers across Maryland have applied (and some stored) for numerous years DAF residuals with no complaints from surrounding neighbors, county governments, or state agencies. The local issues that have arisen in recent months stem from a small handful of bad actors who have failed to implement good neighbor practices.

Again, while we recognize some of the issues associated with DAF and its storage, in our minds, this legislation effectively does nothing except reiterate the planning and zoning authority already granted to county and municipal governments. Recently some local governments have erroneously claimed that they lack this authority or that state law preempts them from zoning DAF storage. In fact, in 2022 Wicomico County enacted zoning ordinances which limited future construction of DAF storage. Although we were opposed to this legislation, we worked closely with the county in the drafting, and there was no state or federal law preventing the county from enacting the legislation. Other elected officials have claimed that Right to Farm laws in Maryland preclude them from enacting such ordinances. Again, this is an incorrect interpretation of this law and one based on arguments that a blanket long-term ban (rather than through proper planning and zoning) enacted by Caroline County may be violating the Right to Farm law. Finally, some local elected officials have said they fear being sued if they zone these structures in such a way that would limit future storage, citing a case brought against the Wicomico County Council. This is based on misunderstanding and misinterpretation. The Wicomico County Council was sued by a citizens group appealing the permit that was issued by the County. They were never sued by any farmer or other party.

Again, there is nothing currently precluding county or municipal governments from using their planning and zoning authority to regulate the storage of DAF in their jurisdictions. Planning and zoning has always been at the discretion of the local authority for most things related to agriculture, including for DAF storage tanks. While we believe that HB 1074 and SB 991 will largely address the concerns created by bad actors, local authorities have been and will always be able to enact zoning laws which they deem necessary to address issues concerning the local citizens. We have not only encouraged Caroline County to do so but have offered several times to help in the drafting of the local laws, instead of creating duplicative and unnecessary state legislation.

Should you have any additional questions, please feel free to contact me at porter@dcachicken.com or 302-222-4069 or Grayson Middleton, Government Affairs Manager at middleton@dcachicken.com or 410-490-3329.

Sincerely,

Holly Porter