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Date: February 10, 2026
To: Members of the Senate Committee on Education, Energy, and the Environment
From: Grayson Middleton, Government Affairs Manager
Re: SB 371 – CAFO Permitting Alterations – **Support**

Delmarva Chicken Association (DCA) is the trade association representing the meat-chicken growers, companies, and allied business members on the Eastern Shore of Maryland, Delaware, and the Eastern Shore of Virginia. Collectively, we contribute more than \$5.4 billion to Maryland’s economy and pay more than \$254 million in state and local taxes. SB 371 is a simple solution to a regulatory defect. It will allow for continuity of business for farmers and protect them from financial harm due to administrative oversights that are no fault of their own. As such, we strongly support SB 371 and urge a favorable committee report.

Background

Almost every chicken farm in Maryland is required to obtain coverage under a Concentrated Animal Feeding Operation (CAFO) permit. We often refer to the CAFO permit as a “non-discharge discharge permit” because the law stipulates that to receive coverage, a chicken farm must be designed, constructed, operated, and maintained such that a discharge of manure, litter, or process wastewater will not occur to the surface water of the state. To ensure these standards are met, [MDE reviews practically every aspect of the site plan](#) under the Notice of Intent (NOI) submission.

This single National Pollutant Discharge Elimination System (NPDES) general discharge permit is delegated to MDE by the EPA and expires every five years, whereupon a renegotiated permit is meant to take effect. In July 2025, the 2019 CAFO permit expired. Inexplicably, MDE did not submit a new permit for review until the end of August. Only then did the negotiation process begin, and MDE is still in the process of responding to public comment. Meaning, farmers across the state still don’t have a renewed CAFO permit.

Fortunately, we worked with MDE to find a mechanism for continued coverage for current permit holders under an administrative extension. However, MDE has taken the position that it lacks the authority to issue new permits under the extension. Furthermore, tucked in the [Environment Article \(§9–323\)](#) is a 2019 amendment that prohibits the construction of any part of a farm before the issuance of a CAFO permit. This includes any stormwater management requirements or construction of chicken houses. It also prohibits MDE from permitting a farm if any construction has begun. Notably, of the 16 NPDES permits administered by MDE, this is the only such precondition.

The effect of this law and MDE’s interpretation of its permitting authority has been such that farmers (many of them new and beginning) wanting to start operations have been unable to break ground or even obtain financing for their chicken houses. Given that we haven’t had a renewed permit since July, we estimate that [approximately \\$35 million in construction projects have been stalled](#). This negative economic impact does not account for the incalculable losses of on-farm income, real estate transfers,



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banking fees, equipment and feed sales, and resulting government revenue. In addition, because MDE has been unable to issue new permits for the last five months, there will likely be a substantial backlog to address once the permit is renewed. This means that a farmer wanting to start an operation back in the summer will likely have had to wait well over a year to start the process, accounting for the permitting backlog, loan process, construction, and integrator contracting. This has been, in effect, an unlegislated moratorium on new CAFO permits in Maryland.

To be clear, this backlog does not represent a proliferation of production on the Eastern Shore. Rather, it is part of the natural cycle of attrition and replacement of chicken houses. As older houses age, they eventually fall out of use. This gap is replaced with farms that have modern, more efficient, and more environmentally friendly houses. Poultry production on the Eastern Shore is limited by the processing capacity of our plants. For some time, those plants have been operating at or near capacity. The prohibitive regulatory climate makes an expansion of production capacity unforeseeable. As such, total chicken production on the Eastern Shore has been virtually static for more than a decade. In short, a widespread proliferation of chicken farming is impossible.

Legislative Intent and Effect

The intent of the legislation is to allow for CAFO construction and financing should the permit once again expire without a renewed permit in effect. This would make it so that during the interim, prospective growers can build their operation and be prepared to receive birds once they've been permitted. If this law is passed before the adoption of the permit, it would bring immediate relief to area farmers by allowing them to begin the process. To be clear, these farms would not be operational until they are fully permitted by MDE. No birds would be placed in the chicken house until they receive full coverage. Therefore, this legislation would have no impact on the permitting process or water quality.

MDE has expressed frustration that this law (§9-323) has restricted its administrative discretion. To ensure that chicken houses are sited and built in a manner that will meet all permitting requirements, they have agreed to allow for a tentative review, using the Notice of Intent (NOI), which is required on the part of the grower early in the permitting process. In fact, we would insist upon some sort of preliminary review, as we do not want our growers to build houses that cannot be permitted and therefore won't cash flow.

Opponents have erroneously claimed that this legislation would set a dangerous precedent by exempting the CAFO permit from the standards applied to all other general permits. In fact, as far as we can tell, the CAFO permit is the *only* NPDES general discharge permit with a "no-build" provision listed explicitly in statute. That law was passed in 2019; the same year the current CAFO permit was adopted. This can hardly be considered precedent. Furthermore, the long history of the CAFO permit before this law was passed does not support any of the concerns raised by these groups regarding public input, implications for other permits, or water quality. The Environment Article indeed provides that a person must have a general discharge permit before they construct an operation that could cause or increase discharge into the waters of the state. However, as previously stated, the CAFO permit explicitly



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prohibits “discharge of pollutants, including manure, litter, or process wastewater to surface waters of the State from CAFO production.” This is, presumably, why proponents saw it necessary to explicitly list *only* CAFOs in that article.

Opponents have also said that the legislation does not address the “real” issue at hand, which is administrative accountability for MDE. We agree that more accountability is needed, and would welcome amendments that provide for that. However, as they have repeated many times, history has shown that agencies often miss statutory deadlines and that there is little accountability when that happens. While we are confident that the current team at MDE will not allow this oversight to occur again, we also know that administrations and personnel change. We hope that this change in statute will never have a practical application, because we hope that in the future there will always be an available permit. However, in light of recent events, we must have assurance that should another administrative error occur, continuity of business for our farmers will not be affected. We cannot afford this to happen again.

SB 371 is very narrow in scope. It simply gives MDE the discretion they need to allow for continuity of business in a very specific set of circumstances. It does not impact water quality. It does not impact public input. And it does not impact the fundamental environmental protection requirements of chicken farming or MDE’s oversight. It will simply allow farmers across Maryland to begin the process of starting an operation, unhindered by administrative errors. Never again should farmers suffer due to oversights that are no fault of their own. This bill will provide that critical assurance. As such, we strongly recommend a **favorable** committee report.

Should you have any additional questions, please do not hesitate to contact me at middleton@dcachicken.com or 410-490-3329.

Sincerely,

Grayson S. Middleton
Government Affairs Manager