



Maryland

Department of the Environment

Larry Hogan
Governor

Boyd Rutherford
Lieutenant Governor

Ben Grumbles
Secretary

February 19, 2020

The Honorable Paul G. Pinsky, Chair
Education, Health and Environmental Affairs Committee
Senate Office Building, Suite 2W
Annapolis, MD 21401

Re: Senate Bill 928 – Environment – Concentrated Animal Feeding Operation Construction or Expansion – Manure Transport Plan Requirement

Dear Chair Pinsky and Members of the Committee:

The Maryland Department of the Environment (the Department or MDE) has reviewed Senate Bill 928 entitled *Concentrated Animal Feeding Operation Construction or Expansion – Manure Transport Plan Requirement*. We would like to express our concerns and provide additional information regarding the bill.

Beginning October 1, 2020, MDE would be prohibited from approving discharge permit coverage for the construction of a new concentrated animal feeding operation (CAFO) or the expansion of an existing CAFO in a county where more than 30% of acres tested under the Phosphorus Management Tool (PMT) have a phosphorus fertility index value (FIV) of 150 or more, unless the permit applicant submits to MDE as part of the permit application, a plan to transport all manure generated by the CAFO (1) into a county where less than 30% of acres tested under the PMT have a phosphorus fertility index value of 150 or more; or (2) to an organics recycling facility. MDE is required to incorporate the terms of a manure transport plan into the discharge permit and make compliance with this plan a condition of discharge permit coverage. MDE is further required to monitor a CAFO's implementation of the manure transport plan to ensure compliance and suspend for at least one year the discharge permit coverage of a CAFO that fails to comply with a manure transport plan.

In addition to discharge permit record keeping and other reporting requirements, a CAFO is required to annually submit to both MDE and the Maryland Department of Agriculture (MDA) a nutrient management annual implementation report (AIR) that provides certain information regarding facility operations including animal numbers, nutrient sources utilized, manure and organics generation and storage, field specific nutrient land application, and the origin, destination, and tonnage of all imported and exported manure and other nutrients or organics. The currently required information regarding manure and other organic materials that have been imported, exported or land-applied will enhance compliance with Maryland's Phosphorus Management Tool (PMT) regulations and contribute to water quality improvement.

The PMT regulations, which were developed with substantial stakeholder input, provide a multi-year phased or tiered process for land-applying CAFOs having farm field soils with high phosphorus levels; and farms with a FIV of 500 or higher have been prohibited from receiving additional phosphorus applications since 2015. The tier group designation for phosphorus ranges high (FIV 450-499), medium (300-449), and low risk (FIV 150-299), determines the length of time for a land-applying CAFO to transition from the Phosphorus Site Index to the PMT. Senate Bill 928 is inconsistent with the PMT's field specific phased approach as the bill has a more broad county-wide application based on the lowest end of the low risk group FIV of 150.

While the bill does not specify the information that a new or expanding CAFO in a county where more than

30% of the acres tested under the PMT have a phosphorus FIV of 150 or more must include in the manure transport plan that would be submitted to MDE as part of a discharge permit application, CAFOs are currently required to provide to MDE and MDA through nutrient management plans (NMPs) and AIRs, the origin, destination, and tonnage of all imported and exported manure and other nutrients or organics. The NMP and AIR would also document whether a CAFO transports manure produced by the CAFO to an organics recycling facility; and the tonnage of manure transported to such a facility. Moreover, MDE is already able to monitor under a discharge permit, a CAFO's compliance with all requirements of the nutrient management plan (NMP) and verify information reported by a CAFO in the AIR.

Senate Bill 928 requires MDE to incorporate the terms of a manure transport plan into a CAFO's discharge permit and make compliance with the plan a condition of discharge permit coverage. Animal feeding operations (AFOs), which include CAFOs and Maryland Animal Feeding Operations (MAFOs), are a category or class of dischargers with similar operational qualities within the State, therefore MDE regulates AFOs under a general discharge permit with common terms and conditions. All CAFOs must submit to MDE a required plan, which includes a nutrient management plan, as a condition for discharge permit coverage. Once approved, required plans are incorporated into and become enforceable as permit terms. Any information set forth in a manure transport plan would likely already be included in an enforceable CAFO required plan; and if not MDE could request such information.

The general discharge permit has a 5-year term and is issued under Maryland's water pollution control and the federal Clean Water Act National Pollutant Discharge Elimination System (NPDES) authorities. The 2014 general discharge permit for AFOs expired on November 30, 2019. The United States Environmental Protection Agency (EPA) has already approved MDE's 2020 draft AFO general discharge permit and the public participation process has concluded. MDE will issue the 2020 AFO general discharge permit before October 1, 2020. Under the bill, MDE would have to modify the 2020 AFO general discharge permit to include the manure transport plan required by the bill, obtain EPA's approval for the permit modification, and if manure transport plan inclusion is a major modification, MDE must undertake another public participation process. This would delay discharge permit coverage for new and expanding CAFOs that do not land-apply and would not be subject to Senate Bill 928 requirements.

Finally, under Senate Bill 928, MDE must suspend a CAFO's discharge permit coverage for at least one year if the CAFO fails to transport manure in accordance with the CAFO's manure transport plan. MDE's suspension of CAFO discharge permit coverage for one year or more would effectively put the CAFO out of business; and substantially disrupt the contractual relationship between the CAFO operator and the CAFO's integrator.

Thank you for your consideration. We will continue to monitor Senate Bill 928 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at tyler.abbott@maryland.gov.

Sincerely,



Tyler Abbott

cc: Ms. Kaley Laleker, Director, Land and Materials Administration