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Date: February 19, 2024
To: Members of the House Committee on Environment and Transportation
From: Holly Porter, Executive Director
Re: HB 24 – Impact of Environmental Permits on State Agency Actions - **Oppose**

Delmarva Chicken Association (DCA) 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 opposes HB 24 as written.

Among other things, HB 24 would require MDE to conduct a climate and environmental equity evaluation regarding the impact of issuing an approval for certain environmental permits. Furthermore, the department would have the ability to impose conditions, alter, or deny a permit based on their evaluations of real or potential environmental justice concerns.

As a matter of policy, DCA explicitly supports environmental justice initiatives in both our legislative policy document and our 2024 legislative priorities, both approved by the DCA Board of Directors. However, we believe these initiatives should be balanced with the economic interests of farmers and the communities that surround them. After all, Delmarva chicken growers are 23% minority, compared with 4.5% of all farmers nationally. This rate tends to be even higher in those areas on Maryland's Eastern Shore where the Environmental Justice score would be above the 75th percentile statewide. We want to avoid a situation where an environmental justice policy harms the economic well-being of those it's meant to protect.

We have several concerns about this legislation, including the lack of guidance for the department in their evaluation of permits. However, our main concern is how this legislation would be applied to general permits, namely the Concentrated Animal Feeding Operation (CAFO) general permit.

Pursuant to Section 402 of the Clean Water Act, 33 USC § 1342, the Maryland Department of the Environment has the delegated authority from the EPA to administer National Pollutant Discharge Elimination System (NPDES) permits. Under the Clean Water Act, MDE may issue general permits to regulate facilities which have similar discharges and are subject to the same conditions and limitations within a specified geographic area. MDE has determined that this is the best course of action for CAFOs, and therefore under Code of Maryland Regulations (COMAR) 26.08.03.09, one general permit covers nearly all chicken farms in the state, regardless of geographic location within the state or the socioeconomic status of the communities surrounding them.

We should also note that current regulations recognize that there is no discharge from chicken houses and is therefore informally known as a "non-discharge discharge permit." This is because each applicant must adhere to the nine minimum standards to protect water quality, which if adhered to, do not allow for discharge. These standards cannot be altered on a farm-by-farm basis.

Given that technically one general permit is issued to all chicken farms in Maryland, and that the EPA and other bodies have recognized that there is no discharge from these facilities, we believe that CAFO



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and perhaps all other general permits are unsuitable for evaluation by a state agency on an individual basis as outlined in this legislation. Not only is it incongruent with the current permitting structure, but it is also unfair to include them with other discharge permits in this legislation since there is no discharge from these facilities.

Both MDE and the sponsors of this legislation have been very receptive to our concerns regarding the inclusion of the CAFO and other general permits. We hope that this legislation will be amended so as not to upend or overcomplicate the current permitting structure. DCA recognizes that there are still concerns about how agricultural activities can affect underserved and overburdened communities, and we want to continue being a part of that conversation with the sponsors and relevant agencies. However, we believe that the current language are unworkable under the current permitting structure administered by MDE and delegated by the EPA.

For these reasons we urge the bill be amended to exclude the CAFO general permit.

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

Sincerely,

Holly Porter
Executive Director