



Support for House Bill 991

Dear Chairman Korman and Members of the Committee:

The Chesapeake Legal Alliance supports HB 991. This bill is necessary to close what has been a massive gap in Maryland law. The Maryland Department of the Environment and Maryland Department of Agriculture are in charge of implementing and enforcing many state and federal regulatory and non-regulatory programs. Along with federal partners, these two environmental and agricultural agencies regulate a number of immense waste streams, including everything from toxic and hazardous industrial wastes, to municipal biosolids, and agricultural manure. But one waste stream that has fallen through this patchwork of programs is a form of industrial sludge that is often disposed of via land application. As a consequence, this waste stream is not only wreaking havoc for certain rural communities, but also a large and missing piece of the Bay restoration puzzle.

It has been said, but bears repeating, that this is a waste management bill. As a recent report from the University of Maryland Extension emphasized, industrial sludge, also known as “dissolved air flotation” (or “DAF”) “may be a poor choice” as a fertilizer in part because it is not particularly “bioavailable” to the crops and is thus more likely to run off into waters. To make matters worse, none of this pollution is even accounted for in the Chesapeake Bay model utilized by the Environmental Protection Agency and Chesapeake Bay Program to track our Bay restoration progress. Because this sludge exists outside of regulatory frameworks its source and fate is not even subject to analysis or tracking.

Until recently, this hidden source of pollution has complicated and confounded our best efforts to finally achieve our State’s and region’s clean water goals. As awful as the mismanagement of sludge has been for certain communities, no one had any idea how large or small the actual waste stream was, or what the broader implications would be. The UMD report issued several months ago has finally shined a light into this regulatory void, illuminating the fact that this waste stream amounts to roughly 2 million pounds of nitrogen; that is more than the combined nitrogen pollution discharged from the State’s two largest sewage treatment plants in Baltimore.

It is important to note that much of this pollution is not home grown. Rather, because of the regulatory void in Maryland, compared to our surrounding states, we have become the dumping ground for industrial sludge. Not only is this concept of becoming a dumping ground a tough pill to swallow for Marylanders on its face, it is also causing the precise problem that leading Bay scientists have recently emphasized must be addressed if we are ever to restore water quality to the Bay and its rivers. What has happened in places like the Eastern Shore and places like Carroll County is the creation of a regional “nutrient mass imbalance,” which is simply what happens when there are more nutrient sources within a given area than can be safely assimilated in that environment.

Typically, smoothing out these imbalances requires policies that focus on exporting nutrients out of an area; but Maryland already has such policies thanks to earlier enactments by this body (e.g., nutrient

management planning, phosphorus management, manure transport, agricultural cost-share, etc.). In this case, we are learning that it was the lack of regulation, or even basic transparency, over this industrial sludge waste stream that has itself created an imbalance by failing to control the *import* of nutrients into one area.

The solution to this problem is simple. First, we need to disrupt the current system of incentives that is causing Maryland to become a dumping ground. That is easily accomplished by standing up a regulatory program that is at least comparable with surrounding states. By merely creating such a program, we can end the regulatory void that made Maryland an attractive place to dispose of this waste.

Secondly, Maryland needs to ensure that the new program created by this bill actually functions and achieves the intended purpose. This means ensuring the details developed through the regulatory process are thoroughly designed to mitigate the various impacts of sludge handling, transport, storage, and application. If the program is well-designed, we can hopefully avoid the worst effects from odors and pests, to road damage, excessive truck traffic, and water pollution.

The one issue that the bill may not address and that may require further attention from the General Assembly or Department of Agriculture is the pre-treatment of this material. As the UMD report emphasized, industrial sludge, without treatment, is not a good choice of agricultural fertilizers, but it can be. Future efforts should be made to promote intelligent pretreatment methods and incentivize their use. This does not mean that any and all technologies will provide a net benefit when all economic, environmental, and community costs and benefits are considered. But it is very likely that some solutions, perhaps on-farm composting, or some form of pretreatment at the source (by the sludge generator) will further enhance the benefits that this bill will catalyze.

For now, we believe that HB 991, including as proposed to be amended, is an important first step toward resolving an urgent problem for many communities and for our State's longstanding mission to restore water quality in the Chesapeake Bay and its countless tributaries. For these and many other reasons we support House Bill 991. For more information, you may reach Evan Isaacson at evan@chesapeakelegal.org.