

# The Maryland Farm Bureau Hotline

*Legislative proposals that impact Maryland's farm community*



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## Chesapeake Bay Update

### **University of Maryland Environmental Law Clinic and Assateague Coastkeeper Team Up to Demand Nutrient Management Implementation and Enforcement Data in Public Information Act Request to MDA**

Maryland Farm Bureau's officers met with MDA officials on Thursday to request that MDA not release information with identifying information about farmers with regard to nutrient management plans, plan inspections and plan implementation. We have engaged our attorney in this discussion and are prepared to seek an emergency injunction to prevent the release of information.

The UMD Environmental Law Clinic and the Coastkeeper filed a PIA request for 14 different sets of data. The request includes all documents related to the Manure Transport Program and the application of manure from 2007-2010. They also want all documents concerning farms inspected for compliance with nutrient management plans and farms cited, warned or fined for non-compliance with plans. They want all documents concerning farms that have nutrient management plans and the total number who are in compliance with the plan. They also want all data to support the MDA claims that "69% of farmers who were randomly selected for on-farm audits passed their inspections" and "99% of our farmers have submitted their Annual Implementation reports for the latest reporting period" and "MDA issued over 1800 warning followed by 144 enforcement actions resulting in \$37,900 in fines for nutrient management violations in 2009." The initial request was for statewide information but a July 7<sup>th</sup> clarifies that they are primarily seeking information for Worcester, Wicomico and Somerset Counties.

Maryland Farm Bureau filed the attached letter opposing the release of the information and requesting that all identifying information be redacted from any material released by the Department. We cited the privacy provision of the 1998 Water Quality Improvement Act and the decision of the Anne Arundel County Circuit Court in our 2009 case.

Attorney General Doug Gansler's office has advised MDA to release the names and other identifying information of farmers who have plans, those who have been inspected and those who have passed or failed inspection. The Attorney General has interpreted the privacy protection to apply only when actual nutrient management plan content is involved. He has instructed MDA to release identifying information without actual plan content. Farm Bureau will go to Court to protect farmer information and oppose the Attorney General's directive to release the data.

### **Rumor Control.....**

There is a rumor floating around the Shore about an impending class action lawsuit to be filed by the Waterkeepers against 197 farmers. Farm Bureau is not aware of this lawsuit and would certainly like confirmation if someone has specific knowledge of such a case. Farm Bureau is only aware of the Public Information Act request detailed above. We do not have specific knowledge about how the information will be used once obtained by the Law Clinic.

### **President Langenfelder Appointed to Sustainable Growth Commission**

On Tuesday, September 2<sup>nd</sup> Governor Martin O'Malley announced his appointments to the Maryland Sustainable Growth Commission which included Maryland Farm Bureau President Pat Langenfelder as its agricultural representative.

Created and enacted earlier this year by the Maryland General Assembly, the Maryland Sustainable Growth Commission is charged with assessing and advising on the progress of State, regional and local planning in Maryland in achieving the goals of the State economic growth, resource protection, and planning policy.

"I am proud to announce the appointments to the Maryland Sustainable Growth Commission," said Governor O'Malley. "I am confident that the appointees announced to the Sustainable Growth Commission will help leverage Maryland's position as a national leader in environmental initiatives, while helping Maryland create a sustainable approach to development throughout our State, and building a more sustainable environment for future generations of Marylanders."

For more information on the Commission please visit their newly launched website at <http://planning.maryland.gov/YourPart/773/sustainableGrowthComm.shtml>.

### **DNR Now Accepting Aquaculture Permits**

*New Leasing Areas, Oyster Sanctuaries Now in Effect*

Annapolis, MD (September 7, 2010) — The Maryland Department of Natural Resources (DNR) is now accepting applications for new aquaculture permits under new oyster leasing regulations that went into effect yesterday. DNR will also be announcing its overall oyster management budget including a package of technical and financial opportunities for aquaculture ventures later this month to help accelerate the growth of this industry in Maryland and create new jobs.

Regulations to implement the State's new Oyster Restoration and Aquaculture Development Plan became effective on September 6. The regulations identify thousands of new acres open to leasing for aquaculture; establish a new application process and rules for aquaculture; identify areas off limits to leasing to support a continued public oyster fishery; and identify the State's new network of oyster sanctuaries, which are expanding from 9% of the Bay's remaining oyster bars to 25%, including some of the most productive bottom.

The plan was reviewed through an unprecedented public process that included more than 150 meetings. Numerous adjustments to the initial proposal were made to accommodate the concerns of affected stakeholders, including commercial watermen, members of the aquaculture industry, recreational fishermen, the environmental community, Marylanders Grow Oyster participants and other interested citizens.

"The newly adopted plan is very reasonable given the status of the Bay's oyster population and interests of all of Maryland's oyster stakeholders," said Secretary John Griffin, "However, I have offered the

commercial oyster industry one last opportunity to propose changes that meet our objectives for oyster restoration and aquaculture development, are based on industry consensus, and honor the supportive comments of our many other stakeholders.” The majority of affected counties submitted proposals by the September 2, 2010 deadline and they are currently under consideration.

Since 1994, the Chesapeake Bay’s oyster population has languished at 1 percent of historic levels; the amount of oyster bars has decreased 80% from 200,000 to 36,000 and the number of harvesters has dwindled from 2,000 in the mid 1980s to just over 500 annually since 2002. Today there are only eight oyster processing companies in Maryland, down from 58 in 1974.

Maryland’s Oyster Restoration and Aquaculture Development plan was built on the findings of a six-year Environmental Impact Study of oyster restoration options, and the work of the Oyster Advisory Commission and the Aquaculture Coordinating Council. In January 2009, Governor O’Malley sponsored aquaculture legislation to streamline the regulatory process and open new areas to leasing to promote growth of that industry, lessen pressure on wild oysters and provide alternative economic opportunities for watermen. This legislation was developed with broad stakeholder involvement and passed unanimously in the General Assembly last year. Aquaculture is now the predominant means of shellfish harvesting around the world.

View the new sanctuaries and leasing areas at [www.dnr.maryland.gov/fisheries](http://www.dnr.maryland.gov/fisheries). Information on the leasing application process is available at [http://www.dnr.state.md.us/fisheries/news/story.asp?story\\_id=88](http://www.dnr.state.md.us/fisheries/news/story.asp?story_id=88)

## National Update

### **AFBF Analysis of National Milk Producers Federation Foundation for the Future Proposal**

At the request of the AFBF Board of Directors and Dairy Commodity Advisory Committee, the Department of Economic Analysis has conducted an economic analysis of National Milk Producers Federation (NMPF) Foundation for the Future (FFF) proposal. FFF includes changes to federal dairy programs and milk pricing. This document is attached.

### **Oil spill prevention deadline extended for some farms, but not all**

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In a little over two months from now, many farms and ranches must have oil spill prevention plans in place. The Environmental Protection Agency in early August put out a proposal to extend by one year the compliance deadline for some facilities that must prepare spill prevention plans under the federal Spill, Prevention, Control and Countermeasure (SPCC) rule.

However, the extension only applies to two categories of farms: those that came into operation since August 2002, when EPA revised the regulations to clarify which facilities were covered; and dairies whose milk storage facilities may already be covered by FDA or other regulations. The newer operations will now have until Nov. 10, 2011, to comply. Dairies will have until one year after EPA finalizes a still-pending regulation on how to treat (or exempt) milk storage containers. Older farms, according to EPA, have always been subject to the SPCC rule and must have a plan already in place.

“Anyone in business before August 2002 was, in EPA’s view, already required to have a spill prevention control plan under an older version of the SPCC regulations, although hardly anyone knew about them,” explained Paul Schlegel, an environmental lobbyist and regulatory specialist at the American Farm

Bureau Federation. “EPA never made it a point to reach out to the farm community and tell them how the rule applied to farms and ranches, so this has been confusing and surprising for a lot of people. However, now the word is going out—farmers must have the required plans in place.”

Under an SPCC rule that EPA finalized in 2008, farms that store oil of any kind—petroleum, vegetable, animal fats, etc.—amounting to more than 1,320 gallons above-ground or 42,000 gallons of buried storage capacity will have to have an SPCC plan and maintain records to show that they are following the plan. Otherwise, if a spill occurs they will face legal liability. Spill prevention plans must describe the preventative control measures that are in place and the response actions that would be taken in case of a spill. Under the rule, a spill is one that reaches navigable waters, or “waters of the U.S.”

Farms with above-ground fuel storage of 10,000 gallons or less, no single container of more than 5,000 gallons and no recent history of oil spills, which EPA calls Tier I facilities, will be able to use a plan template, available on EPA’s website, at [www.epa.gov/emergencies/content/spcc/tier1temp.htm](http://www.epa.gov/emergencies/content/spcc/tier1temp.htm), and self-certify their plans. Farms with larger amounts of fuel storage are required to hire professional engineers to certify their prevention plans.

Evan Teague, environmental specialist for the Arkansas Farm Bureau (ARFB), doesn’t think self-certification is a good idea, mainly for liability reasons. By signing the self-certification form, he says, you are stating that you have read and fully understand the rule and that you have explained it to all your employees and trained them.

“Another way to think of this is you wouldn’t do your own taxes would you? Most likely not. You would hire a CPA so that you have that professional providing you with a greater level of protection,” explained Teague.

Since many farmers and ranchers are just now becoming aware of the SPCC requirements, AFBF urged the EPA to provide guidance specific to agriculture. The agency has since posted farm-specific information on its website, at [www.epa.gov/emergencies/docs/oil/spcc/spccfarms.pdf](http://www.epa.gov/emergencies/docs/oil/spcc/spccfarms.pdf).

State Farm Bureaus also have been working to get the word out to their members. Indiana Farm Bureau (INFB) has run articles in its member publication, *IFBulletin*, which will run a longer story in September with a checklist of considerations farmers and ranchers need to make to determine whether they have to comply with the SPCC rule. INFB also is sharing its information with the main agricultural fuel supplier in the state, CountryMark, so it can help get information to its customers. Also, an environmental consulting firm has offered to work with INFB members at a fixed, reduced price.

ARFB also is offering its members a discounted cost from a professional engineering firm. Engineering Compliance & Construction Inc., of Little Rock will charge \$1,750 per plan; some farms will need more than one plan, a discount of as much as 50 percent. Construction costs to implement each plan, such as building secondary containment structures, aren’t included.

Illinois Farm Bureau (ILFB) has tried to inform farmers in that state by doing radio spots and a display about SPCC at ILFB’s commodities conference in July. Nancy Erickson, environmental and natural resources director for ILFB, said the requirement to have an oil spill prevention plan comes as a surprise to most of the farmers they’ve talked with, and there isn’t much time left to get the word out.

“We’ve been talking about it for a while. Still, for every one person you talk to, there seem to be a hundred others who have no idea that this is going on,” she said.

Erickson said it's tempting to remain in denial about having to comply with the rule, but she wouldn't advise it. "We realize that farmers aren't the problem when it comes to oil spills, and Farm Bureau fought very hard to keep farmers and ranchers out of this," she said. "We've done our best, but now farmers have to comply and the deadline is almost here. It's time to get ready."

**This article appeared in the August 23, 2010 edition of the American Farm Bureau Federation's *FBNEWS*.** Attached to the GRB are the AFBF SPCC Issue Paper and EPA's SPCC Farmer Fact Sheet. If you have any questions or concerns contact Kurt at 410-922-3426 or via email at [kurtf.mdfb@verizon.net](mailto:kurtf.mdfb@verizon.net).

### **Co-Sponsors Needed For Senate Bill S. 3735**

Senators Blanche Lincoln (D-Ark.) and Saxby Chambliss (R-Ga.) introduced legislation on August 6<sup>th</sup> that clarifies that lawful application of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) does not trigger regulatory requirements in other programs.

The bill, S. 3735, the FIFRA Paperwork Reduction Act, would amend FIFRA by clarifying that additional permits are not needed when a pesticide is applied in accordance with the FIFRA approved label. The legislation is intended to solve many of the problems associated with the new National Pollutant Discharge Elimination System (NPDES) permitting program and the underlying 6<sup>th</sup> Circuit decision from 2009. AFBF supports S. 3735 and is asking State Farm Bureaus to ask their senators to co-sponsor the legislation

Companion legislation was also introduced in the House by Frank Lucas (R-Okla.) and 6 other republicans. We are working to ensure the legislation is bipartisan; once that occurs, we will ask state Farm Bureaus for their help in getting cosponsors for the legislation. S. 3735 seeks to address the 6<sup>th</sup> U.S. Circuit Court's ruling on NPDES permits. The proposed legislation would reaffirm the purpose of FIFRA by ensuring that pesticides applied to or near water, in accordance with the FIFRA label would not be considered a pollutant and would not require an NPDES permit under the Clean Water Act (CWA). The 6<sup>th</sup> Circuit ruling means that some pesticide applications are now considered discharges under the clean water act, requiring a permit to avoid liability for unregulated discharges. The Environmental Protection Agency (EPA) is in the process of finalizing a proposed draft permit covering spraying for four categories of nuisances: aquatic weeds and algae; aquatic animals; forest canopy; and mosquitoes and other flying insects. Regulated pesticide discharges will require permit coverage when the 6<sup>th</sup> Circuit's ruling goes into effect in April 2011.

Maryland Farm Bureau members should call Senator Mikulski (202-224-4654) and Senator Cardin (202-224-4524) and urge them to co-sponsor S. 3735 and encourage that Senator Lincoln mark-up the legislation the week of September 27<sup>th</sup>.

## Other News....

### **2010 Doe Harvest Challenge Kicks off Next Week**

Maryland Farm Bureau, Farmers and Hunters Feeding the Hungry, and the Maryland Grain Producers Utilization Board have teamed up for the second year in a row to hold the Doe Harvest Challenge! Taking place on the Mid-Shore (Talbot, Caroline, Dorchester, Queen Anne's, and Kent counties) and in Southern Maryland (Anne Arundel, Calvert, Charles, St. Mary's, and Prince George's counties), the 2010 DHC is designed to encourage hunters to harvest more white-tailed and sika does and donate them to

participating FHFH processors making them eligible for up to 6 prize packages! The benefits of the Challenge are threefold, 1) Increased harvest of does will help reduce overpopulations of deer and, in turn, result in a reduction of deer-ravaged crops, 2) Donated venison goes to local charities and soup kitchens providing an essential source of high-quality lean protein, and 3) Hunters in each region are eligible for 5 prize packages valued at \$500 each and a grand prize package valued at \$1000!

The DHC begins with opening day of bow season, September 15<sup>th</sup> and runs through December 25<sup>th</sup>! For more details and challenge rules see the attached 2010 DHC flyer or contact Kurt at 410-922-3426 or email him at [kurtf.mdfb@verizon.net](mailto:kurtf.mdfb@verizon.net).

### **Maryland Farm Bureau Policy Development**

The policy development season is upon us. Maryland Farm Bureau members are urged to draft new policy positions that they would like MFB delegates to adopt at our annual meeting. Policy statements can cover existing, on-going issues like nutrient management implementation and wildlife management or they can cover issues that are newly emerging and of concern to farmers. This could include a new problem on the farm that might take government involvement (or non-involvement) to solve.

County Farm Bureaus will hold policy development meetings this fall to seek input from all farmer members in the county. They will consider recommendations at local annual meetings. All policy recommendations approved by the County Farm Bureaus will be forwarded to the state Farm Bureau for consideration by our annual meeting delegates. The deadline for counties to submit to MFB is October 21, 2010.

If you have a policy recommendation that you would like to have considered in your county, get in touch with your county Farm Bureau president. If you are not sure how to do that, simply send your suggestion to me ([valeriec.mdfb@verizon.net](mailto:valeriec.mdfb@verizon.net)) and I will get it to the appropriate folks in your county. Please include your name and address on your email.

Some of the issues Farm Bureau staff at the state and federal level have identified for policy development this year appear below:

**Maryland Agland Preservation Foundation Funding:** The MALPF Board of Directors has had an on-going discussion about the need to generate new funding for the program and to target the new funding to the Priority Preservation Areas, which are authorized (and required for county program certification) by current law. The MALPF Task Force report from 2004 called for the PPAs and for the targeting of all new sources of funding for easement purchases in the PPAs. Unfortunately, since the TF reported, the economy has significantly declined. There are no new sources of MALPF funding and the traditional source – transfer tax - has declined dramatically. Some on the Board are asking whether the current MALPF funding formula should be changed to target more of the available funds to Priority Preservation Areas. Should existing funding be better targeted to preserve priority farms? Should counties with zoning laws designed to meet the PPA certification requirements be eligible for more funding for easement purchases than counties that do not zone according to PPA guidelines? Should the decision to target priority farms be left to a county's Agland preservation board under the current MALPF funding formula?

**Maryland Estate Tax Reform:** During the last General Assembly session there were several bills to provide estate tax relief to Maryland farmers. Some of the bills targeted relief to all farmers. Others targeted relief to farms where the land was under a permanent Agland preservation easement. If funding for reform is limited, should the state distinguish between those farms permanently

preserved and those that are not? What are the pros and cons of providing estate tax relief to only farms already under easement? How should the estate tax law be reformed to better protect farmland from sale when the farm passes from one generation to the next?

**Bay Clean-Up Funding:** In order to reach the Bay Clean Up goals, additional funding is likely to be needed to install the biological nitrogen removal technology at all waste water treatment plants in the state and to facilitate the replacement of failing septic systems with nitrogen removing systems. Additional funding will also be needed to cost-share cover crops and other farm BMPs. The so-called “flush fee” and “septic fee” were set at \$30 per year for all households 8 years ago. The flush fee is dedicated to waste water treatment plant upgrades and the septic fee is used to pay for septic upgrades and farm cover crops. Should we support efforts to increase the fee to generate the funds necessary to complete the bay clean-up program? If so, how much should the fee increase – by \$10, \$20 or \$30 per year?

**Stormwater Management Requirements/ Impervious Surface Fees:** Local governments will now be required to upgrade their stormwater management programs to meet Bay clean-up goals. The cost of retrofitting stormwater systems in municipal areas is very high. During the last General Assembly session legislation was debated to require local governments to assess a fee on impervious surfaces to raise the amount of funds necessary to install stormwater management programs. Given the fact that all sources of bay nutrients should have to do their part for reduction, should local governments raise fees to address their source of nutrients – stormwater runoff? If an impervious surface fee is authorized, how will this impact farms? Should farms be exempt from the fee if they meet their bay clean-up baseline with on-farm BMPs?

**Copper Wire Recycling:** As a result of the increasingly hard economic times, incidences of copper wire theft from irrigation systems across the state have risen dramatically. Some farmers have even had their systems hit multiple times resulting in significant repair costs, lost man-hours, and tremendous disruptions to irrigation during a time when much of the state is experiencing drought-like conditions. The stolen copper wiring is often taken to salvage yards and sold for scrap, in most cases, to unsuspecting yard operators. Although no one would like to disrupt the buying and selling of legally obtained copper, perhaps there is a need for better regulation and oversight to discourage and help prevent the vandalism and theft seen recently. Would you support tighter controls over the recycling of copper wire in order to limit the outlets for stolen material? What might that oversight look like? Should copper recycling be conducted by local public works departments or perhaps limited to certain days of the month at private recyclers to allow the presence of law enforcement officers to inspect the wire?

**Statewide Sunday Hunting -** Every year, Maryland farmers experience tremendous economic loss from the overpopulation of white-tailed and sika deer as they graze on corn, soybeans, and just about any other crop to which they have access. Maryland Agricultural Statistics Service reported that last year alone, Maryland farmers estimated deer-related crop losses of over \$7.3 million. As a result, farmers and sportsmen alike seek more opportunities to reduce the state’s deer herd. One of the most effective ways to do this is to increase the number of days that the average hunter can go afield, through options such as Sunday hunting on private lands. Allowing for an additional weekend day, enables hunters to go afield without having to take off work and can act as a backup if inclement weather prevents a Saturday hunt.

Each year the General Assembly debates multiple pieces of legislation related to the expansion of Sunday hunting of white-tailed (and sika) deer on private lands. This year alone, Sunday hunting was expanded in Allegany, Calvert, Charles, Garrett, St. Mary’s, and Talbot Counties. The result has been the creation of varied levels of Sunday hunting opportunities from county to county

causing confusion amongst hunters and law enforcement alike. With a majority of counties already enjoying some level of Sunday hunting of deer on private lands would you support legislation creating one uniform statewide Sunday hunting framework? Would you support it in only those counties that currently allow Sunday hunting on private lands and allow for the remaining counties to “opt-in” in the future?

**2012 Farm Bill:** With the 2008 farm bill expiring in September 2012 congressional hearings on the next farm bill have begun. Discussion and debate will be taking place in an environment characterized by tight fiscal constraints, increasing aversion to spending programs, and presidential-election-year dynamics. Thus, configuring the farm income safety net in a manner that addresses the market realities facing producers in the coming years may call for a fundamental change in program priorities. How do we modify the existing farm income safety net so that it provides meaningful protection from risk in this environment of declining budgets?

**Commodity Warehouses:** There is concern that current bonding and insurance has not provided adequate coverage for commodity producers. While there are federal warehouse oversight programs, these are currently voluntary programs and thus also fail to adequately protect commodity producers. What needs to be changed to ensure producers are protected?

**Crop Insurance:** In many respects, the federally-supported crop insurance program overlaps with commodity support programs. The growing participation of producers in insurance programs as well as the improved product offerings suggests at least the potential for these programs to replace current farm safety net provisions in the next Farm Bill. Can crop insurance replace current safety net provisions and if so what would it encompass?

**Dairy Policy:** While, no safety net could adequately compensate for the economic devastation dairy producers faced in 2009, many producers, industry organizations and policy makers believe that the current dairy safety net and milk pricing structures are outdated and do not effectively protect dairy producers. Despite small changes to formulas, data collection and reductions in the number of milk marketing orders USDA sets milk prices in a similar way to how it set prices in the post-Depression era. Is the price support program still relevant to today’s dairy producers?

**Food Safety:** Since California and Arizona implemented two popular Leafy Green Product agreements, there has been a movement to develop similar programs at the national level. The Agriculture Departments Agricultural Marketing Service has published an advance notice of proposed rulemaking to create the National Leafy Greens Marketing Agreement (NLGMA) with the intent of enhancing food safety within the industry. Should AFBF support the NLGMA?

**Incremental Beef Trade:** Historically, the United States (U.S.) has taken a firm international position that countries should follow sound science and internationally recognized standards in setting trade and import policies. The issue is whether the U.S. should move away from this requirement and instead in some situations consider an “incremental” approach to opening foreign markets to U.S. beef exports. What are the potential opportunities and challenges, both in the short-term and in the long-term to be considered?