

The Maryland Farm Bureau Hotline

Legislative proposals that impact Maryland's farm community



Contact: Val Connelly or Kurt Fuchs
(410) 922-3426

Government Relations Bulletin #8 – September 25, 2009

National Update

EPA's Bay Restoration Reports Rely Heavily on New Farm Regulations

EPA released seven Draft Reports entitled, "Addressing the Key Challenges to Chesapeake Bay Protection and Restoration." The reports rely heavily on new regulation of the farm and construction industries to meet the 2025 Bay clean up goals. Specifically, the reports call for capturing as many livestock operations as possible under CAFO permits, controlling the use of manure/organic fertilizer on all farms, new federal penalties for states not meeting the Bay Goals in 2-year increments, Total Maximum Daily Load limits (TMDLs) that are enforceable and an end to all development or redevelopment that is not "offset" by the purchase of conservation practices elsewhere.

Based on our initial review of the 300+ pages of reports and on a conference call hosted by Chuck Fox at EPA, Farm Bureau has identified the following concerns:

- EPA is asking the 6 states in the Chesapeake Bay region to rewrite state-level CAFO permits to "expand the universe of regulated operations" to include as many livestock farmers as possible. EPA would also like the state CAFO permits to be stronger to cover not only the production area (poultry houses, dairy barns) but also all land on which the farmer grows crops and/or applies animal manures as organic fertilizer. EPA is not suggesting a re-write of the federal CAFO permit, which would apply to all competitor livestock operation across the country. This new level of regulation would apply only to producers in this watershed.
- EPA proposes to use its authority to object to inadequate state permits and assure appropriate limits are set to meet TMDL limits. In reviewing state drafted TMDL plans, EPA is adopting a new definition of the regulatory term "reasonable assurance" - but only for the four entities that signed the Chesapeake Bay Agreement. Under this procedure, the states of Maryland, Pennsylvania and Virginia and the District of Columbia would have to meet a higher level of performance and enforcement for TMDLs.
- Total Maximum Daily Loads are limits that must be set for nutrient loads into the 96 tributaries to the Chesapeake Bay. Together they will be one Bay-wide TMDL. Under a TMDL, all point source and non-point sources would be limited in the amount of nutrients they could release into the Bay. TMDLs must be established by December 2010 under a court order. The new EPA report suggests more significant federal level penalties and less flexibility for state and local governments in the process of meeting the TMDL.

- Under the new EPA plan, each of the four signatory states would be required to demonstrate a penalty structure that will ensure compliance with the TMDL. If any of the TMDLs are not met, EPA proposes to impose unilateral reductions in point source nutrients. Under this proposal, all farms subject to CAFO permits are point sources. This means that EPA could require livestock operations to reduce herd sizes, or require waste water treatment plants to reduce capacity, or order manufacturing facilities to halt operations until the TMDL limit is met.
- EPA wants to impose new regulations to ensure that any new or expanding discharges are offset by reductions from other sources at levels that account for scientific uncertainty and are in addition to existing commitments necessary to achieve Bay water quality goals. During his conference call, Chuck Fox suggested that offsets would likely be purchased by developers from farmers. He also said that meeting the minimum 2025 goals would require 100% of farmers to do 90% of the conservation practices available. If farmers cannot sell credits until they meet the minimum criteria needed to reach the goals (everything, everywhere, every time) what is left to sell to those who need to increase discharges? Will developers look to buy whole farms and stop all agricultural production in order to achieve offsets? How will communities expand or redevelop? How will farms expand? Will a farmer be able to switch crops or livestock numbers to meet market demand in the future?
- EPA proposes widespread upgrades of onsite septic systems to nitrogen removal systems. This issue has been debated for several years by the Maryland General Assembly. The cost-prohibitive nature of retrofitting existing systems has inspired a go-slow approach. If EPA presses forward, state elected officials might lose their ability evaluate the economic impact of such mandates on the citizens of this state.

Farm Bureau policy supports a cooperative approach to restoring and protecting the Chesapeake Bay. Maryland farmers have been partners in Bay restoration efforts for the last 20 years. Agriculture has one of the best records towards meeting the Bay restoration goals – having reached more than 50% of our reduction targets. At the same time, urban and suburban pollution has gone in the wrong direction, scoring a negative ninety one percent (-91%) for reduction targets. Maryland farmers believe all sources of pollution should be reduced. At the same time, we believe economic viability and the potential for competitive disadvantages must be major considerations. We cannot support a program that puts a farmer who lives in the watershed at a competitive disadvantage with a farmer who lives just outside the watershed – perhaps in the same state or same county - and operates under a different, less costly set of regulations. We fully support federal programs such as the Conservation Security Program at USDA that rewards and encourages farmers to install conservation practices.

The draft reports will be reworked and re-release in early November as one report with one set of recommendations. That version of the report will be open for public comment. The seven reports released earlier this month were triggered by President Obama's Executive Order from May 2009. The reports are intended to address the following key challenges:

1. Reducing pollution and meeting water quality goals
2. Targeting conservation practices
3. Strengthening storm water management at federal facilities
4. Adapting to impacts of a changing climate
5. Conserving landscapes
6. Strengthening science for decision making
7. Conducting habitat and research activities to improve outcomes for living resources.

An executive summary and each of the full reports can be viewed at <http://executiveorder.chesapeakebay.net>.

Maryland Farm Bureau has formed an Ad Hoc Bay Report Committee to fully evaluate the seven draft reports and prepare to make comments on the version released on November. Farm Bureau will work with the Delmarva Poultry Industry, Inc., The Maryland Grain Producers Association, MDIA and other commodity organizations to develop a thorough analysis of the proposal.

HSUS, OTHER GROUPS TARGET CAFOS

The Humane Society of the United States and eight other extremist animal rights and environmental groups filed a legal petition with the Environmental Protection Agency seeking to regulate air pollution from concentrated animal feeding operations (CAFOs).

The petitioners joining HSUS are the Association of Irrigated Residents; Center on Race, Poverty and the Environment; Clean Air Task Force; Dairy Education Alliance; El Comité para el Bienestar de Earlimart; Environmental Integrity Project; Friends of the Earth; and Waterkeeper Alliance.

The 69-page petition claims CAFOs emit two greenhouse gases—methane and nitrous oxide—that hurt human health and welfare. The petition also targets hydrogen sulfide and ammonia emissions from CAFOs. The groups claim these emissions cause adverse effects on climate and the environment in the United States. The petition explains how reducing emissions of major pollutants from CAFOs will improve human health, reduce suffering of farm animals, protect habitat for wildlife, and reduce the effects of climate change and other environmental problems.

The American Farm Bureau Federation is considering what action to take on the petition. Lawsuits could potentially force emission limits on 90 percent of the livestock industry.

Greenhouse Gas Emissions May Be a Public Nuisance

The Second Federal Circuit Court of Appeals on September 21 issued a decision that could open the door to public nuisance lawsuits against operations that emit greenhouse gases. *Connecticut v. AEP* overturned a district court decision that dismissed a lawsuit by several states against utilities that emit carbon dioxide claiming that such emissions constitute a public nuisance. The lower court held that the issue of climate change was a “political question” that could not be litigated.

The Second Circuit did not decide that emissions are a public nuisance. The decision only allows plaintiffs to move forward with their case.

The plaintiffs argue that greenhouse gas emissions are a significant cause of global warming that constitutes a public nuisance. If allowed to be litigated, such claims could result in equitable relief that might include capping or elimination of emissions. There are other such suits pending, including a Mississippi case against oil refiners for damages for emissions contributing to the damaging nature of Hurricane Katrina.

This case has potentially huge implications for any sector that emits greenhouse gases, including the agriculture and livestock sectors. It could provide a significant weapon for plaintiffs that move into farming areas that claim such operations are nuisances. Any entity emitting greenhouse gases could be sued. Because such suits could include money damages and/or abatement of emissions, such suits could significantly threaten agricultural operations. The opportunities for plaintiff attorneys are virtually limitless, although plaintiffs still have a high burden of proof of injury and causation. In addition, a

successful nuisance suit based on emissions could greatly affect regulatory or legislative actions on climate change.

EPA Mandatory GHG Reporting Rule

On Tuesday, September 22, the Environmental Protection Agency (EPA) issued a final rule entitled “Mandatory Reporting of Greenhouse Gases.” The rule only requires reporting of covered emissions, and does not limit emissions or practices. The only parts of agriculture affected by the rule are manure management systems, and it only applies to manure management systems that emit more than 25,000 tons of greenhouse gases per year. No other type of agricultural emissions is covered under this rule.

The rule establishes threshold levels of application to livestock facilities. Those levels are: beef—29,300 animals, dairy—3,200 animals, swine—34,100 animals, poultry layers—723,600 animals, poultry broilers—38,160,000 animals, turkeys—7,710,000 animals. Operations below those levels are not required to report. Reporting requirements begin in January, 2010. EPA estimates that the rule would apply to approximately 107 livestock operations.

Estate Tax Update – House

Ways and Means Committee Chairman Charles Rangel (D-N.Y.) said yesterday that a simple one-year extension of the current estate tax exemption, rather than a multiyear fix, is an option being considered by the Ways and Means Committee. The estate tax exemption for 2009 is \$3.5 million per person and the maximum rate is 45 percent. A one-year extension would replace estate tax repeal scheduled for 2010, but would leave in place a return to a \$1 million exemption with a 55 percent top rate scheduled for 2011.

Farm Bureau has joined with other members of the Family Business Estate Tax Coalition to send a letter to the House and Senate urging Congress to enact legislation this year providing permanent estate tax relief for family-owned businesses.

State Update

New Snow Goose Conservation Order

The U.S. Fish and Wildlife Service is now allowing states within the Atlantic Flyway, of which Maryland is included, to initiate new harvest strategies for light geese, commonly referred to as snow geese and Ross’s geese, in order to better mitigate the crop and property damage associated with the population’s overabundance. Huge flocks of snow geese have increasingly found the Eastern Shore and Maryland’s western shore to be an ideal stopover on the yearly migration to their breeding grounds in the north. With ideal habitat in our creeks, rivers, and bays and an ample supply of food, many times found in agricultural fields, light geese have been an increasingly significant problem for the state’s agricultural producers.

DNR will initiate the Light Goose Conservation Order Season beginning Feb. 1 and closing April 17. During this special season, along with the use of electronic recorded calls and unplugged shotguns, legal shooting hours will be extended to one-half hour before sunrise and one-half hour after sunset with no daily bag or possession limits. The Conservation Order Season is limited to the following areas: Anne Arundel, Baltimore, Calvert, Caroline, Cecil, Dorchester, Harford, Howard, Kent, Queen Anne’s, Somerset, Talbot, Wicomico, and Worcester Counties; that portion of Carroll County east of Route 31 to the intersection of Route 97, and east of Route 97 to the Pennsylvania line; that portion of Prince George’s County east of Routes 3 and 301; and that portion of Charles County east of Route 301 to the Virginia line.

Waterfowl hunters participating in the Light Goose Conservation Order season must possess a Snow Goose Conservation Order Hunting Season permit which may be obtained for \$5 from any DNR sport license agent, online at <http://www.dnr.maryland.gov/>, or by phone (1-800-918-2870). Participants must possess a valid Maryland hunting license (or resident Delaware license) and a 2009-2010 Maryland Migratory Game Bird Hunting Stamp.

All migratory game bird hunters, including landowners who are license-exempt, are required to obtain the Maryland Migratory Game Bird Stamp. Hunters must possess the printed receipt showing proof of purchase of the Maryland Migratory Game Bird Stamp while hunting migratory game birds.

All waterfowl hunters age 16 and over must also purchase the Federal Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) which must be signed and in possession while hunting waterfowl and coots. Hunters may obtain federal duck stamps at U.S. Post Offices, National Wildlife Refuges, certain DNR sport license agents, and online at www.duckstamp.com. The Federal stamp is not required for the Light Goose Conservation season.

For additional information contact Larry Hindman, DNR Waterfowl Project Manager at 410-221-8838, ext 105.

University of Maryland Extension to Host Small Farm Conference

The 6th Annual Small Farm Conference will be held on November 6 & 7, 2009, at the University of Maryland Eastern Shore. Participants will have the opportunity to learn about alternative agriculture, production & marketing and the business and legal side of a farm business. Presenters will discuss direct marketing farm raised meats, growing high value specialty crops and backyard gardening tips for the average homeowner. The keynote speaker for Saturday's program will be Mike McGrath, host of the national syndicated Public Radio show "You Bet Your Garden" and garden editor for WTOP news radio in Washington, D.C. For more information on the conference, contact UMES at (410) 651-6206 or log onto mce@umes.edu.

Maryland Farm Bureau Activities and More.....

Policy Resolutions Due in October

Policy resolutions are due into the MFB office by Thursday, October 22nd. Issues of Concern were published in the August Spotlight. Copies of the MFB policy and AFBF policy were sent with the email. State policy is also posted on the MFB website at www.mdfarmbureau.com. Field staff will have hard copies of state and federal policy for use at county resolutions meetings. If you would like a copy of the policy development email, please send the request to valeriec.mdfb@verizon.net. I will be happy to forward a copy to you.

Maryland Association of Soil Conservation Districts Seeks Part Time Staffer

Envirothon Coordinator: part-time contractual position to manage the Maryland Association of Soil Conservation District's high school environmental education program. Hours per month vary. Monthly fee plus expenses. Some travel. Must be self-motivated, proficient in MS Office, use of Internet and work from home. Must have own transport. Office equipment provided plus support from your local SCD office. Job description at www.mascd.net. Deadline October 16, 2009.