

Maryland Farm Bureau's Government Relations Bulletin



1 – May 12, 2011

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State Update

Fall Special Session Likely to Bring New Taxes and Fees

As many of you know by now, the Maryland General Assembly will hold a Special Session this fall to approve a redistricting map for Congressional legislative districts. The new map is required after each 10 year census. The General Assembly must meet in special session to complete the map because the state's primary for the 2012 Presidential Election will be held on the second Tuesday in April. Because the filing deadlines for the Congressional races are set for early January, the MGA cannot wait until the 2012 legislative session to approve the new map.

In addition to the redistricting map, the legislature can take up any business its leaders deem necessary. In a recent letter to Governor O'Malley, Senate President Mike Miller is requesting at least three additional actions. He wants legislation to require local governments to pay a portion of teacher retirement benefits. He wants to close the remainder of the state's budget deficit with increased revenue (taxes & fees). And, he wants to address transportation infrastructure needs through greater contributions from users (registration fees, tolls & gas taxes). Attached is the letter Senator Miller sent to the Governor on Monday, May 9th.

MDA Considering New Nutrient Management Regulations

The Nutrient Management Advisory Committee at MDA held its annual meeting on Monday, April 25th. During the meeting, MDA staff unveiled several regulatory changes they are considering this year. One of the changes concerns "setbacks" for the purposes of applying fertilizer or allowing livestock to deposit fertilizer. The change would require a 10-foot setback from waters of the state. MDA is considering this regulation because it is already required for MAFO/CAFO permits and they want consistency.

As far as we can tell, the new 10-foot setback would apply to intermittent and permanent streams. It is not intended for field ditches. This would mean a farmer with livestock would have to fence out 10 feet from the stream's edge. In the case of an intermittent stream, some farmers would have trouble getting livestock to and from barns if mandatory fencing is required and cattle are excluded from an area where water lies during storms.

Other possible regulatory changes include applying the winter fertilizer application prohibitions to sewage sludge in the same manner it applies to livestock manures and poultry litter; restricting and/or banning fall fertilizer applications on small grains; and changes to the P-Site index that would limit or prohibit the use of organic fertilizer on many more fields throughout the watershed than is the case with the current P-Site index. Dr. Frank Coale presented his preliminary research on the new P-Site index and asked for support for funding for a 2-year field test to confirm his work.

Maryland Farm Bureau filed informal comments with MDA based on the discussion at the NMAC meeting. Our comments were:

We have not had the opportunity to fully analyze or share with our members the proposed changes to the nutrient management guidelines that were distributed during the April 25th NMAC meeting. We have also not received copies of the updates that were to be made after the discussion at the meeting. We do, however, want to go on record opposing the proposed 10-foot setback for nutrient application. We firmly believe setbacks should be determined on a case-by-case basis depending on the conditions of the land. NRCS has agreed with this concept in that their stream exclusion practice does not use an exclusive 10-foot setback. We also believe that as drafted, the setback will be a tremendous burden for livestock owners who will have to fence off intermittent streams and move existing permanent stream fencing. We urge you to reconsider this proposal.

With regard to the issue of fall fertilizer application and the research presented by Dr. Kratochvil, we urge continued dialogue on the issues identified during the group discussion. We oppose any ban on fall fertilizer use at this time. There is significant anecdotal information from our members to indicate fall use of fertilizer increases yield.

With regard to changing the Phosphorous Site Index based on the material presented by Dr. Coale, we urge you to secure the necessary funding and work with Dr. Coale to conduct field test research prior to implementing any change. While we agree that science should be the deciding factor in any formula used for nutrient application, we firmly believe that the science must be fully tested prior to asking farmers to make costly changes on farms.

We look forward to reviewing the updated version of any proposed regulation MDA plans to submit to AELR. We would like to share the proposals with our members in draft format and seek additional comments. Please let us know if you have any question about our position.

Maryland Farm Bureau will make available full copies of the draft regulations as soon as possible. We urge you let us know your position as the proposed regs move forward. We also urge you to contact Secretary Hance and staff at MDA to weigh in on these important changes.

MD Department of Planning Showcases New Growth Plan

The following is a release from the Maryland Department of Planning regarding a series of open houses to be held throughout the state intended to garner input on their draft of the State Growth Plan known as PlanMaryland. Although, it is an extremely busy time of year for farmers and any spare time you can find would rather be spent with your families, it is imperative that the agricultural community come out and make their voices heard regarding the growth and preservation aspects of PlanMaryland.

Executive Summary - http://plan.maryland.gov/PDF/draftPlan/PM_draft_execsummary.pdf

Full Draft Plan - http://plan.maryland.gov/PDF/draftPlan/pmddraft_April.pdf

Contact Kurt Fuchs for more information.

PlanMaryland Public Forums II: The Open Houses

Eight regional open houses are scheduled throughout Maryland to encourage and welcome the public to learn about and provide feedback on PlanMaryland



MDP has scheduled eight open houses as part of the next phase of public outreach for a State Growth Plan known as PlanMaryland. We're holding these Open Houses to share ideas about how to make PlanMaryland work.

Attendees will be given the opportunity to learn about the draft Plan, and talk to state staff and provide comments and input on the draft Plan.

We want your feedback on what needs to be done for growth and development to be directed more to our urban and rural communities, towns, and cities. We want to know what you think needs to be done to protect and preserve our farms and open spaces so that they will be around for future generations to enjoy. We want to know what you think about the role of the State and local governments in accomplishing goals for growth, development, revitalization, preservation, and protection, and how limited revenues, incentives and regulations can be used in the most efficient and effective way possible to achieve these goals.

Each open house will begin at 5:00 p.m. at the locations below. The events are structured for attendees to arrive at any time between 5:00 p.m. and 8:00 p.m. and to stay as long as they like. While pre-registration is not required, you can indicate your attendance by clicking the respective RSVP link below.

To date, the outreach effort for PlanMaryland has reached several thousand stakeholders throughout the State to ensure that multiple viewpoints are heard and represented. The PlanMaryland process has included [10 listening sessions](#) in 2008 and [13 public forums](#) in the spring of 2010, all of which were held throughout the State. We have also solicited input through online surveys, meetings with civic, cultural and business organizations and interviews with numerous stakeholders. The resulting feedback has informed the current draft of PlanMaryland that we would like to share at these open houses.

[Help promote PlanMaryland Open Houses with the full schedule flier](#) or with the fliers for each event (see links below).

Thursday, May 5 - 5:00 to 8:00 p.m.

Salisbury University

Guerrieri University Center ([campus map](#))

1101 Camden Avenue • Salisbury, MD 21801 ([driving directions](#))

Wednesday, May 11 - 5:00 to 8:00 p.m.

Washington College

Hynson Lounge ([campus map](#))

300 Washington Avenue • Chestertown, MD 21620 ([driving directions](#))

Thursday, May 19 - 5:00 to 8:00 p.m.

Long Reach High School ([register](#))

Cafeteria

6101 Old Dobbin Lane • Columbia, MD 21045 ([driving directions](#))

[Help promote with the event flier](#)

Wednesday, May 25 - 5:00 to 8:00 p.m.

Morgan State University ([register](#))

Calvin and Tina Tyler Ballroom, University Student Center ([campus map](#))

1700 East Cold Spring Lane • Baltimore, MD 21251 ([driving directions](#))

[Help promote with the event flier](#)

Thursday, June 2, 2011

Frostburg State University ([register](#))

Lane University Center ([campus map](#))

101 Braddock Road • Frostburg, MD 21532 ([driving directions](#))

[Help promote with the event flier](#)

Wednesday, June 8 - 5:00 to 8:00 p.m.

Harford Community College ([register](#))

Chesapeake Center, Dining Halls A & B ([campus map](#))

401 Thomas Run Road • Bel Air, MD 21015 ([driving directions](#))

[Help promote with the event flier](#)

Thursday, June 16 – 5:00 to 8:00 p.m.

University of Maryland College Park ([register](#))

Samuel Riggs IV Alumni Center ([campus map](#))

U.S. Route 1 • College Park, MD 20742 ([driving directions](#))

[Help promote with the event flier](#)

Thursday, June 23 – 5:00 to 8:00 p.m.

College of Southern Maryland ([register](#))

Center for Business and Industry, Atrium ([campus map](#))

8730 Mitchell Road • La Plata, MD 20646 ([driving directions](#))

[Help promote with the event flier](#)

National Update

Co-sponsors Needed for Farm Dust Bill

The bipartisan *Farm Dust Regulation Prevention Act of 2011*, H.R. 1633, was recently introduced by Reps. Kristi Noem (R-S.D.), Rob Hurt (R-Va.), Leonard Boswell (D-Iowa) and Larry Kissell (D-N.C.). The bill would temporarily prevent the Environmental Protection Agency (EPA) from changing the national ambient air quality standard (NAAQS) for coarse particulate matter for one year. The bill would also exempt “nuisance dust” (defined as naturally occurring coarse particulate matter that consists primarily of soil or other natural or biological materials) from regulation, unless nuisance dust was found to cause serious adverse health effects, and the benefits of regulation were found to outweigh the costs.

There is no companion bill in the Senate.

In February, 32 Senators sent a letter to Administrator Lisa Jackson expressing their concerns about the adverse effects that changing the dust standards would have on rural America. On March 29 of this year, 100 representatives sent a similar letter requesting that the current standard not be changed.

Coarse particulate matter (dust) is a naturally occurring substance found mostly in rural areas. It is frequently caused by activities on unpaved roads and in farm fields. Virtually all of the data on possible environmental effects of coarse particulate matter comes from urban studies. EPA is considering a more

stringent standard, although it has stated that the evidence would justify keeping the current standard. Rural areas in the Southwest and rural plains cannot meet the current standard, and many more rural areas would be unable to meet a stricter standard. Urban areas will be relatively unaffected.

EPA is expected to make a decision sometime later this year to either propose a new standard or to retain the current standard. The decision will be subject to public comment. Farm Bureau members are requested to contact their House delegations and ask them to co-sponsor H.R. 1633.

Federal Court of Appeals Ruling in CAFO Lawsuit & Maryland Interpretation

On March 15th a federal court ruled that the U.S. Environmental Protection Agency cannot require livestock operations to obtain Clean Water Act (CWA) permits unless they are discharging manure into a waterway of the United States. The U.S. Court of Appeals for the 5th Circuit in New Orleans said that EPA exceeded its statutory authority in requiring concentrated animal feeding operations (CAFOs) that propose or that might discharge to apply for CWA permits.

National Pork Producers Council, the American Farm Bureau Federation, the United Egg Producers and several other agricultural groups sued EPA over its so-called CAFO rule, which was issued in 2008 after EPA's core provision in the initial 2003 regulation was struck down by the U.S. Court of Appeals for the 2nd Circuit in New York City. In that 2005 decision, the court ruled that the CWA requires permits only for producers who actually discharge. EPA had sought to require permits even for operations that had a "potential" to discharge.

The 2008 regulation, which set a zero-discharge standard, included a duty to apply for a CWA permit for all CAFOs that discharge or "propose" to discharge. The rule essentially established a presumption that CAFOs "proposed" to discharge if any future discharge occurred. The rule covered production areas and crop land on which manure is applied and imposed fines of up to \$37,500 a day not only for illegal discharges but for the failure of a CAFO that had a discharge to apply for a CWA permit.

In arguments before the 5th Circuit, NPPC said the 2008 rule's duty to apply "constitutes a thinly veiled effort to impose the same duty to apply that was invalidated" by the 2nd Circuit. It also argued that the "failure to apply" violation creates substantial economic pressure to apply for a CWA permit and that the regulation shifts the burden to a non-permitted CAFO that has a discharge to establish that it did not "propose" to discharge.

The 5th Circuit Court agreed with NPPC's arguments, ruling on the "duty to apply" provision that previous court cases "leave no doubt that there must be an actual discharge ... to trigger the CWA's requirements and EPA's authority." It also struck down the CAFO rule's "failure to apply" provision, stating that its imposition is "outside the bounds of the CWA's mandate."

How does this impact Maryland poultry and livestock producers? During the State Soil Conservation Committee meeting on April 21st, MDE officials offered this interpretation: All requirements of the current MD CAFO permit are supported by MDE State legal authorities and stand regardless of recent court determinations pertaining to EPA authorities. MDE plans to delay any official guidance during the period of time that federal court decision is open to appeals.