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The Case against the Poultry Litter Management Act

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It is clear now why proponents of the Poultry Litter Management Act would not share draft language with anyone prior to introduction. Instead, they called around and told farmers, representatives of farmers, radio station talk show hosts and Legislators that, "this is simply a bill to say that if a poultry farmer doesn't have a use for his poultry litter, the poultry company would have to take it." They promised that "farmers will be able to continue to use or sell their poultry litter, this is just to help out if they can't use it or don't want to use it." At the same time proponents talked about how they perceived poultry farmers as powerless against the integrators for whom they grow chickens. They talked about wanting to help them.

What was purported to be a "simple little bill," upon actual review, turns out to be a fairly comprehensive intrusion into the independence of family farm operations. The fact is that HB 599/SB 496 actually takes away personal responsibility and decision making authority from farmers and turns it over to poultry companies.

The fact is that farmers, poultry companies, the Administration, Legislative leaders, and environmental advocates came together last year to craft a monumental compromise on new phosphorus management regulations to implement the PMT. The compromise included a six-year phase-in, with the first 2 years targeted at analysis and alternative use development. Farmers and poultry companies committed to making the new program work. HB 599/SB 496 is a withdrawal from the agreed framework and a major disappointment to those who negotiated in good faith in 2015.

- HB 599/SB 496 establishes poultry companies as mandatory enforcement agents and inspectors for a farm Nutrient Management Plans. Nutrient Management Plans are already regulated under a comprehensive set of rules by State government. Many aspects of a nutrient management plan affect the private business operations that are not involved in the poultry production aspect of a farm.

- This bill institutes "co-permitting" a concept that was rejected many times over by the Legislature as far back as 1998. Under the co-permitting scenario, a poultry company may not place birds with an independent farmer unless the poultry company inspects and verifies that conditions already required of that farmer by law are met. In this case, the poultry company becomes more powerful over an independent farmer and a farmer is in jeopardy of losing revenue during the time it takes the poultry company to conduct its inspections of documents already regulated by the state. A delay in bird placement can cause significant financial harm to independent farmers.

- HB 599/SB 496 only allow a poultry farmer to retain ownership of poultry litter – *which has become a valuable, saleable, organic fertilizer* – if it can be used on the farm immediately adjacent to the poultry house and operated by the farmer. Otherwise, the farmer has to ask permission of the poultry company and the state government to be able to sell a product he or she

has had ownership of for many years. A farmer will no longer be able to continue the business arrangement he or she has with nearby grain farmers who buy the organic fertilizer. When alternative use companies become operational, the poultry company will have all the power to sell the poultry litter for those uses and a farmer can be denied.

- HB 599/SB 496 requires a new regulatory document called An Alternative Use Plan for farmers who want to keep and market their own poultry litter fertilizer products. The Plan must be approved by MDA.

- HB 599/SB 496 creates new recordkeeping and reporting requirements. Farmers already file annual reports on the implementation of their nutrient management plans. This bill now requires poultry companies and their agents to collect information about the farms they do business with and submit that information to the State to become available to the public. The Courts have ruled that farmers are entitled to certain protections under the Water Quality Improvement Act of 1998. This is an attempt to circumvent those protections and make farmers susceptible to lawsuits by activists.

- HB 599/SB 496 limits the delivery of poultry litter in a way that might discourage the establishment of technologies that can separate phosphorus from poultry litter and allow farmers to continue to use the nitrogen, micro nutrients and organic matter that are so good for the soil.

- This bill ends the very successful cost-share program that has helped farmers move poultry litter and liquid dairy manure. The cost-share is going to be needed more than ever by farmers, particularly dairy farmers, as they strive to meet the requirements of the Phosphorus Management Tool (PMT). Maryland is at risk of losing credits in the Bay TMDL WIP calculation if we end this Best Management Practice (BMP) cost-share program.

- HB 599/SB 496 establishes penalties of $50,000 per violation and establishes the violation as a criminal misdemeanor. Civil penalties of $100 per ton of manure are also available to the state.

- The Poultry Litter Management Act strips the Department of Agriculture of its authority to manage compliance and settle civil cases. The bill requires MDA to seek permission/concurrence of the Attorney General to settle a civil regulatory case.

- HB 599/ SB 496 gives new authority to contract growers to sue poultry companies for any loss incurred if an integrator violates the Act.

- HB 599/ SB 496 impacts not only the contract growing operations on the Delmarva, but it also pulls in turkey growers in western Maryland (Frederick, Washington & Carroll Counties) where legacy phosphorus in soils is not a problem.

In short, the provisions in the Poultry Litter Management Act are unnecessary and are harmful to the economic balance of Maryland farm operations.