National Milk Producers Federation

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January 27, 2016 VIA U.S. Mail & Email

Ms. Susan Payne
Program Coordinator
Maryland Department of Agriculture
50 Harry Truman Parkway
Annapolis, MD 21401

RE: Proposal to Adopt Agricultural Nutrient and Sediment Credit Certification Program Regulations; COMAR 15.20.12

Dear Ms. Payne:

The National Milk Producers Federation (NMPF) welcomes the opportunity to provide comments to the Maryland Department of Agriculture's proposal to adopt an Agriculture Nutrient and Sediment Credit Certification Program.

NMPF, based in Arlington, VA, develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 32,000 dairy producers on Capitol Hill and with government agencies. Visit www.nmpf.org for more information.

NMPF strongly supports the concept of nutrient trading and applauds Maryland officials for having the foresight to propose a program in the state of Maryland. We wholeheartedly believe that Maryland's proposed action exemplifies the leadership that is needed to improve water quality in the Chesapeake Bay in an economically judicious manner. It will set a precedent that other states and watersheds can and will follow to improve their water quality.

Eligibility for Nutrient Recovery Technologies

While NMPF is highly supportive of the proposal, we ask for either a clarification or an amendment to the proposal that states that technologies that remove nutrients from manure prior to land application are eligible to participate in nutrient trading.

Nutrient recovery technologies show great promise. We believe that they can dramatically improve water quality by recovering the nutrients and moving them to an area where they are needed and are beneficial. Unfortunately in many cases the technologies are very expensive to construct and operate, and markets for the created nutrient products which can offset the costs are lacking. We

believe that Maryland's inclusion of nutrient recovery technologies in its nutrient trading program can drive investment and use of these technologies as well as drive innovation, promote acceptance of these technologies and spur market growth.

NMPF is not alone in its belief of the value of nutrient recovery technologies. The U.S. Environmental Protection Agency (EPA) and numerous others are collectively working together enhance the efficiency and reduce the cost of nutrient recovery technologies. In fact, EPA is now in Phase I of a multi-agency, multi-partner Nutrient Recycling Challenge. We are attaching, with EPA's consent, that program's information, criteria and guidelines to these comments. EPA has four stated goals for the Challenge:

1) Accelerate the development of nutrient recovery technologies for pork and dairy farms that produce environmental and economic benefits.
2) Increase awareness of issues and opportunities related to nutrients and manure management.
3) Connect innovators and agricultural stakeholders.
4) Stimulate markets for products generated by nutrient recovery technologies.

EPA, the United States Department of Agriculture, academics, cooperatives, companies, associations including NMPF, and other partners all strongly believe that we have a tremendous opportunity to generate economic benefits for the nation's agricultural producers and environmental benefits for everyone. We hold this Challenge out as an example of the desire, vision and dedication of a diverse group of stakeholders' interest in changing the game. We would like Maryland to be part of the game change.

While we have a keen interest in seeing the introduction of new technologies and the improvement of existing ones, we would be remiss if we were not to acknowledge that there are in fact existing technologies that work well today. We firmly believe those technologies should be eligible to participate in Maryland's nutrient trading program when it is introduced later this year.

<u>Clarifying Language Needed</u>

To effectuate such an inclusion, we suggest clarifying the language in the proposed rule which states that technology-based nutrient recovery technologies are for the purpose of this rule included as best management practices (BMPs). As currently drafted in the proposed rule it would appear that you may have intended such inclusion in your definition of "Category 3 Practice" under the

BMP definition. You defined Category 3 Practice to mean, "a new or innovative technology or practice (emphasis added) as determined by the Department that is not in widespread use and for which no recognized nutrient removal efficiency exists." In contrast to Category 1 and Category 2 which explicitly use the acronym "BMP" in their definition, Category 3 does not and instead it refers to a "new or innovative technology or practice" as shown above. The ambiguity of the language is confusing and, in fact, when NMPF staff attended the Nutrient Trading Symposium on January 8, 2016, a Maryland official stated that nutrient recovery technologies were not currently eligible for trading, but that a number of technologies were currently under peer review and a determination would be made in the near future. We think the rule must be clearer.

If the definition of Category 2 were modified so that "BMP" was replaced with "BMP or new or innovative technology or practice" we feel this would be more representative of where those technologies are currently. Such a change would dovetail nicely with Section .05 of the proposed rule, which addresses Agriculture Nutrient and Sediment Credit Generation. Subsection C. states that Category 2 Practices "require review by an independent technical panel established by the Department to ascertain the appropriate nutrient and sediment removal efficiencies and determine effectiveness estimates." We believe the existing technologies will easily withstand such scrutiny and prove themselves, though we do have concerns. The evaluation must be made in advance of construction either by the review of scientific and engineering documentation or existing systems that are in place in Maryland or elsewhere. This is imperative if we are to drive the adoption of these technologies as lenders will not approve funding unless there is a reasonably certainty that there will be revenue sufficient to retire debt and cover operating costs. If the review is only to be performed after installation and operation begins, that is a non-starter.

From our perspective, technology-based nutrient recovery schemes are in many ways superior to traditional BMPs. For example, the nutrients that are recovered are easily verifiable and quantifiable which removes the uncertainty associated with BMP's. In fact, the certainty ratio for these technologies is one, versus a much lower ratio that needs to be used for BMPs. As you are likely aware, the Pennsylvania nutrient trading program ran into difficulty in precisely this area and ultimately had to reduce the value of BMP credits to one-third of their previous value. In addition, nutrient removal technologies can deliver large quantities of recovered nutrient, so one nutrient recovery installation can deliver considerably more than many traditional BMP installations. That helps in reducing the overhead associated with validating and verifying the nutrient reductions. Further as previously stated, the nutrients can be taken from a

watershed where they are not needed and can be delivered to an area where they are needed and can be used in a beneficial manner.

Long-Term Credit Trading Needed

Another important consideration is the length of time credits are available. As we have alluded to, the cost to build and operate the existing technologies in a word is *expensive*. In fact, most of the existing technologies can cost millions of dollars to build and install. We envision that markets will grow for the nutrients that are recovered from these systems which will make the deployment of these technologies more economically viable. However, we need additional revenue sources today to offset the costs and retire the debt associated with constructing them or these technologies will not be utilized. The additional revenue that is needed can easily come from nutrient trading but there must be a long-term contract option of ten years or more, which will give lenders and investors a comfort level that revenues will be sufficient for years ahead to justify the investment. We believe long-term agreements will benefit those who intend to make credit purchases as it gives them certainty as well, and we are encouraged that can happen here in Maryland

We are at a critical stage in terms of water quality in both the Chesapeake Bay and in terms of fostering nutrient recovery technologies that can help Maryland and others meet their water quality goals. In time, we envision that nutrient recovery technologies efficiencies will improve, the costs to build them will come down and the markets for the products derived from these technologies will develop. This will provide a meaningful and stable source of income that may obviate the need for revenue from trading, but that is likely a decade away. Until then, Maryland needs to act, Maryland needs to lead, and Maryland needs to show other states how to efficiently and effectively achieve the nutrient loss reductions that are needed to improve water quality throughout the United States.

We commend the state of Maryland for its leadership in pursuing a nutrient trading program that will benefit the agriculture community and Maryland's citizens. NMPF staff stand ready to assist the state in the pursuit of its mission.

Sincerely,

Clay Detlefsen, Esq.
Senior Vice President, Environmental and Regulatory Affairs & Staff Counsel