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## Testimony in Support of House Bill 715 – Better Public Notification at the Public Service Commission

February 23, 2018

Dear Chairman Davis and Members the Committee:

Thank you for this opportunity to submit testimony in support of House Bill 1221 – Protection of Personal Information in Nutrient Management Plans – on behalf of Waterkeepers Chesapeake. Waterkeepers Chesapeake is a coalition of nineteen independent programs working to make the waters of the Chesapeake and Coastal Bays swimmable and fishable.

House Bill 1221 will specify what types of "personal information" are protected under Nutrient Management Plans (NMPs) in Maryland. The bill will bring NMPs in line with other information that's available through Public Information Act requests. Specifically, the bill will protect a NMP holder's identity by safeguarding the name, address, driver's license number, social security number, telephone number, medical information, associated images, and *any other identification number*. Ultimately, this bill aims to lower the costs to citizens, community groups, and other stakeholders who are trying to gain access to Nutrient Management Plan summaries, which are designed to protect local streams and rivers from over-pollution.

The current cost of accessing Nutrient Management Plan summaries using the Maryland Public Information Act is too high for most to afford - effectively preventing access to NMP summaries, related cost-share documents (MACS), and enforcement records which are designed to safeguard our rivers from nutrient pollution. In cases where the Maryland Department of Agriculture (MDA) has agreed to release the plan summaries, they have been so heavily redacted that they are rendered useless to the requester. This is due to a vague state court interpretation of a provision in the Water Quality Improvement Act that calls for protecting the "identity" of a nutrient management plan holder. The court's interpretation has caused much more than the identity of the NMP holder to be protected, with a costly legal analysis taking place to determine what information is protected in each case.

While the legislature intended to make nutrient management plan summaries and associated documents available to the public, the current confusion around what is considered "personal information" has effectively prevented public access. By specifying the types of information considered "personal," MDA, NMP holders, record-keepers and information seekers will know exactly what type of information is publicly available and what type of information is confidential. This prevents a complex and costly analysis in the case of each Public Information Act (PIA) request. To that end, the Attorney General's most recent report recommended that "the General Assembly clarify the provision *so as to avoid further unnecessary expenditure of public resources*." Further, the importance of the role played by citizens in environmental stewardship has only increased as budget cuts have severely reduced both federal and state enforcement efforts.

Nutrient Management Plans contain vital information for the protection of the Maryland's local waters and streams. Having access to these plans will ensure the success of Maryland's Water Quality Standards and the Chesapeake Bay TMDL. According to a recent report from MDA, the

Anacostia Riverkeeper  
Assateague Coastkeeper  
Baltimore Harbor Waterkeeper  
Chester Riverkeeper  
Choptank Riverkeeper  
Gunpowder Riverkeeper  
Lower James Riverkeeper

Lower Susquehanna Riverkeeper  
Middle Susquehanna Riverkeeper  
Miles-Wye Riverkeeper  
Potomac Riverkeeper  
Sassafras Riverkeeper  
Severn Riverkeeper

Shenandoah Riverkeeper  
South Riverkeeper  
Upper James Riverkeeper  
Upper Potomac Riverkeeper  
Virginia Eastern Shorekeeper  
West Rhode Riverkeeper



purpose of Nutrient Management Plans is to “ *protect Maryland’s waterways from nutrient pollution...* [ and] ensure that nutrients applied to crops and lawns *are not impacting waterways* . The program also works with... producers to make certain that animal manure... is managed in an environmentally sound manner.”<sup>2</sup> Having access to nutrient management information and understanding how manure has been applied and possibly over-applied in certain watersheds allows researchers to determine what bodies of water are being impacted by specific nutrients and how it may be affected the health of the Chesapeake Bay. For instance, a study from the Environmental Integrity Project that looked at 62 of Maryland’s largest farm operations (which are already publicly available since they are regulated by federal law), concluded that poultry farmers spread three times more phosphorus in chicken manure on their fields than their crops needed.<sup>3</sup>

Increased government transparency around Nutrient Management Plans ensures that any related tax dollars are serving their desired function of reducing pollution in our waterways. The Maryland Department of Agriculture’s Office of Resource Conservation receives close to \$50 million annually and “provides cost-share funding for nutrient management plan development, including the training, certification and licensing of nutrient management plan consultants.” Farms across Maryland receive public dollars each year to help them comply with NMPs.

Waterkeepers Chesapeake is a strong proponent of any policy that increases government transparency, the backbone of a free and open democracy, especially for plans created with public dollars for the purpose of protecting water quality. We agree with the Maryland’s Attorney General’s Office recommendation that “ § 8-801.1 of the Agriculture Article should be amended to specify what identifying information should be withheld when nutrient management plans are provided in response to a PIA request.”<sup>4</sup> House Bill 1221 does exactly that. For these reasons, the undersigned Waterkeepers, Riverkeepers and Coastkeepers urge the Committee to adopt a favorable report on House Bill 1221.

Sincerely,

**Betsy Nicholas**  
Executive Director  
Waterkeepers Chesapeake

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