Testimony of
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Good morning, Chairman Causer, Chairman Pashinski, and Committee Members.

Thank you for holding this hearing today and for the opportunity to testify. Urban nutrient management is an important and growing focus of water quality efforts in the region.

My name is Marel King, and I am Pennsylvania Director of the Chesapeake Bay Commission, a tri-state legislative commission advising the general assemblies of Maryland, Virginia and Pennsylvania on matters of Bay-wide concern. We are especially focused right now on achieving the Chesapeake Bay Total Maximum Daily Load (TMDL) for nitrogen, phosphorus and sediment, the three key sources of Bay impairment.

The Chair of our Pennsylvania Delegation is Senator Rich Alloway. Vice Chair is Representative Mike Sturla. Other members of the Delegation include Senator Gene Yaw, Representative Garth Everett, Representative Keith Gillespie, DEP Secretary Patrick McDonnell and Citizen Member Warren Elliott.

The Commission has been actively working on turf fertilizer legislation since 2011, learning from scientists and industry experts about the different forms of fertilizer, how it is distributed, and how it is used on turf. The product of that eight-year process is SB 792 as currently amended – a bill that we believe is comprehensive in its approach to urban nutrient management, protecting water quality while respecting the diversity and innovation of the turf fertilizer industry in Pennsylvania.

We are very grateful for the assistance of the Pennsylvania Department of Agriculture's Bureau of Plant Industry throughout this process. Their staff patiently educated us on industry terminology and their own regulatory process, and opened the doors of the Fertilizer Advisory Committee to us for insight and feedback.

Background

At the Commission's first quarterly meeting of 2011, we heard a compelling case study from Michigan about the significant water quality improvement that quickly resulted from local implementation of turf fertilizer restrictions. Although that situation was in a small local watershed, it demonstrated a very clear connection between lawns and water quality.

This should not have been a surprise. Unlike forested or agricultural areas, much of the stormwater in urban and suburban areas is directed toward storm drains, which connect directly to a stream. Any substance caught up in the runoff has little chance of infiltrating or attenuating before reaching a water body.

At the same time, we were learning the impacts of previous efforts to remove phosphates from laundry and dish detergents. In the 30-year history of the Bay restoration effort, these actions had been some of the most meaningful and successful. It was becoming clear that removing nutrients at their source – rather than trying to mitigate the impacts once they were in the environment – could be extremely cost-effective.

This approach does not make sense in all cases, but we began to look for opportunities where source reduction would be appropriate.

Finally, new land use data was illustrating unprecedented changes in the watershed. In particular, the acres of turf were now exceeding acres of corn. The watershed has only continued to become more urbanized, and the nutrient and sediment loads from developed areas continue to grow – while loads from other sectors continue to decline.

With the growing influence of urban acres on water quality, it seemed only right that nutrient management principles – already applied to agriculture – should be extended to lawns.

All three Commission states introduced lawn care legislation in 2011. Maryland's Fertilizer Use Act was passed later that spring, while Virginia passed legislation banning phosphorus in 2011 and nitrogen standards became effective in 2014. These states joined New Jersey, New York, New Hampshire, Delaware and several others that had already established turf fertilizer restrictions.

Pennsylvania's bill (SB 1149 of the 2011-2012 Session) was modeled on Maryland and Virginia's legislation, but included changes that reflected stakeholder input. Pennsylvania's bill language continued to evolve and the current version now reflects eight years' worth of knowledge and negotiation, including current industry terminology, accommodations for innovative and organic fertilizer products, state-specific dates and setbacks, and a recognition of the value of site-specific nutrient management plans.

While these provisions were initially modeled on Maryland and Virginia's programs, they are also consistent with a stakeholder-driven report prepared for New York and New England. That process was focused on an industry-led approach promoting the **Right** Source, **Right** Rate, **Right** Time, and **Right** Place for fertilizer application.

This legislation is not anti-fertilizer or anti-lawns. Healthy lawns that receive the **Right** fertilizer can help to reduce runoff from urban and suburban areas.

SB 792

We heard loud and clear from the industry that they wanted a level playing field and predictable expectations, but flexibility to incorporate new products and practices. They also wanted assurance that their efforts would be recognized with credit toward the Chesapeake Bay TMDL. The current version of SB 792 meets those goals.

Key provisions include:

§6813

Turf fertilizer sold at retail can contain no more than:

- 0.9 pounds of total N/1,000 square feet, with at least 20% of the total N consisting of "enhanced efficiency" nitrogen. "Enhanced efficiency" is an industry term that refers to characteristics that increase plant uptake and reduce nutrient loss to the environment.
- Zero phosphorus, with two exceptions:
  - Organic products that contain phosphorus by their nature.
  - Products labeled for establishment or repair of turf.

This section applies to "do-it-yourself" products. By reducing the nitrogen level from 1.0 to 0.9, 10% of N is removed at the source, while remaining within the acceptable application range for turf. Phosphorus promotes root growth, and is not typically needed for established turf. By reducing the content in the bag, the total pounds of nutrients sold per acre of turf should decline. This decline in sales per acre is key to receiving credit under the Bay TMDL.

§6814

- Establishes labeling requirements such as brand and grade of fertilizer, guaranteed analysis of nutrient content, net weight, etc. It also requires the following statements on the product label:

  This product shall not be applied near water, storm drains or drainage ditches.

  This product shall not be applied if heavy rain is expected.

  This product shall only be applied to the intended application site.

- In addition to the above statements, the label of turf fertilizer sold at retail must include:

  Material that lands on an impervious surface shall be swept back on the turf.

- Fertilizers shall not be labeled for the purposes of melting snow or ice except for use at airports.

§§6831-6835

- Creates a new licensing requirement for "fertilizer application businesses" and certification requirement for "commercial applicators" and "public applicators."
- "Commercial applicator" is a person who applies or supervises the application of fertilizer to the property or premises of another or who applies or supervises the application of fertilizer to any of the following:
    1. Golf course
    2. Public or private park
    3. Public or private school grounds
    4. Public or private university campus (university research is exempt)
    5. Public playground or athletic field
- A "Fertilizer application business" is any governmental or public entity, commercial applicator or for-profit or not-for-profit business that applies fertilizer to one of the above locations.
- "Public applicator" is defined as a person employed by a government or public entity who applies or supervises the application of fertilizer as part of the applicator's employment duties.
- Fertilizer application businesses must be licensed and must employ at least one certified applicator. All employees who apply fertilizer must be trained by a certified applicator employed by the business.
- Commercial applicators must be certified annually.
- Public applicators must be certified every three years.
- Applicators that already possess one of several pesticide certifications do not need to be certified for fertilizer until their pesticide certification is due.
- Certified applicators must obtain four continuing education credits every three years.

§6841

- All certified applicators must keep records of every application, including customer's name, address and date of application, weather conditions, name and grade of fertilizer, rate of application, among others. Records must be maintained for three years and made available to PDA on request.

§§6851-6853

- Prohibits application of fertilizer within 15' of top-of-bank of a water body, at top-of-bank when using a precision applicator.
- Establishes a default maximum application rate for turf of:

- 0.7 lbs. of "readily available nitrogen" and 0.9 lbs. total nitrogen per 1,000 square feet; and
- zero phosphorus except when:
  - establishing or repairing turf
  - applying an enhanced-efficiency or organic fertilizer product.
- The default rate can be exceeded when the applicator is following a site-specific plan based on a soil test, other site characteristics and university recommendations.
- Turf fertilizer may not be applied to impervious surfaces or to ground that is snow-covered or frozen to a depth of at least two inches.
- Generally, turf fertilizer may not be applied after December 15 or before March 1, except professionals can apply up to 0.5 lbs N/1000 sq. feet during that time.

By establishing a default rate that can be exceeded if indicated by a site-specific nutrient management plan, combined with the certification and recordkeeping components above, this provision recognizes the value of plans developed by trained professionals. Such a plan is the first of ten elements listed by the Chesapeake Bay Program's Urban Nutrient Management Expert Panel as a "Core Urban Nutrient Management Practice" and is key to receiving credit toward the Bay TMDL.

§6861

- Requires PDA, in cooperation with Penn State and the ag and turfgrass industries, to undertake a program of public outreach and education on the proper use, application, handling and storage of fertilizer.

§6887

- Pre-empts conflicting local ordinances.

In addition to the provisions that relate directly to water quality, we recognize that the Department of Agriculture needs the resources to be able to carry out both its existing and new responsibilities to oversee the Commonwealth's fertilizer program and the bill includes several fee provisions for that purpose.

We also note that §6879(E) allows the Department to not enforce *de minimis* violations.

<u>Now is the Time</u>

The current version of SB 792 is the product of eight years' of negotiation and dialogue with the Department of Agriculture, stakeholders, and the Chesapeake Bay Program. We have now reached a point where there is consensus on the language with assurance from EPA that the Commonwealth can receive credit under the Bay TMDL.

Additionally, we are at a critical juncture in our Bay TMDL efforts. Planning is underway for the "Phase III" Watershed Implementation Plan that will guide Pennsylvania's Chesapeake Bay activity between now and 2025. All sectors must continue to contribute toward nutrient and sediment reduction, but reductions from stormwater are some of the most difficult and expensive to achieve.

However, a source-reduction approach, such as urban nutrient management, is an extremely cost-effective way to help the urban sector meet its goals. In fact, it is one of the few tools that will actually reduce the burden at the local level, by instituting a state-wide program.

By taking action now, we will have this important program in place for the Phase III Plan. Therefore, we respectfully request your swift and favorable action on SB 792.

Thank you for your time and attention. I am happy to answer any questions you may have.