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March 25, 2024

Submitted electronically via Regulations.gov

Steve Whitlock
Engineering and Analysis Division
Office of Water, Environmental Protection Agency
EPA Headquarters
1200 Pennsylvania Avenue NW
Washington DC, 20460

**Re: Docket No. EPA-HQ-OW-2021-0736: Clean Water Act Effluent Limitations
Guidelines and Standards for the Meat and Poultry Products
Point Source Category**

Dear Mr. Whitlock:

The National Chicken Council (NCC) appreciates the opportunity to comment on the proposed rule titled "Clean Water Act Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category." NCC is the national, non-profit trade association that represents vertically integrated companies that produce and process more than 95 percent of the chicken marketed in the United States.

As the proposed rule will directly impact most of our member companies, our major concerns are addressed below. However, the unworkable time constraints and limited information will severely limit constructive comments from all parties providing feedback to the Agency. Overall, the proposed rule is unnecessary as the existing 2004 regulation establishing effluent limitations guidelines (ELGs) and new source performance standards for the meat and poultry products (MPP) industry is sufficient (2004 MPP ELGs), and numerous federal, state, and local programs already regulate our members.¹

Our industry goes above and beyond the 2004 MPP ELGs. Still, establishing more stringent regulations can significantly impact smaller facilities, directly undermining Administration efforts to support these producers. Depending on the scope of any potential final rule, many smaller establishments may be forced to use recently provided federal funding to comply with the rule instead of using these funds to establish and expand their businesses.

The proposed rule was developed without concrete justification. Many of the analyses, such as around pollutant loading and the cost-benefit analysis, lack robust support. The economic evaluations are inaccurate for the scale suggested within this proposal. For one, the cost model is not appropriate for estimating capital nor the operational and management costs of most MPP facilities. Additionally, EPA's estimations of closures and job losses are severely understated,

¹ [Federal Register :: Effluent Limitations Guidelines and New Source Performance Standards for the Meat and Poultry Products Point Source Category](#)

and a proposed rule that anticipates such consequences, even if underestimated, should be revised.

Of the Options presented (Options 1-3), Options 2 and 3 should not be implemented, as they will be impossible to comply with and will result in severe economic harm. Although Option 1 is the more palatable of the options, it still needs numerous revisions before implementation should be considered. Not only are the justifications for the proposed rule inadequate, but it will also disproportionately impact indirect dischargers and their relationships with publicly owned treatment works (POTWs).

I. EPA has not provided adequate time to allow for meaningful public comment on the proposed rule

Sixty days is an insufficient amount of time to provide substantive comments on the proposed rule. This view is shared by both small and large producers, both within the broiler industry and in the agricultural product industry more broadly, by those in the environmental advocacy community, and by Members of Congress. EPA can grant an extension to the comment period, even under the consent decree, by asking the Court for more time for the rulemaking and explaining the complex considerations at play. There are multiple provisions within the decree that allow for extending the deadline, which would be warranted in this instance. Past deadlines have been missed with no direct or significant liabilities to EPA, even if challenged in Court.

Instead of seeking adequate time to conduct measured rulemaking, the Agency has proceeded with an abbreviated comment period even after hearing from various stakeholders. This undertaking is rushed, and much of the necessary material needed to comment on is restricted by confidentiality. Moreover, the Agency continues to request data from stakeholders during the comment period to complete inaccurate or missing aspects of the proposed rule. In short, it is difficult to provide substantive and meaningful feedback on the docket containing over 600 associated documents, incomplete and inaccurate economic analysis, and engineering reasons behind such a policy that will likely lead to many facility closures and major job losses nationwide, resulting in an increased cost of products produced.

The strict limits within the proposed rule are very technical. All the research, assertions, and data were based on surveys and information from a decade ago. The revised proposal will likely have deep economic consequences expanding far beyond what has been estimated in the economic analysis. Additionally, the rulemaking will likely cause major disruptions to local POTWs, their employees, and the communities that rely on the POTW's services.

It is unacceptable that the proposed rule, with over 600 associated documents aimed at changing the current standard that has been in place for more than two decades, has been given a mere 60-day public comment period, despite the glaring and overwhelming issues at hand. This proposed rule, if finalized, will have a significant impact on the nation's food supply, and it is imperative that these realities are considered before implementation.

II. The proposed rule lacks necessary supporting data and could negatively impact existing symbiotic relationships

There are multiple issues with the data used in the proposed rule, and the record is insufficient to support such a widescale rulemaking. As noted in the proposed rule, data collection occurred nearly a decade ago. EPA reviewed discharge and toxic release data from 2015, and based on this data, the Agency ranked industrial categories by the nutrient loads in their wastewater

discharge and ranked total nitrogen (TN) and total phosphorous (TP) as the highest nutrient loads on which EPA would focus.

The data supporting the conclusions in this proposal should be re-evaluated, and the Agency should work closely with the industry when deciding which nutrients to target rather than reaching this conclusion using outdated data and without input from the regulated industry. All MPP industries have significantly improved their abilities to test and control water quality long before EPA considered revising the 2004 MPP ELGs. The Agency even acknowledges this in the proposed rule, citing that the industry has improved the removal of nitrogen, ammonia, and phosphorous in discharge when compared to the 2004 MPP ELGs. The MPP industry is, and has been, making extra efforts to comply with regulatory guidelines and ensure that water discharged from their facilities meets required federal and state standards for safety and cleanliness.

The 2004 MPP ELGs give the industry the necessary flexibility to stay compliant while independently pushing for better water quality at a rate that does not hinder work capacity, chemical availability, renovation needs, or new technology.

Currently, federal, state, and local programs already effectively regulate water quality without the need for additional federal intervention. On a local level, indirect dischargers work closely with POTWs to ensure that the pre-treated water being sent to municipal wastewater facilities does not overload their systems. Occasionally, water originating from MPP operations provides loadings that enable POTWs to meet their nutrient goals and aid their on-site lagoon systems. Many MPP facilities have financial ties with POTW operators, either through investments in maintenance or by paying surcharges for operation costs. This reduces public treatment fees for residential ratepayers and improves the quality of local and downstream waters.

The proposed ELG requirements for MPP indirect dischargers would upset the POTW relationship. MPP facilities provide high concentrations of readily treatable biochemical oxygen (BOD) loads to their POTWs. If reduced, many POTWs with operations optimized for the current domestic and industrial users would have difficulty achieving their BOD percent removal compliance requirements. Regulated MPP indirect dischargers currently provide advantageous carbon loads for POTWs that nitrify and denitrify. However, the proposed rule would greatly reduce this carbon input. POTWs would need to either purchase replacement carbon or make costly facility changes that are outside the current scope of the rule and not considered in the economic impact analysis. The sharp reduction, in general, in pollutant loads from indirect dischargers will reduce POTW revenues from surcharges and sewer use. Worst of all, the closure of MPP facilities will result in no regulated streams going to POTWs, exacerbating the abovementioned conditions. The closures will also have downstream impacts on the local communities needing the jobs from these facilities to support the towns, either through taxable revenue or general capital for people to spend within the economy. This is, however, a reality EPA anticipates for many communities as a result of this proposal.

As stated previously, the 2004 MPP ELGs already provide effective local requirements, given that federal entities are not as involved nor conscious of discharge matters as State and local authorities. State and Local Agencies are often the better options for regulating waterways, as, like with POTWs, they have close relationships with those discharging water and being affected by it. This one-size-fits-all policy attempting to be enacted at a federal level will have a disproportionate impact due to a general consideration of MPP facilities rather than a localized one.

This rule will interfere with the essential relationship between MPP facilities and POTWs, both of which can demonstrate why this proposed rule is unnecessary and harmful to communities, both large and small. In total, this proposed rule would force an unnecessary burden on meat and poultry processors and impact product cost and availability to the public during these times of significant inflationary pressures.

III. The proposed limits are too restrictive with weak justifications

EPA has committed errors in reviewing the limited amount of data and information available when calculating the proposed limits for the various subcategories. Based on EPA's analysis, certain MPP facilities using the prescribed treatment technologies would be unable to comply with the proposed limits, even if they were well-designed and operated. This is particularly true for the proposed TN limits and for renderers in general. Many MPP facilities designed for full nitrification/denitrification would not achieve the proposed TN limits. Even with the proposed technologies put in place, other calculation issues would result in exceedances of BOD, total suspended solids (TSS), TP, Fecal Coliform, and E. coli. These likely effects go against the primary objective of ELGs and EPA's responsibility to guarantee that facilities can comply with the final limits derived from using the prescribed technologies.

Of the eight historical "damage" cases cited in the Environmental Assessment by EPA, in which MPP facilities were alleged to have caused POTW permit violations, none would have been prevented had the proposed ELG been in effect. These cases all involved accidents from intervening forces, not poor MPP effluent management. EPA's findings show water impairments downstream of MPP dischargers are mainly due to non-MPP pollutants. EPA does not possess sufficient data and information to prove that there is any passthrough or interference with POTWs. In fact, POTWs are created in a way to treat and depend upon conventional pollutant loads from MPP indirect dischargers to guarantee consistent, efficient operations, and overall pollutant removal.

IV. Options 2 and 3 should not be considered, while Option 1 needs substantial modifications

EPA is aware of the harm choosing Option 2 or 3 would cause producers, which is even outlined in the Agency's proposed rule itself. The first, and one with which NCC agrees, is that the more expansive options would impede the Biden Administration's initiatives to expand independent meat and poultry processing capacity. Millions of dollars are being funneled into those initiatives, and the restrictive measures of Option 2 and 3 would hinder that investment, wasting taxpayer money. Secretary of Agriculture, Tom Vilsack, in a Senate hearing, remarked that his Department worked closely with EPA for that very reason.² Option 2 and 3 would also require significantly more resources, land, and technological advancements than Option 1. Urbanized areas likely do not have sufficient space due to zoning or land constraints to install anaerobic or aerobic lagoons. The options would also lead to greater numbers of facility closures and job loss than Option 1.

This does not mean, however, that Option 1 is void of issues. The costs for Option 1 are severely underestimated. First, any proposal that is expected to provide closures should be reevaluated to change those aspects that would drive business closures. Option 1 penalizes small and medium-sized producers who have been following the 2004 MPP ELGs for the past

² [Department of Agriculture Oversight Hearing | February 28, 2024 | C-SPAN.org](#)

two decades. Such a sudden shift would put previously compliant facilities out of compliance through no fault of their own. Not only that, this proposed rule would compete, if finalized in the currently predicted window, with the National Drinking Water Standard also proposed by EPA. Wastewater facilities around the country will be seeking to expand, build, and implement new technologies into wastewater systems within the next few years. Facilities nationwide will be required to make significant capital investments and implement new technologies in the same time window, causing supply and labor shortages. This will lead to overall costs increasing beyond what is estimated, and compliance will be delayed.

Overall, the industry is opposed to the MPP proposed rulemaking in its current form. Option 1 can be made more workable for the industry should the Agency grant additional time for input, consider feedback offered by the regulated industry, and work more collaboratively with the regulated industry to achieve environmental improvements. The proposed limits in Option 1 are not achievable by the candidate technologies, and we urge EPA to revisit its approach and revise the limits so that all the proposed levels are achievable by the proposed technologies and without the acceptance of closures or job loss. We also urge that EPA drop indirect discharging MPP facilities from the scope of the proposed rule. These facilities are already well-regulated through a combination of pretreatment permits, NPDES permits, and local limits.

V. The economic considerations are likely incorrect or downplay the realities of the proposed rule

The proposed rule fails to consider multiple economic factors that should be taken into account before implementation. For one, the Agency admits in the proposed rule that it did not account for land expansion in its economic impact study. Additionally, the Agency needs to consider the impact of other water-regulation rules and if their implementation windows will increase costs, create labor shortages, and force supply shortages for implementable technologies.

The economic impact analysis of this proposed rule is inadequate. It should more accurately simulate the tax status and financial decision-making process of the owners of a facility that has lower profitability. These owners may be at risk of closure due to the projected costs of complying with the proposed rule. Additional changes are necessary to the Agency's overall approach to compliance cost analysis, including those recommended in previous sections for engineering cost estimation procedures. For example, the Agency should recognize that the rule would pose compliance obligations and costs on MPP facilities forever, not just for the next 40 years. The current timeframe to calculate costs allows the Agency to avoid including the significant future expenses of replacing most of wastewater treatment equipment, starting in year 41, which EPA assumes has a useful life of 20 years.

If EPA were to adopt the suggested changes to the economic impact and costing procedures, the compliance costs that the agency includes in its cost-to-revenue (CTR) comparisons and discounted cash flow closure tests would increase by approximately 50%. If engineering compliance costs are expected to be twice as much as EPA's estimation, then the CTR and discounted cash flow analyses should be three times EPA's estimate (double the engineering costs and then add 50% to the doubling). If we assume there is a three-fold increase in the actual costs over the estimated costs, the projected number of MPP facility closures for Option 1 without chlorides would jump from 16 sites EPA estimated in this proposal to 48 sites, representing about 6% of the MPP facilities that exceed the production thresholds for Option 1. The projected number of near-term job losses associated with these facility closures would increase from nearly 17,000, EPA estimates in the proposal, to a little more than 50,000 job

losses. The number is only higher for the other two options. In sum, EPA has significantly underestimated the proposed rule's impacts on the industry.

Additionally, using income data from 2021 for the MPP industry will skew the economic impact assessment of the proposed rule. Using revenue solely from 2021 in the middle of a global pandemic is not indicative of the industry's usual profits and losses. Rather than using skewed pandemic information, EPA should consider using adjusted averages from years prior to 2020. They will provide a more accurate estimate for the Agency's economic evaluation than a singular outlier year that will greatly bias results.

Conclusion

For the reasons outlined in these comments, we first suggest that EPA leave in place the current 2004 MPP ELGs and redo the necessary scientific, economic, and engineering studies needed to determine whether new requirements are truly necessary. Alternatively, EPA could withdraw the proposed rule and reissue a new proposal addressing the concerns raised by comments. Finally, EPA could publish the relevant information, including what the Agency is still collecting today, and reissue a proposed rule with an additional and adequate comment period. Any of the above-mentioned options is a better approach than the current trajectory.

Rushing a rulemaking as extensive as this, without allowing all stakeholders the ability to comment meaningfully, will only lead to issues for all parties in the future. It has been two decades since the 2004 MPP ELGs were set, and the water quality in the United States has only become cleaner since then. EPA has spent considerable time collecting information independently and from stakeholders. Pushing forward at these speeds degrades the effectiveness of the rulemaking process. We ask that EPA be considerate of the parties affected by this rulemaking and truly consider all impacts to all stakeholders involved – not limited to MPP facilities. A rule that results in establishment closures, job losses, increased costs, and general anxiety about the future of effluent guidelines is one that should be considered in a more deliberate fashion.

Thank you for considering the comments outlined above. Please let us know if we can provide any more information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ashley B. Peterson". The signature is fluid and cursive, with the first name being the most prominent.

Ashley B. Peterson, Ph.D.
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National Chicken Council