May 19, 2025

The United States Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, DC 20004

Re: Proposed 2026 MSGP Comments Docket ID# EPA-HQ-OW-2024-0481

On behalf of the poultry and egg industry, the US Poultry & Egg Association (USPOULTRY), the National Turkey Federation (NTF), the National Chicken Council (NCC) and numerous State Poultry Associations and Poultry Processing companies respectfully submit the following requested comments on the proposed 2026 Multi-Sector General Permit (MSGP). Numerous proposed changes to the MSGP will have a direct impact on these industries, and we request your consideration of the points below when finalizing the 2026 MSGP. Our comments are focused on facilities that fall within SIC codes 2015, 2047, 2048, 2077, and 4212 (local trucking associated with these Sector U facilities). However, our comments are also likely applicable to other facilities subject to industrial stormwater discharge permitting requirements.

Industry Representatives Background

USPOULTRY is the world's largest and most active poultry organization. Membership includes producers and processors of broilers, turkeys, ducks, eggs, and breeding stock, as well as allied companies. Formed in 1947, the association has affiliations in 26 states and member companies worldwide.

NTF represents all segments of the turkey industry, including growers, processors, breeders, hatchery owners, and allied companies. NTF is the only national trade association exclusively representing the turkey industry; our members account for more than 95% of all U.S. turkey production.

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.

Overview

USPOULTRY is concerned that several of the proposed changes in the 2026 MSGP lack clear scientific and/or legal justification and would impose substantial compliance costs and operational burdens on permittees. While generally supportive of efforts to protect water quality, USPOULTRY wishes to avoid unnecessary and disproportionate burdens that may be imposed on permittees with the proposed quarterly benchmark monitoring, quarterly impaired stream monitoring, and PFAS indicator monitoring for Sector U facilities, among other proposed changes.

Furthermore, the White House's April 9, 2025, memorandum directs federal agencies to reconsider and rescind rules which exceed their statutory authority, with consideration of recent Supreme Court decisions. Most relevant here, the memorandum requires agencies to consider *Loper Bright Enterprises v. Raimondo* which abolished Chevron deference and requires agencies to adopt the single, best meaning of statutory text; *West Virginia v. EPA* which limits agency authority absent clear Congressional authorization; and *Michigan v. EPA* which requires cost-justification in regulatory decisions. We urge the USEPA to consider whether the added requirements to the proposed 2026 MSGP comport with these Supreme Court decisions. In particular, the quarterly PFAS-monitoring requirements for so many industrial sectors is not explicitly cost-justified in the permit, and it is unclear whether the impaired stream corrective action requirements are within the scope of the agency's authority under the single best interpretation of the Clean Water Act.

To this end, we respectfully request that the USEPA extend the comment deadline to allow stakeholders sufficient time to comment. The White House's April 9, 2025, memorandum, Administrator Lee Zeldin's April 28, 2025, statement on PFAS and protecting passive receivers, and the recent Supreme Court decisions mentioned above all have significant implications for the final 2026 MSGP. Given the recency of these statements and decisions, allowing stakeholders additional time to digest those statements and provide comment on the proposed 2026 MSGP will only serve to improve the final 2026 MSGP from the perspective of both stakeholders and the USEPA.

Notwithstanding the limited amount of time available to consider the implications of the above mentioned statements and decisions, our response to the USEPA's solicitation for comment pertaining to several specific topics, along with our primary concerns regarding the proposed 2026 MSGP, include the following.

1. Quarterly benchmark monitoring for the first 12 quarters (three years) of the permit term is excessive and will impose a significant burden and costs on permittees.

Avoiding Excessive Burdens: While it is understood that an improved database of benchmark monitoring data across all sectors may prove to be an useful tool for better understanding the relationship between industrial stormwater discharges and the water quality of receiving water bodies, the means of obtaining the data must not be an excessive burden to the individual facilities, and is not appropriate to be collected under a strictly regulatory approach. The responsibility of collecting such data should be held by the United States Environmental Protection Agency (USEPA) or contracted third parties to develop a comprehensive database and should not fall on industrial facilities as a requirement of their MSGP coverage. It should be noted that significant stormwater monitoring data is available in state environmental regulatory agency files and databases, and the USEPA could request this information through available channels. This data is also available through electronic discharge monitoring reporting systems operated by state regulatory agencies. In many cases this data is also used to populate the USEPA Enforcement and Compliance History Online (ECHO) platform (database).

<u>Analytical Monitoring Challenges:</u> There are various factors that make stormwater analytical monitoring challenging and cumbersome. Specifically, a rain event must be a qualifying storm, the facility must be

operating, sampling personnel must be available to collect stormwater samples within the first 30 minutes of a discharge occurring, conditions must be safe to allow facility personnel to collect samples (i.e., lightning storms, darkness, high stream flows, outfall accessibility during certain rain events, contract laboratories etc. prohibit unsafe sample collection), and samples must be delivered to the laboratory for analysis within USEPA specified holding times (i.e., per 40 CFR Part 136). Many facilities are located in rural areas where local laboratories are not readily available, which requires shipping samples to contract laboratories and/or driving samples long distances to laboratories for drop off to meet sample holding time requirements, amid other factors. Furthermore, at some facilities such as truck shops and feed mills, there is a limited number of staff present onsite. These staff are there to perform other specific duties and tasks related to feed production, plant maintenance and repairs, testing and recordkeeping for product QA/QC, and food/feed safety (to meet United States Department of Agriculture Food Safety Inspection Service [USDA-FSIS], U.S. Food and Drug Administration [FDA], and other related Federal and State agencies requirements) purposes, etc., which further limits the ability and resources available to collect additional stormwater samples.

Less Burdensome Alternatives to Quarterly Benchmark Monitoring: The practicability of performing quarterly benchmark monitoring for the first three years of the permit term is overburdensome, costly, and unnecessary for all industry sectors. Less burdensome and more cost-effective alternatives to 12 quarters of analytical testing for COD, TSS, pH, and other industry sector specific constituents of concern are available and provide more reasonable means of evaluating stormwater pollution prevention effectiveness at regulated facilities. A more reasonable and cost-effective alternative is to reduce the frequency of universal benchmark monitoring to annually for the entire permit term. This approach is more in line with many general stormwater permits from states with delegated authority. If two consecutive annual results for the universal benchmark parameters exceed the benchmark the applicable AIM response would be triggered. This approach would reduce the burden on facility personnel and simplify the benchmark monitoring requirements of the MSGP. This approach also places appropriate emphasis on facilities that are not meeting benchmarks. Another alternative is to retain the benchmark monitoring schedule from the 2021 MSGP (quarterly monitoring for first year, if appropriate benchmark is met then facility is free to discontinue quarterly monitoring until the fourth year of permit coverage).

2. Quarterly impaired waters monitoring for the duration of the permit term is excessive and will impose significant burden and costs on permittees.

<u>Quarterly Impaired Waters Monitoring as it Relates to Recent Supreme Court Ruling</u>: The USEPA proposes that permittees be required to implement "any additional measures you identified as necessary" as the result of detecting any pollutants causing the stream's impairment. Such a trigger appears contrary to the Supreme Court's directive in *City and County of San Francisco v. EPA*, where the court held that the USEPA cannot enforce end-result requirements focused on the quality of the receiving water. The open-ended election and implementation of "any additional measures" appears to circumvent proper effluent limitation development as outlined by the Court in its direction to the USEPA that the agency cannot impose permit conditions that hold permittees solely responsible for ensuring water quality in receiving waters, as opposed to the the test of test of the test of test of the test of the test of t

to regulating their own discharge. This scheme utilized in the proposed 2026 MSGP fails to take into account the contribution of other discharges into these impaired water bodies.

Requiring Corrective Actions Upon Detecting Pollutant of Concern is Not Practical and Not Reflective of Waterbody Needs: The USEPA proposes that facilities who discharge to an impaired water be required to institute corrective actions and appropriate AIM Reporting whenever the pollutant of concern is *detected* in quarterly monitoring. Also, basing a facility's potential to cause or contribute to a waterbody's impairment on the presence or absence of the pollutant in question is not indicative of a facility causing or contributing to a water quality impairment. There are many instances where a facility's stormwater discharge may have detectable limits of a pollutant of concern (e.g., TSS, bacteria) that are still well below the applicable instream water quality standard or are due to natural background sources. Industrial stormwater discharges to impaired waterbodies can also provide a dilutory effect and help lower the instream concentration of the pollutant of concern – even when the pollutant of concern is present in detectable levels in the industrial stormwater discharge.

The proposed language in Part 4.2.5 also states that if the pollutant of concern is detected in a facility's stormwater discharge, then the facility must take "all reasonable steps" to prevent the discharge. This is unreasonable as detected concentrations below the water quality standard are not causing or contributing to impairment. Discharges at concentrations below the water quality standard in fact reduce the instream concentration if the stream is impaired with an instream concentration above the applicable water quality standard. Also, this language is not practical as many facilities in Sector U and Sector P (e.g., feed mills and truck shops) are not equipped with wastewater treatment systems or other means to routinely divert or treat stormwater discharges. Facilities that do have on-site wastewater treatment systems often lack the necessary capacity to routinely treat stormwater discharges, particularly those from heavy precipitation events. Additionally, many watersheds have water management plans that consider the impact that stormwater discharges have on surface waterways. The applicable language in the 2021 MSGP should be retained instead.

<u>Missed Opportunity to Incentivize Dischargers to Reduce Pollutant of Concern Levels:</u> Currently, the proposed 2026 MSGP requires that all dischargers conduct quarterly monitoring for the length of the permit term regardless of sampling results. The proposed 2026 MSGP also contains a requirement to have dischargers take AIM upon receiving a sample result with detectable levels of the pollutant of concern as discussed above. By not offering a reduced monitoring schedule to facilities who demonstrate their discharges are not causing or contributing to impairment, these requirements unfairly burden facilities with no or low levels of the pollutant of concern in their discharge. Similarly, by instituting this blanket monitoring schedule and setting the de facto benchmark at zero for impaired waterbody monitoring, the USEPA is missing an opportunity to further incentivize dischargers to reduce levels of the pollutant of concern in their dischargers to reduce levels of the pollutant of concern in their dischargers to reduce levels of the pollutant of concern in their dischargers to reduce levels of the pollutant of concern in their dischargers to reduce levels of the pollutant of concern in their dischargers to reduce levels of the pollutant of concern in their dischargers to reduce levels of the pollutant of concern in their dischargers to reduce levels of the pollutant of concern in their dischargers to reduce levels of the pollutant of concern in their dischargers to reduce levels of the pollutant of concern in their dischargers to reduce levels of the pollutant of concern in their dischargers to reduce levels of the pollutant of concern in their discharge by offering a reduced monitoring schedule upon meeting an impaired monitoring benchmark.

Less Burdensome Alternative to Quarterly Impaired Waterbody Sampling: Although the USEPA is proposing that exceptions will be available to facilities that are able to demonstrate that the presence of the

pollutant of concern is due to natural sources or is within the acceptable range for the receiving waterbody to meet its designated use, these exceptions place the burden of proof on the facilities rather than the USEPA. The USEPA already has access to the data and advanced models needed to make these determinations. Many facilities lack the internal expertise and capacity necessary to complete such determinations and would be forced to hire external consultants to gather and submit the supporting data. This is in addition to the financial burden and challenges associated with quarterly monitoring (i.e., qualifying rain events, safe collection of samples, laboratory availability, etc.) as discussed in Part 1 of this letter.

As an alternative, we propose that the USEPA work to establish quantifiable impaired waterbody monitoring benchmarks specific to the waterbody of concern that give facilities an obtainable goal when conducting monitoring. We also propose that impaired water monitoring be conducted on an annual basis. This approach is more in line with many general stormwater permits from states with delegated authority and may help the USEPA achieve compliance with the recent Supreme Court Ruling in *City and County of San Francisco v. EPA*. If two consecutive annual results for the pollutant of concern exceed the impaired monitoring benchmark, then the facility would be required to take AIM and institute more frequent (e.g., biannual) sampling.

3. Exceptions for new dischargers discharging to impaired waters without a TMDL should be clarified.

We urge the USEPA to explicitly adopt an exception to corrective action requirements for new dischargers to impaired waters without TMDL standards. The proposed 2026 MSGP, at Section 4.2.5.2(b), provides such an exception for existing dischargers. In contrast, Section 1.1.6.2(c) only provides an exception for new dischargers to impaired waters with TMDL standards. Providing an exception for new dischargers would ensure consistency and uniformity for all permittees, reducing compliance costs and reducing the USEPA's regulatory oversight burden. In the absence of a rationale for this internal inconsistency, this permit requirement may run afoul of the Constitution's Equal Protection guarantees.

4. The addition of PFAS indicator monitoring for facilities in Sector U: Food Processing and Kindred Products are not currently implied by available data, will impose significant burden and costs on permittees, and should be reviewed in light of Administrator Zeldin's recent statement.

<u>PFAS Monitoring Requirements Should Align With Administrator Zeldin's April 28, 2025 Announcement</u> <u>Regarding PFAS</u>: We urge the USEPA to reconsider the PFAS-monitoring requirements being imposed on Sector U facilities given Administrator Zeldin's April 28, 2025, announcement regarding PFAS. Administrator Zeldin stated that he intends to work with the federal government to establish a PFAS liability framework that protects passive receivers and makes the original polluters of PFAS pay. In the interim period before that framework is established, requiring passive receivers of PFAS-contaminated water to monitor for and report on PFAS in their stormwater discharge could subject those passive receivers to civil lawsuits. For example, various poultry facilities are required by the Department of Agriculture to conduct wet cleaning operations and wash down specific areas. These facilities use potable water from publicly

owned water utilities to conduct those cleaning and wash-down operations, and that potable water may be contaminated with PFAS. The proposed MSGP's PFAS-monitoring requirements could detect PFAS from these cleaning and wash-down operations, exposing poultry facilities to liability for merely complying with the cleaning requirements. Eliminating this monitoring requirement for livestock industries until Administrator Zeldin can establish a PFAS liability framework would protect these passive receivers and ensure that PFAS lawsuit costs are not passed onto consumers.

Sector U Contains Many Different SIC Codes and Available Data on PFAS Prevalence in Industrial Stormwater Discharges from Sector U Facilities is Limited and Not Representative: The USEPA has *not* identified Sector U facilities in its "PFAS Strategic Roadmap."¹ Rather, stormwater DMR data from two individually permitted facilities in Sector U (a soybean oil production facility in Mississippi [SIC Code 2075] with one PFAS test result above detection levels and a malted beverage plant in Colorado [SIC Code 2082]) is being used as primary justification for all Sector U facilities to conduct required quarterly PFAS indicator monitoring for the duration of the MSGP term.² However, the above facilities are individually permitted by their respective states precisely because their on-site operations and/or site-specific industrial stormwater discharges are *not* viewed to be representative of Sector U facilities as outlined in their state's general permits.

Publicly available wastewater monitoring data from poultry processing plants (SIC Code 2015) in Michigan indicate PFAS are either non-detectable or well below the USEPA's final drinking water MCLs.³ The low level of PFAS indicated may also be attributed to the incoming water supply as monitoring has indicated the detection of PFAS in the finished water supply across the U.S. Additionally, the Food and Drug Administration (FDA) conducted six different surveys from 2019-2023 to quantify 16 individual PFAS in a variety of meat and poultry food products across the U.S.⁴ Every sample of meat and poultry products tested by the FDA across these six surveys indicated a non-detect result for all PFAS analyzed.

PFAS Used in Grease-Proofing Applications for Food Contact Packaging are No Longer Being Sold in the U.S. and Loading/Loadout Operations at Sector U Facilities are Not Generally Exposed to Stormwater: The USEPA's "Proposed 2026 MSGP Fact Sheet" specifically lists oil/grease/water-resistant packaging materials as a potential source of stormwater exposure to PFAS via final product loading/loadout operations. However, per the Food and Drug Administration's (FDA) Constituent Update dated February 28, 2024 "Grease-proofing substances containing Per and Polyfluoroalkyl Substances (PFAS) are no longer being sold by manufacturers for food contact use in the U.S. market. The completion of the voluntary market phase-out of these substances used on food packaging paper and paperboard, eliminates the primary

¹ US EPA, "PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024," October 14, 2021,

https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024.

² US EPA, "Memorandum: PFAS Research," US EPA, December 9, 2024,

https://www.regulations.gov/document/EPA-HQ-OW-2024-0481-0153.

³ "Wyoming WWTP • MiEnviro Portal," accessed March 18, 2025,

https://mienviro.michigan.gov/nsite/map/results/detail/-4384479983811999951/documents.

⁴ "Analytical Results of Testing Food for PFAS from Environmental Contamination," FDA,

https://www.fda.gov/food/environmental-contaminants-food/analytical-results-testing-food-pfas-environmental-contamination.

source of dietary exposure to PFAS from authorized food contact uses."⁵ Additionally, due to the nature of operations at Sector U facilities, unloading and loading operations are typically performed under cover or are provided with secondary containment and not generally exposed to stormwater. The USEPA recognizes in its "Sector U Industrial Stormwater Fact Sheet" that it is a recommended industry-wide stormwater best management practice (BMP) to minimize exposure of loading/loadout operations to stormwater. ⁶ Therefore, it is reasonable to conclude that PFAS in industrial stormwater originating from final product loading/loadout and/or food contact packaging at Sector U facilities is negligible and should not be included as a potential source.

The Use of PFAS in Pest Control Products Has Been Closely Regulated by the USEPA and Exposure to Stormwater is Limited: The USEPA's "Proposed 2026 MSGP Fact Sheet" specifically lists application of pesticides, rodenticides, and insecticides as a potential pollutant source for PFAS compounds from Sector U facilities. However, under USEPA's "PFAS Strategic Roadmap" the USEPA has announced that it stopped the use of PFAS compounds both as inert ingredients in pest control products and in pesticide containers.^{7,8} Additionally, use of pest control products at Sector U facilities is generally by a licensed third-party contractor and products are selected and used in a manner that minimizes their exposure to stormwater (e.g., use of covered rodent bait stations, etc.). Therefore, outdoor pest control operations should not be considered a potential source of PFAS exposure to industrial stormwater discharges. If the USEPA still has reason to believe that pest control products have the potential to release PFAS into the environment, the USEPA should take further action to limit the use of PFAS in these products.

Less Burdensome Alternatives to Quarterly PFAS Indicator Sampling: Given the limited sample size and data available for Sector U, the likely site-specific factors influencing this data, and the lack of evidence that Sector U facilities routinely use PFAS compounds in a way that would significantly impact industrial stormwater discharges, it is unreasonable and inappropriate to apply broad, sector-wide PFAS monitoring requirements to Sector U. This is in addition to the financial burden and challenges associated with routine quarterly monitoring (i.e., qualifying rain events, safe collection of samples, laboratory availability, etc.) as discussed in Part 1 of this letter. Instead, we propose that the USEPA retain the ability to institute additional monitoring requirements (including for PFAS) through individual stormwater permitting for individual facilities where facility operations or site history indicate that PFAS in industrial stormwater is a concern. Alternatively, indicator PFAS monitoring could be instituted based on specific SIC codes or sub-sectors of Sector U where PFAS are expected to be exposed to stormwater instead of being applied to Sector U as a whole.

⁵ "FDA Announces PFAS Used in Grease-Proofing Agents for Food Packaging No Longer Being Sold in the U.S.," *FDA*, September 25, 2024, https://www.fda.gov/food/hfp-constituent-updates/fda-announces-pfas-used-grease-proofing-agents-food-packaging-no-longer-being-sold-us.

⁶ US EPA, "Industrial Stormwater Fact Sheet - Sector U: Food and Kindred Products Facilities,"

⁷ US EPA, "Per- and Polyfluoroalkyl Substances (PFAS) in Pesticide and Other Packaging," January 13, 2021, https://www.epa.gov/pesticides/pfas-packaging.

⁸ US EPA, "EPA Stops Use of 12 PFAS in Pesticide Products," December 14, 2022,

https://www.epa.gov/pesticides/epa-stops-use-12-pfas-pesticide-products.

The Use of Method 1621 is Not Currently Substantiated at This Time: The USEPA specifically requested comments on the appropriateness of requiring indicator monitoring using Method 1621 in addition to Method 1633. It is our understanding that Method 1621 is not currently approved for CWA compliance purposes. In addition, Method 1621 provides a total concentration of a broad array of fluorinated chemicals, including non-PFAS fluorinated compounds such as pesticides and pharmaceuticals. This broad, non-speciating approach would prevent facilities or regulators from accurately determining what, if any, proportion of the total concentration reported is due to industrial, on-site sources of PFAS as opposed to non-PFAS, non-industrial, and/or off-site sources.

5. AIM Triggering Event Report imposes a significant regulatory reporting burden on facilities.

The proposed language requiring the submittal of an "AIM Triggering Event Report" within 14 days of an AIM triggering event and another Report within 14 days of completing the corrective actions would grossly increase the regulatory reporting burden on permitted facilities. In the past, the USEPA required facilities to summarize each year's AIM and triggering events in the annual report submitted to the USEPA. With the proposed 2026 MSGP requiring facilities to take AIM upon receiving any quarterly impaired monitoring result that is above the level of detection (among other circumstances), it seems likely that USEPA will receive a large volume of AIM Reports. The USEPA may not have the personnel or resources to do a timely review of each AIM Report sent under these proposed requirements, raising the question of whether or not these Reports are necessary. Again, a sample result above the level of detection should not be used as an action level as this is not indicative of causing or contributing to the impairment.

<u>Less Burdensome Alternatives to AIM Triggering Event Reporting:</u> It would be more reasonable to require facilities to summarize AIM triggering events and resulting AIM taken in the Annual Report submitted to the USEPA. The USEPA may also wish to require facilities to submit a Report to the USEPA when AIM cannot be implemented in a reasonable time frame (e.g., 90 days) after a triggering event. This requirement would be in line with many general permits from states with delegated authority and be respectful of the time of USEPA employees while not significantly increasing the reporting burden on permitted facilities.

6. Additional benchmark monitoring requirements for Sector P are not generally indicated for SIC Code 4121 – Local Trucking Without Storage.

Operations that May Contribute to Heavy Metals in Stormwater Discharges are Not Generally Exposed to Stormwater at SIC Code 4212 Facilities: The new heavy metal benchmark monitoring requirements for Sector P facilities represent a substantial increase in analytical monitoring. Sector P facilities with SIC Code 4212 (such as those associated with Sector U facilities) typically perform light maintenance (e.g., oil changes, tire changes, etc.) on vehicles inside dedicated buildings where operations are not exposed to stormwater. The requirement to conduct quarterly benchmark monitoring for total recoverable lead, total recoverable cadmium, total recoverable copper, total recoverable mercury, total recoverable zinc, and total recoverable arsenic is overly burdensome for small truck shops that fall under SIC Code 4212 where operations are not generally expected to result in exposure of these heavy metals to stormwater. It is certainly not indicated that these facilities be subject to further benchmark monitoring for aluminum,

manganese, or nickel at this time. Additionally, facilities with SIC Code 4212 generally operate with limited staff in rural areas, making routine quarterly benchmark monitoring difficult to achieve.

Less Burdensome Alternatives to Quarterly Heavy Metal Benchmark Monitoring: If the USEPA wishes to implement benchmark monitoring for these heavy metals, benchmark monitoring could be instituted based on specific SIC codes of Sector P where more intensive vehicle and/or equipment maintenance might be expected to occur and be exposed to stormwater instead of being applied to Sector P as a whole. Alternatively, the USEPA could require that benchmark monitoring be conducted on a reduced (e.g., annual) basis. This approach is more in line with many general stormwater permits from states with delegated authority. If two consecutive annual results for a parameter exceed the applicable benchmark, then the facility would be required to take appropriate AIM.

Table 8.P-2 Should be Revised to Clearly Indicate that Hardness Monitoring Should be Conducted on Receiving Water (Not Stormwater): Table 8.P-2 details required benchmark monitoring for industrial stormwater discharges from Sector U facilities. Many of the proposed benchmark monitoring parameters are hardness dependent when the facility discharges to freshwater. As written, Table 8.P-2 does not clearly indicate that the required hardness monitoring should be conducted on the receiving water and not on the stormwater discharge itself. We request that this entry in Table 8.P-2 be revised to read "Hardness (of receiving water)" to prevent operator error and ensure accurate sampling results. Clarification should be provided in Table 8.P-2 on the required frequency of receiving water hardness monitoring. Its inclusion in Table 8.P-2 under benchmark monitoring seems to indicate that receiving water hardness monitoring would need to be conducted quarterly every time a benchmark stormwater sample was collected. Additionally, clarification should be provided for circumstances where facilities may not be able to legally or safely access their receiving water (e.g., receiving water is located on private property, flows through underground piping, steep or slippery banks, flood conditions, etc.) and third-party data is not readily available.

7. Specific criteria for water quality-based effluent limitations contains highly subjective language.

<u>Water Quality-Based Effluent Limitations as it Relates to Recent Supreme Court Ruling</u>: The proposed 2026 MSGP includes new criteria on water quality-based effluent limitations in Part 2.2 stating that permittee discharges, "Must not contain or result in: substances that produce an observable change in color or odor." This requirement appears contrary to the Supreme Court's directive in *San Francisco*, where the court held that the USEPA cannot enforce end-result requirements focused on the quality of the receiving water. Here, the requirement that discharges must not result in an observable change in color or odor does not account for the fact that water bodies may change color or odor for other reasons such as excess rainfall. If a permittee's discharges do not typically produce an observable change in color or odor, but did produce such a change because the water body itself has temporarily changed color or odor, this could result in a permit violation premised on factors outside of the permittee's control, which is the exact issue raised by the Supreme Court in *San Francisco*. We urge the USEPA to review this permit provision in light of the *San Francisco* decision.

According to the 2026 MSGP Fact Sheet, this specific criteria requirement is intended to clarify previous water quality standards and guidance for facilities. However, we are concerned that this language is subjective and may be subject to misinterpretation. According to the 2026 MSGP Fact Sheet, facilities may use quarterly visual stormwater assessments to comply with this water quality-based effluent limitation and other limitations. However, there is not currently language in the 2026 MSGP itself stating that general compliance with quarterly visual stormwater assessments can demonstrate compliance with the water quality-based effluent limitations. We would request that language be added to the 2026 MSGP mirroring that found in the 2026 MSGP Fact Sheet to ensure that all operators and regulators understand how facilities may achieve compliance under these new criteria.

8. Further modification and clarification is requested on the requirement to consider enhanced Stormwater Control Measures (SCM).

Enhanced SCM Requirement Should Only Apply to Facilities Which Have Historically had Stormwater Quality Impacted by Major Storm Events: The USEPA proposes that facilities undergo an assessment to determine if they have previously experienced major storm and flood events under current conditions or may be exposed to major storm and flood events in the future. Given the difficulties and subjectiveness of such forward looking assessments even while using best available data, it is suggested that Part 2.1.1.8 be changed to omit the phrase, "...Or may be exposed in the future to major storm and flood events."

<u>The Term, "Flood Level," may Result in Subjective Determinations:</u> Although it is understood that the reference event referred to in the proposed definition for flood level is generally a 100-year flood based on FEMA's Base Flood Elevation (BFE), the use of this term instead of BFE or 100-year flood can result in highly subjective determinations and open up stormwater designers, engineers, and facilities to unwanted liability. Additionally, flood plain maps often change based on development activity in nearby areas, and a facility may be required to conduct costly and unreasonable upgrades due to actions by other entities.

<u>"Impacts From Stormwater Discharges" Should be Further Defined:</u> The phrase, "Impacts from stormwater discharges," in Part 2.1.1.8 should be further defined and limited to refer to illicit discharges, permit limitation violations, benchmark exceedances, spills, or other specific significant MSGP violations.

9. Clarification should be provided on the enhanced requirements for public access to Stormwater Pollution Prevention Plans (SWPPPs).

Ability to Redact Confidential Information Should be Clarified or Ability to Transcribe Relevant Information to NOI Should Be Retained: The proposed 2026 MSGP would remove the option for a facility to provide public access to its SWPPP via transcribing relevant information to the facility's NOI. The two remaining options to satisfy the requirement to make the SWPPP public are: to attach a copy to a facility's NOI, or to attach a URL to the facility's NOI linking to the SWPPP. Facilities often write their SWPPP to include detailed information on the site and its operations to allow for effective implementation of the SWPP by employees. This includes detailed site maps that may contain information on safety and security risks on the site (e.g., chemical storage, manufacturing processes, underground conduits, shut-off valves, location of guard shacks, etc.). Additionally, the disclosure of detailed site information, including site maps,

may cause concerns for facilities in Sector U that are subject to federal food security programs. We request that facilities be either allowed to continue transcribing relevant information to their NOI or be allowed to extensively redact their publicly available SWPPP to protect confidential business information and protect facility operations and security, including information considered confidential business information under USEPA's Risk Management Program (RMP) and/or OSHA's Process Safety Management (PSM) program.

<u>Resolve Apparent Contradictions in the Proposed 2026 MSGP</u>: Section 6.4.1 of the proposed 2026 MSGP indicates no changes to the approved methods to make the SWPPP publicly available, while Section 1.3.1 and the 2026 MSGP Fact Sheet indicate changes as described above. These apparent contradictions should be resolved in the final 2026 MSGP to avoid confusion by permittees.

<u>Confidential Business Information (CBI) Should Be Properly Defined in the 2026 MSGP:</u> Currently, the definition of CBI is not provided in the proposed 2026 MSGP. The Permit refers to Appendix A for a definition of this term, but the link provided in Appendix A to a web page with the definition of CBI is broken. We request that this link be fixed in the 2026 MSGP and that the proper definition of CBI be supplied.

10. The USEPA should consider eliminating quarterly visual stormwater assessment requirements.

Visual stormwater assessments are qualitative and highly subjective in nature. Results from these assessments may vary widely depending on who is conducting the assessment, and laypeople often have a hard time distinguishing between industrial and natural sources (e.g., groundwater) and processes that visually impact stormwater. Universal indicator monitoring as it has been implemented by the USEPA is a better gauge of actual stormwater quality than visual assessments. Given the above information, we would request that the USEPA thoroughly investigate the current efficacy and necessity of visual stormwater assessments in this Permit.

11. The USEPA should conduct a close review of this Permit in light of recent Supreme Court rulings and executive branch directives.

The Supreme Court's recent decision in *San Francisco* has significant implications for how Clean Water Act permits are to be written and enforced. The Supreme Court ruled that the USEPA cannot enforce "end-result requirements" focused on the quality of the receiving water rather than the limits on a permittee's discharge. We respectfully request that the USEPA carefully review this proposed 2026 MSGP to ensure that it is in line with this and other recent rulings (e.g., *Loper Bright Enterprises, West Virginia, Michigan*, etc.) so as to prevent future litigation over the MSGP, operator confusion, or permittee exposure to citizen suits vague or ambiguous permit requirements.

We want to ensure that the enhanced monitoring requirements for impaired water bodies, added language regarding criteria for visual stormwater evaluations, and new requirements for enhanced SCMs are consistent with the opinions in these cases as well as aligned with recent memorandums (e.g., April 9, 2025, memorandum) and statements from the White House and Administrator Zeldin (e.g., April 28, 2025, announcement regarding PFAS). The impaired water body monitoring requirement imposes monitoring

requirements on permittees based on whether the quality of the receiving water is impaired, not based on the contents of the permittee's own discharge, which is arguably an "end-result requirement." The visual stormwater evaluations require visual examination of industrial stormwater discharges for a number of water quality characteristics and require corrective action procedures whenever the visual examination of industrial stormwater discharges appears to indicate stormwater pollution. This kind of ever-shifting results-based permitting appears problematic under recent rulings.

Finally, the requirement for enhanced SCMs, or adaptive measures, also appears at odds with the Supreme Court's concern with end-result requirements. The Supreme Court reasoned in *San Francisco* that the Clean Water Act's plain language requires the USEPA to set specific, concrete measures that permittees must follow rather than setting general end-result requirements and allowing permittees to decide how to comply with those requirements, because doing so would render the Act's permit shield defense useless. Similarly, the enhanced SCMs requirement sets a general requirement that permittees in flood-prone or major storm-prone areas must consider a variety of enhanced SCM options, but does not provide any direction as to how permittees should evaluate those options, nor how the USEPA will evaluate the adequacy of a permittee's chosen enhanced SCMs, or lack thereof. This could similarly render the Clean Water Act's permit shield useless. We urge the USEPA to carefully consider whether each of these requirements impermissibly focus on the quality of the receiving water rather than the limits on a permittee's discharge.

The poultry and egg industry appreciates the opportunity to provide these comments, if you should have any questions, please contact Paul Bredwell at pbredwell@uspoultry.org or by telephone at (678) 514-1973.

Respectfully,

U.S. Poultry & Egg Association National Chicken Council National Turkey Federation Alabama Poultry and Egg Association Delmarva Chicken Association Fieldale Farms Georgia Poultry Federation Indiana State Poultry Association Koch Foods, Inc. Mar-Jac Poultry Texas Poultry Federation Virginia Poultry Federation Wayne-Sanderson Farms LLC