

February 5, 2024

Mr. Steve Whitlock
Engineering and Analysis Division, Office of Water (4303T)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
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RE: Request to Extend the Comment Deadline for the Proposed Clean Water Act Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category; Docket No. EPA-HQ-OW-2021-0736.

Dear Steve:

For the relevant reasons set forth below, the Coalition of Meat and Poultry Products manufacturers, and other organizations representing the animal agriculture community and farmers across the nation, request a minimum of a 90-day extension of the comment period for the Proposed Clean Water Act (CWA) Effluent Limitations Guidelines and Standards (ELGs) for the Meat and Poultry Products Point Source Category (Proposed MPP ELGs); Docket No. EPA-HQ-OW-2021-0736. The Proposed MPP ELGs include the following:

- 64-page *Federal Register* notice (89 Fed. Reg. 4,474; January 23, 2024);
- 174-page *Technical Development Document for Proposed Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category* (TDD);
- 147-page *Environmental Assessment for Revisions to the Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category* (EA);
- 142-page *Benefit Cost Analysis for Revisions to the Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category* (BCA);
- 107-page *Regulatory Impact Analysis for Revisions to the Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category* (RIA); and
- a docket containing 660 documents, including 657 additional support documents that were only added on January 23, 2024.

The original 60-day proposed comment period is not a reasonable amount of time to collect comprehensive and informed public comment from this Coalition or other interested stakeholders on such a complex proposal and related docket. A minimum of a 90-day comment period extension is warranted as set forth below.

The MPP Coalition associations and their members, as well as their supply chains and the wider agriculture community, are potentially impacted by EPA's Proposed MPP ELGs, have substantial interest in ensuring that any Final MPP ELGs are promulgated consistent with CWA requirements, the Administrative Procedure Act (APA) mandates, are based on sound science and technologies appropriate to and relevant for wastewater discharges from direct and/or indirect

industry point sources, and are economically achievable and consistent with to prior ELG precedents set forth by EPA under CWA Section 304(m) rulemakings.

Throughout the Proposed MPP ELGs *Federal Register* Notice, EPA seeks specific comments on at least 43 major topics. See the Appendix to this letter. These topics include: variations on all of the options that EPA is proposing; confirmation from industry sources that EPA's assumptions or analyses are consistent with how the various industries operate; requests for data that EPA needs to assess various options or considerations; impacts on small businesses and how they should be assessed and considered; and other technical information that may vary by subindustries within the MPP umbrella. EPA's comment solicitations will take significant time (much more than 60 days) and require extensive coordination among technical, economic, environmental, and other industry stakeholders. If EPA expects to receive thoughtful and thorough responses to its solicitations, then a 60-day comment period is not reasonable or appropriate.

To put this 60-day comment period into perspective, while the APA does not specify a minimum period for comments, Executive Order 12,866 provides that most rulemakings "should include a comment period of not less than 60-days."¹ That implies that many proposals support comment periods well-exceeding 60 days. The mean page length of proposed federal regulations in the *Federal Register* between 1995 and 2000 (the most recent statistics) is 10 pages.² The Proposed MPP ELGs are more than six times that length and warrants a much longer comment period. Further, EPA fully understands the complexities and challenges associated with CWA Section 304(m) rulemakings in comparison to "typical" rulemakings, and must realize that a 60-day comment period is never reasonable or effective for most ELG rulemakings. Additional time to develop comments ultimately will benefit EPA in its review and understanding of the comments that are submitted and hopefully avoid confusion leading up to any final rulemaking.

The past experience from the prior MPP rulemaking, which started in April 2002, also supports an extension. EPA's efforts in 2002 to streamline the rulemaking process actually resulted in a much longer process than anticipated. EPA proposed MPP ELGs (with 20 comment solicitations, as opposed to the 43 solicitations in this proposed rulemaking) and provided a 60-day comment period. The Agency was then forced to extend that comment period by an additional 60 days.

One year later, EPA issued a Notice of Data Availability (NODA), reopening the comment period for the MPP ELGs and subsequently issued a comment period extension on that NODA. The final MPP ELG rulemaking was issued in September 2004, 29 months after proposal. In addition, because EPA is proposing options that could significantly expand the existing scope of the MPP ELG regulations, the Coalition believes that a similar rulemaking schedule should not be ruled out. More time for this initial comment period provides the Agency

¹ See Exec. Order No. 12,866 § 6(a) reaffirmed by Exec. Order No. 13,563, "Improving Regulation and Regulatory Review" § 2(b), 76 Fed. Reg. 3821 (Jan. 21, 2011)("To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days.").

² See *Federal Agencies are Publishing Fewer but Larger Regulations* at <https://regulatorystudies.columbian.gwu.edu/federal-agencies-are-publishing-fewer-larger-regulations> .

with the opportunity to pursue a more efficient and streamlined rulemaking schedule than the last MPP ELG rulemaking.

Finally, there are two other confounding factors that necessitate a significant extension of the Proposed MPP ELGs comment period – the inability for the industry to prepare for or meaningfully participate in EPA’s rulemaking hearings, and the significant size of the docket that was not made available for public review until close of business on January 23, 2024. The recent hearing was conducted less than 24 hours after the docket was populated with support documents. The January 31st hearing directly conflicted with important MPP industry meetings that were scheduled well before EPA set its hearing schedule. While EPA may hold an additional hearing, the Coalition believes an adequate comment period is more important than being able to participate in EPA’s hearings. Thus, the industry strongly encourages EPA to grant a comment period extension.

Next, 657 documents were added to the docket on January 23, 2024. Many are marked as confidential business information. Hence, the only way to understand what they contain is to file a Freedom of Information Act request and force EPA to defend the claim of CBI. That process will take in excess of 60 days, let alone the time to analyze the information that may be received in the future.

In sum, this rulemaking significantly exceeds the length and complexity of the average federal rulemaking proposal and warrants longer than the “minimum” 60-day comment period set forth in the Executive Orders cited above. In fact, after further analysis of the Proposed MPP ELGs, the various comprehensive development documents related thereto, and the size and complexity of the docket, the Coalition believes that a significant extension is warranted. The Coalition requests at least a 90-day comment period extension.

If you have further questions or would like to meet and discuss this request further, please contact the Coalition’s counsel, Jeffrey Longworth, Earth & Water Law, at (301) 807-9685 or Jeffrey.longworth@earthandwatergroup.com.

Respectfully,

Meat Institute
National Pork Producers Council
North American Renderers Association
U.S. Poultry & Egg Association
American Farm Bureau Federation

Cc: Rob Wood, Director, Engineering and Analysis Division, EPA
Nick Goldstein, Asst. Chief Counsel, Environment, SBA Office of Advocacy

Appendix

(all cites are to 89 Fed. Reg. 4,474; January 23, 2024)

1. EPA is considering a range of options in this rulemaking. The options include more stringent effluent limitations on total nitrogen, new effluent limitations on total phosphorus, updated effluent limitations for other pollutants, new pretreatment standards for indirect dischargers, and revised production thresholds for some of the subcategories in the existing rule. EPA is also requesting comment on potential effluent limitations on chlorides for high chloride waste streams, establishing effluent limitations for E. coli for direct dischargers, and including conditional limits for indirect dischargers that discharge to POTWs that remove nutrients to the extent that would be required under the proposed pretreatment standards in certain regulatory options. Each option would result in different levels of pollutant reduction and costs. *Id.* at 4,475-6.
2. EPA requests comment on the concept of allowing POTWs, control authorities, or permit authorities to waive, under certain circumstances, the new conventional pollutant limits for large indirect dischargers. *Id.* at 4,487.
3. Additionally, POTWs that perform denitrification may want to waive BOD limits for their MPP industrial users so they can receive more carbon to support bacterial conversion of nitrates to nitrogen gas. EPA requests comment both on whether such waivers should be allowed, and the demonstration necessary to justify such waivers. *Id.*
4. In addition to the options described above, EPA solicits comment on including three additional requirements in any final rule. First, limitations on the discharge of chlorides by establishing a zero discharge of pollutants requirement for certain high chlorides wastestreams. The technology basis for this requirement is segregation of these wastestreams from other process wastewater streams and management via sidestream evaporation. EPA solicits comment on including this provision for all facilities (both direct and indirect) producing more than 5 million pounds per year with high chlorides processes. *Id.* at 4,488.
5. Second, EPA solicits comment on conditional limitations for phosphorus and nitrogen discharges from indirect dischargers under Options 2 and 3. *Id.*
6. Third, EPA solicits comment on limitations on E. coli for direct discharging facilities. *Id.*
7. In addition to some specific requests for comment included throughout this proposal, EPA solicits comment on all aspects of this proposal, including the information, data, and assumptions EPA relied upon to develop the three regulatory options, as well as the proposed effluent limitations and pretreatment standards for existing and new facilities, and additional provisions (see Section F below) included in this proposal. *Id.*
8. EPA also solicits comment on the other proposed options (Options 2 and 3), and any other permutation of these options, although they are not the preferred option in this proposed rule for the reasons discussed in section VII. E below. *Id.* at 4,489.

9. After considering all the relevant statutory factors and wastewater technologies presented in this preamble and the TDD, EPA is not proposing to establish pretreatment standards (PSES/PSNS) for nitrogen and phosphorus removal for indirect dischargers under its preferred Option 1 for the reasons discussed in Section VII.E below. However, EPA is soliciting comment on the other proposed regulatory options (Options 2 and 3) and any other regulatory options that would include such pretreatment standards for nutrients (See Section VII.D below). *Id.* at 4,491.
10. However, there may be constraints on availability of nutrient removal technologies with respect to indirect dischargers (as discussed in Section VII.E below), and EPA solicits information about such potential constraints. *Id.* at 4,492.
11. With respect to non-water quality environmental impacts of the BPT/BCT and BAT technologies under Options 2 and 3, see Section X below. EPA solicits comment on whether these proposed options – or other regulatory options based on different production thresholds or technologies – would meet the applicable statutory factors and should form the basis of any final rule. *Id.*
12. At the same time, EPA intends to consider any impact of federal financial assistance on wastewater treatment upgrades at these facilities. EPA seeks comment on whether other federal funds or other programs could reduce or minimize potential impacts of the more expansive options on the Administration’s efforts to support the meat and poultry supply chain. *Id.*
13. EPA solicits additional information about production capacity for nutrient control technologies in the industry, given that the Nation is currently in the process of significant investments in water infrastructure as part of the Bipartisan Infrastructure Law. *Id.* at 4,493.
14. EPA solicits comment on how it could implement new pretreatment standards consistent with this provision recognizing that there could be supply chain issues preventing facilities from installing the treatment technologies. *Id.*
15. EPA solicits comment on such an approach, or other implementation flexibilities for indirect discharging facilities, should the Agency decide to finalize a rule based on a more expansive option than the preferred Option 1. *Id.*
16. Should the Agency decide to promulgate a rule based on a more expansive option, EPA is considering conditional limits under these options (see Section VII.F) to reduce costs and eliminate the need for redundant treatment. To better understand the potential use of such conditional limits, EPA solicits information about how many POTWs that receive MPP wastewater have nitrogen and phosphorus removal technologies that could provide an equivalent level of treatment. and whether such flexibilities may result in significant cost savings, including any relevant data on incremental cost savings or other benefits. *Id.*
17. While EPA notes that the secondary treatment regulations at 133.103(d) allow for consideration of less concentrated influent wastewater and the substitution of a lower percent removal requirement or a mass loading limit for the percent removal requirement by the Regional Administrator or State Director, which could address this issue, EPA solicits additional comments on this concern from the POTW community. *Id.*

18. In addition to seeking comment on the three proposed regulatory options, EPA solicits public comment on three additional provisions that would apply with respect to some of these options: First, with respect to the pretreatment standards for nitrogen and phosphorus that would apply to indirect dischargers under Options 2 and 3, EPA solicits comment on a provision that would allow an exemption from these limits for indirect discharging MPP facilities discharging to POTWs that provide equivalent nutrient removal as would be required under the proposed PSES/PSNS. *Id.*
19. For conditional limits applied to a MPP facility, EPA solicits comment on how to structure such a provision to include factors such as what treatment at the POTW could be considered equivalent, whether the POTW permit should contain nitrogen and phosphorus effluent limits at least as stringent as the pretreatment standards that would be required at the MPP facility, how to demonstrate compliance, how to ensure that the POTW has the capacity and ability to adequately treat such wastewaters while maintaining its design pollutant capacity reserved for the residential population, and the process by which the facility would request the conditional limits be applied and receive approval from their control authority. *Id.* at 4,494.
20. Second, EPA solicits comment on including *E. coli* as a regulated parameter for direct dischargers because the presence of *E. coli* is a more reliable indicator of pathogen pollution than the presence of fecal coliforms. *Id.*
21. Given these updates in the use of bacterial indicators for water quality, and that current disinfection technology can consistently reduce the presence of these indicator bacteria below the current MPP ELGs, EPA is soliciting comment on more stringent fecal coliform limits for direct dischargers based on BCT/BPT as well as limits for *E. coli* for direct dischargers based on BAT as part of the preferred option in this proposed rule. *Id.*
22. EPA also solicits comment on replacing fecal coliform limits with *E. coli* limits in any final rule to reduce redundancy in monitoring and limit requirements. *Id.*
23. Third, EPA solicits comment on including BAT/NSPS/PSES/PSNS chloride limits for certain wastestreams to remove salts from facility discharges in any final rule based on BAT. *Id.*
24. EPA is considering effluent limitations for chlorides for direct and indirect discharging facilities in any subcategory with production greater than 5 million pounds per year with high chlorides processes. Analysis indicates that these technologies may be available, economically achievable, and have acceptable non-water quality environmental impacts. See Section 12 of the TDD for additional details on the non-water quality environmental impacts of this provision. EPA is not including this provision as part of the preferred option in today's proposal, but rather is soliciting comment on including such a provision in any final rule. *Id.*
25. In particular, EPA solicits comment on the potential costs of such a provision, and specifically on the cost methodology and results contained in the TDD. *Id.*
26. EPA also heard concerns during the SBAR panel outreach meetings with SERs specifically related to a lack of familiarity with effluent guidelines and pretreatment standards. One of the five recommendations was for EPA therefore

- to solicit comments on what information small facilities would find beneficial (e.g., terms to know for determining applicability and compliance, information from the POTW or control authority, information on the general permitting process, wastewater operator requirements, and how to measure annual production) that could be addressed through guidance or other materials that EPA could provide should any final rule expand applicability to small firms beyond the current rule. EPA therefore solicits comment from small entities on this topic. *Id.*
27. EPA also heard from SERs about concerns related to production thresholds for applicability of the ELGs. While EPA's proposed regulatory options minimize impacts on small entities, another recommendation that EPA also solicits comment on is whether the proposed production thresholds could be adjusted to further minimize such impacts, particularly with respect to Options 2 and 3 as those options expand coverage to additional facilities as compared to Option 1. *Id.* at 4,494-5.
 28. A third recommendation that EPA also solicits comment on is for alternatives to production thresholds for determining regulation, such as water usage, specifically as a way to minimize impacts to small firms or to provide an alternative means of determining applicability to small firms that may not track production. *Id.* at 4,495.
 29. A fourth Panel recommendation that EPA also requests comment on is the inclusion of conditional limits, and specifically what documentation and approval by the POTW/control authority would be sufficient to establish conditional limits as a compliance mechanism. *Id.*
 30. The fifth recommendation was for EPA to consider and take comment on a longer or flexible timeline for small entities to meet proposed regulations. EPA requests comment from small entities on what kind of timeline flexibilities would be helpful. See the SBREFA panel report for additional details regarding these and other considerations that were raised by SERs (USEPA. 2023. DCN MP00347). *Id.*
 31. EPA also solicits comment on whether the BPT costs of conventional pollutant reductions under regulatory Options 2 and 3, as reflected in [Table VIII-1], are also not wholly disproportionate to the effluent reduction benefits. *Id.* at 4,496.
 32. EPA solicits comment on whether Options 2 and 3 would be economically achievable for the industry as a whole, based on the level of possible facility closures reflected in [Table VIII-2]. *Id.* at 4,497.
 33. Given that the BAT CTR results for options 2 and 3 show that 99.6 percent and 99.1 percent of discharging facilities would have costs less than 1 percent of revenues, respectively, EPA solicits comment on whether these options would also be economically achievable. *Id.* at 4,499.
 34. EPA is taking comment on the inclusion of chlorides removal limits. EPA is considering establishing a zero discharge of pollutants requirement for high chloride waste streams for facilities producing more than 5 million pounds per year with high chlorides processes. The technology costs considered for this requirement involve segregating the high chloride waste streams from other process wastewater and managing these high chloride streams through sidestream

- evaporation. Details on the costs and economic impacts of the chlorides removal provision can be found in the TDD and the RIA, respectively. Id. at 4,503.
35. EPA's use of EGRID values for the proposed rule analysis is conservative in that it would tend to overstate emissions associated with the increased power consumption to operate MPP wastewater treatment systems since emission factors are expected to decline in the coming decades (e.g., due to the 2022 IRA). For the final rule, EPA plans to account for these changes by using future emission factors derived using EPA's IPM model. EPA requests comment on using IPM results to estimate future emissions. Id. at 4,511.
 36. The BCA Report discusses changes in these potentially important effects qualitatively, indicating their potential magnitude where possible. EPA will continue to seek to enhance its approaches to quantify and/or monetize a broader set of benefits for any final rule and solicits comment on monetizing some of these additional benefits categories. Id. at 4,512.
 37. These findings suggest that wastewater discharge from MPP facilities differentially impacts various communities and population groups. EPA solicits comment on additional literature that discusses potential EJ concerns related to the specific changes being proposed to MPP wastewater discharges. For further discussion of the literature review, see Chapter 7 of the EA. Id.
 38. For the proposed limitations, EPA combined data sets across all MPP processes to give a single limit per analyte for the industry. As the raw materials for MPP processes are animals/animal products, composed of carbon, nitrogen, and phosphorus, EPA finds combining data from different MPP processes to be reasonable. Additionally, with the available data, EPA performed a comparison of influent from the different MPP processes and found the wastewater characteristics to be comparable. Therefore, EPA proposes to find that the combination is reasonable and solicits data to inform this analysis. Id. at 4,515.
 39. In addition to the proposed limitations, as described earlier EPA is soliciting comment on including effluent limitations for E. coli in addition to, or in place of, limitations for fecal coliform for direct discharging facilities. Id.
 40. Based on data available to EPA at the time of proposal, the monthly average limitation for E. coli would be 9 MPN or CFU per 100 mL (see the TDD for additional information). EPA solicits comment on this value as well as the data and methodology used to calculate the proposed effluent limitations in today's proposal. Id.
 41. EPA also solicits comment on including effluent limitations for chlorides, which are proposed as zero-discharge for high chlorides processes. Id.
 42. In addition to general comments related to the calculation of proposed effluent limitations, EPA also solicits comment on combining data across subcategories in developing the proposed limitations. Id.
 43. EPA also solicits additional daily and monthly data from facilities across the industry. Id.