



TENNESSEE FARM BUREAU FEDERATION

March 22, 2024

U.S. Environmental Protection Agency
Attn: Steve Whitlock, Engineering and Analysis Division, EPA Office of Water
EPA Docket Center, Office of Water Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Clean Water Act Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category (89 Fed. Reg. 4,474, January 23, 2024)

Docket ID No. EPA-HQ-OW-2021-0736

Dear Mr. Whitlock:

The Tennessee Farm Bureau Federation (TFBF) submits the following comments in response to the U.S. Environmental Protection Agency's (EPA) expansive, costly and exceedingly complex rulemaking in its 64-page proposal in the *Federal Register* (see 89 Fed. Reg. 4,474 (January 23, 2024)) to revise the existing effluent limitations guidelines (ELGs) for the meat and poultry products (MPP) industry. On behalf of the diverse group of commodity producers in Tennessee we represent, we present the following concerns outlined below.

EPA has not Provided an Adequate Opportunity to Evaluate and Provide Meaningful Public Comment to the Proposed Rule

The Agency's work on the MPP effluent guidelines has proceeded under an unreasonably tight timeframe, considering the more "typical" comment period afforded to prior ELG rulemakings. Making matters more challenging, EPA did not make available hundreds of pages of detailed analyses in its development documents and more than 600 other supporting documents in the rulemaking docket until after the proposed rule was published in the Federal Register.

EPA's assertions the comment period was dictated by a federal consent decree mandating the Agency meet strict proposed and final rulemaking deadlines is illusory. The consent decree contains multiple provisions and reasons for extending its deadlines, which are legitimate in this case, and EPA has a history of missing deadlines with no direct or significant liabilities, even if challenged in court. Finally, EPA's slow manner hides important data behind confidential business information tags and lengthy Freedom of Information Act reviews, further supporting the need for an extended comment period.

From our review of the massive rulemaking docket, our wide-ranging concerns include but are not limited to:

- (1) the high degree of technical complexity associated with strict new limits contained in the proposed rule;

- (2) the extensive potential expansion of the scope of the proposed rule under the most stringent option to more than a thousand additional facilities across the nation;
- (3) the potential for significant new economic burdens on the MPP industry, including significant facility closures and other economic impacts on small businesses; and
- (4) the likelihood of major disruption to current and advantageous MPP industry facility relationships with their local publicly owned treatment works (POTW) that benefit the facility, the POTW operators, and the neighboring communities who rely on the POTW's services.

Despite these and other important considerations, such as the Agency's solicitation of comments on entirely novel and undefined mechanisms intended to provide flexibility for MPP facilities ("conditional limits" and "waivers"), EPA has provided only a 60-day public comment period. This timeframe is woefully inadequate to digest the proposal itself, determine its impacts, and properly evaluate the extensive analytical work in the massive docket underpinning support for new limitations, their accompanying technology requirements, and the resulting business implications for company operations.

In addition, because EPA has not provided a timely response to industry stakeholder requests for greater transparency and further detail on EPA's technical and analytical work supporting the Agency's conclusions, it is impossible to provide an appropriate set of comments to correct what are apparent significant deficiencies in the proposal. Some of the Agency's failures during the comment period to answer fundamental questions about its work are due to concerns over releasing confidential business information. We believe the Agency's claim of CBI is not appropriate and not consistent with Agency CBI policy and regulations in many instances.

In other instances, the ELG Coalition has suggested "workarounds" to the Agency. For example, the ELG Coalition suggested EPA aggregate CBI information into summaries, totals, subtotals, or "crosstabs" so that key portions of EPA's analysis can be better understood and commented on without revealing any individual CBI data point. EPA's unwillingness to provide greater transparency and detail regarding the Agency's underlying analyses has severely limited the public's ability to properly and intelligently assess the accuracy of the justifications for EPA's proposed rule.

The Proposed Rule is Unnecessary Because the MPP Industry Already is Effectively Regulated by Federal, State and Local Programs

Under existing ELGs and where additional controls are appropriate, the MPP industry has successfully achieved a level of environmental protection which demonstrates advancements in technologies and water quality protections. These achievements have resulted from a combination of programs that include, for direct discharging facilities, the increasingly stringent National Pollutant Discharge Elimination System (NPDES) permit program administered by EPA and the states, and stringent implementation of the 2004 MPP ELGs.

Moreover, EPA has continued its progress in implementing a national program to address site-specific water quality concerns through the Total Maximum Daily Load (TMDL) and other Clean Water Act Section 303 programs. Local POTWs have focused on water quality concerns not readily addressed on a national scale and provide yet another layer of regulations and a safeguard for MPP discharges. Furthermore, indirect discharging MPP facilities in many local jurisdictions have a unique relationship with POTW operators, often through significant financial investments in maintaining and upgrading the POTW or shouldering major surcharges for the POTW's continued operation and maintenance, which reduce public treatment costs for residential ratepayers and improve the quality of local and downstream waters.

In sum, both the industry and POTWs can demonstrate why this proposed rule is unnecessary, harmful to many municipalities and communities, and an unnecessary burden on meat production – which may limit the availability of meat to consumers during a time of significant inflationary pressures.

EPA has Inadequately Developed and Justified the Rule

Despite the challenges the industry has experienced attempting to understand the basis and rationale for EPA's proposed rule, as set forth above, we have been able to identify the Agency has committed consequential errors, applied faulty analysis, and used questionable data in the proposed rule's development.

EPA's Analyses of Pollutant Loadings are Inconsistent with its Cost Analyses

The MPP industry's review of EPA's pollutant loadings analyses appear to demonstrate that EPA has estimated a high level of pollutant loading being removed by MPP facilities, while underestimating the cost of necessary treatment systems required to meet the proposed limits. In determining the baseline pollutant loadings, EPA notes it has utilized results from its industry survey that collected information about raw waste concentrations before any treatment occurs, including screens, settling tanks, and dissolved air flotation. However, in the cost model, EPA assumes all facilities have some existing form of treatment already in place. By inflating pollutant removals and minimizing treatment costs, EPA is making the proposed rule look more cost-effective. Stated differently, EPA is (intentionally or not) taking credit for pollutant removals that are already occurring. These inconsistencies must be corrected. In EPA's development documents, it sets forth how the loadings analysis was performed but fails to provide sufficient detail or calculations which would further allow more precise comments. The MPP industry has requested more detailed information from EPA to determine how the loadings data and calculations have been performed as a basis for more stringent limits under the proposed rule. Yet, EPA has not provided this information for public and industry verification in a timely way due to the Agency's confidential business information concerns.

The Proposed MPP ELG Limits Are Too Restrictive

The MPP industry has reviewed the limited amount of data and information the Agency used to calculate the proposed limits for the various subcategories. EPA has committed errors in this

exercise. According to EPA's analyses, some well-designed and operated MPP facilities currently employing the prescribed treatment technologies in the proposed rule would not fully comply with the proposed limits. This seems particularly true for the proposed total nitrogen limits and for renderers. Many MPP facilities designed for full nitrification/denitrification would not achieve the proposed total nitrogen limits. Other calculation issues would result in exceedances of biochemical oxygen demand (BOD), total suspended solids (TSS), total phosphorous (TP), fecal coliform, and E. coli, even with proposed technologies in place. These results are contrary to the fundamental purpose of ELGs and EPA's obligation to ensure facilities with EPA's prescribed technologies can otherwise comply with the final limits derived from using those technologies. In short, EPA's proposed limits are too restrictive.

The docket appears to be missing important information regarding various facilities' treatment technology/schematics, flow rates, unit operations sizes/ retention times, pollutant loadings, laboratory analytical QA/QC of the data, and more. The MPP industry has requested this data, but EPA claims it to be CBI and it has not been provided. This information is critical for the public to review and confirm EPA's analyses, especially because mistakes have already been found in EPA's calculations and approaches. EPA needs to be transparent in how it derived the proposed rule and related effluent limitations.

EPA's Cost Model is Not Appropriate for Estimating Capital and O&M Costs for MPP Facilities

EPA's use of the CAPDET model is problematic and unreliable for estimating capital and O&M costs for MPP facilities. The model was not intended or designed to be used in the way EPA uses it in this proposed rule. Additionally, modifications made to CAPDET by EPA are not justified or adequately explained in the docket. The CAPDET model was developed to estimate the cost of POTW biological systems which typically have low influent contaminant loadings such as BOD concentrations ranging from 200 to 400 mg/l. Meat and poultry processing wastewater has concentrations typically 10 to 20 times higher, and rendering has concentrations several times higher than that. EPA indicates it has made changes to the model to account for the higher contamination loadings but has made no attempt to compare the model to the "real world" cost of MPP treatment facilities.

We also can see that the model significantly underestimates costs, but without more information, we cannot identify the degree of underestimation or suggest particular fixes EPA could apply to the model. Hence, once again we are prevented from providing more detailed comments by EPA's application of CBI and the lack of public transparency normally afforded during ELG rulemaking.

The Impacts of EPA's Misuse of the CAPDET Model Will Be Severe for the MPP Industry

The industry expects the problems with the Agency's misuse and misapplication of the CAPDET model could be far-reaching. Among the specific and egregious examples of this is EPA's adjustment of the model to have only a one-day retention time in an anaerobic treatment lagoon. Based on the heavy pollutant loads from the MPP facilities, the anaerobic systems in

today's well-designed and operated plants typically range from 10 to 20 days of retention time. For a 1 million gallon-per-day facility, this would equate to a 10- to 20-million-gallon capacity in this treatment unit. Since EPA references the treatment units possibly being 12 or 15 feet deep, a typical facility today would have to expand its retention area by 2.5 to 5 acres to accommodate just the anaerobic system. EPA's cost estimates do not appear to include the cost of obtaining neighboring properties or reallocating a facility's use of its land, even if either of these were possible.

Many MPP indirect dischargers who may face the proposed PSES requirements, including many located in urban areas, will not have the space available now or for purchase within the next couple of years. Many would also face land use or setback restrictions in seeking to establish a larger wastewater treatment lagoon on their property or adjacent property in an urban area. This will also be the case for some directly discharging facilities. Industry concerns over EPA's technical errors have been amplified by docket materials for the proposed rule that include a reference to a 33-year-old document on plant design that EPA used to estimate capital and O&M costs.

We believe the Agency has underestimated costs in multiple ways.

EPA Has Underestimated Facility Closures and Job Losses from the Proposed Rule

The Agency's economic impact analysis is flawed. It should be improved to better simulate the likely tax status and financial decision-making process by the owners of a facility with lower profitability and may be threatened with closure by the projected costs to comply with the proposed rule. Several changes should also be made to the Agency's overall approach to the compliance cost analysis, in addition to the changes to engineering cost estimation procedures suggested in the preceding sections. For example, the Agency should recognize the rule would pose compliance obligations and costs on MPP facilities forever, not just for the next 40 years. By using a 40-year window, EPA can avoid counting the large future costs of replacing for a second time, beginning in year 41, the major portion of wastewater treatment capital equipment that the Agency assumes to have a 20-year useful life.

If EPA were to make the specific changes we recommend to the economic impact and general costing procedures, the compliance costs that the agency enters in the cost-to-revenue (CTR) comparisons and the discounted cash flow closure tests would increase by about 50%. If engineering compliance costs are likely to be double what EPA has estimated, then the CTR and discounted cash flow analyses should be triple EPA's estimate (double the engineering costs and then add 50% to the doubling).

We have requested information from EPA to confirm these conclusions, and EPA has declined to provide any further detail, even though we believe what we have asked for is not CBI. EPA may have derived the detailed information we have requested by analyzing data that is in part CBI, but that does not make EPA's conclusions based on those analyses CBI. Virtually all of the numerical analytical conclusions the Agency presents in the Technical Development Document and in the Regulatory Impact Analysis rely similarly on analyzing data that is in part

CBI, yet the conclusions clearly are not CBI and EPA has not claimed them as CBI, but will not provide important related details.

Absent the additional detail that we have requested, we will assume simply that tripling the cost inputs to the CTR and discounted case flow analyses would triple the resulting projected facility closures and job losses. Making this assumption, the projected number of MPP facility closures for Option 1 without chlorides would jump from 16 sites that EPA estimates in the proposed rule 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 that EPA estimates in the proposal to a little more than 50,000 job losses.

The projected closures and job losses for the more stringent regulatory options would increase similarly. For Option 2 with chlorides, for example, the projected number of facility closures would increase to 90, nearly 10% of all the MPP facilities that exceed the production thresholds for Option 2. In sum, EPA has significantly underestimated the impact of the proposed rule on the industry as a whole.

EPA Should Not Regulate Chlorides

EPA seeks comment on potential effluent limitations on chlorides, perhaps including separation and zero discharge requirements for “high chloride waste streams.” The industry opposes any such requirement, believing costs would be exceptionally high and widespread throughout the industry with minimal environmental benefits. Control of MPP chloride discharge should not be required across the board for the industry but instead only where needed from a water quality perspective and accomplished through WQBELs in direct discharger and POTW NPDES permits.

A large majority of MPP facilities have what might be considered “high chloride waste streams.” (This term is ambiguous. Without defining the term, it is not possible for the public to assess and comment on the impacts and costs of regulating these waste streams.) Nearly every MPP facility uses a softener to produce at least boiler makeup water and a high chloride stream results from the softener regeneration process. Other processes such as marinating and brining also produce potential “high chloride waste streams” and separating the high concentration streams from other wastewater and then collecting the commingled high chloride streams for treatment would be difficult and costly.

Practicable treatment or disposal options for high chloride streams are rarely available to MPP facilities. For the few facilities that have the option of hauling to a treatment or disposal facility (perhaps most often a POTW), the cost is high and, from experience, the receiver can shut the option off as quickly as they allowed it. EPA appears to have underestimated the costs for evaporation ponds, forced circulation evaporation or crystallization, some other very limited-availability options.

The Meat and Poultry Products ELG Threatens to Disrupt the Biden Administration’s Top Priority Initiative for Small and Medium-Sized Meat and Poultry Processors

In its current form, the MPP ELG proposal appears to work at cross purposes with the Administration's priority to increase the number and competitiveness of independent small and medium-sized meat and poultry processing operations. The U.S. Department of Agriculture has launched its Action Plan with a planned investment exceeding \$1 billion to achieve this objective. However, EPA's proposed production thresholds for this rule, even for Option 1, extend well down into what USDA-FSIS defines as small establishments or facilities. The rule may impose burdensome new costs on smaller to medium-sized facilities without such grants, as well as cause closures for some operations now receiving assistance under the USDA grant program.

Recommendation to Reject Options 2 and 3, and Potential Corrections to Option 1

The industry is opposed to the MPP proposed rulemaking in its current form for all Options, including the egregious and wide-ranging impacts and consequences resulting from Options 2 and 3. However, Option 1 may be made more acceptable and workable for industry with certain changes. Currently, the proposed limits in Option 1, according to industry's analysis, are not achievable by the candidate technologies. We urge EPA to revisit its current approach, reanalyze and correct deficiencies, and revise the proposed limits so they are – at all levels – clearly achievable by the proposed technologies.

Additionally, we urge EPA to drop indirect discharging MPP facilities from the scope of the rule entirely, including in Option 1. Indirect discharging facilities are quite well-regulated in a cost-efficient manner through a combination of pretreatment permits and local limits, and NPDES permits for POTWs that include water quality-based effluent limits (WQBELs) as determined by TMDLs and as necessary to achieve water quality standards. The national POTW community has similarly informed EPA during public hearings on the proposed rule that new MPP requirements for indirect dischargers are not needed and not a priority for POTWs.

The Proposed Requirements for MPP Indirect Dischargers Would Upset Successful, Established Relationships

The great majority of POTWs are now operating with what most would consider to be smooth relationships with their MPP indirect dischargers. MPP indirect dischargers operate under pretreatment permits and local limits set by POTWs and control authorities to protect POTW operations and contribute to POTW compliance with their NPDES permits, which are water quality-based to the extent necessary.

MPP indirect dischargers pay substantial amounts in sewer charges and sometimes surcharges to cover their share of POTW's operating and maintenance expenses and sometimes contribute to capital costs. POTWs have optimized their operations and planned their capital budgets based on expected hydraulic and pollutant loads from domestic sources and important industrial users, including MPP facilities. The proposed ELG requirements for MPP indirect dischargers would upset these successful relationships in many instances.

First, MPP facilities provide high concentration but readily treatable BOD loads to their POTWs. If these loads were substantially reduced as required under the proposed standards, many

POTWs with operations optimized for their current set of domestic and industrial users would have difficulty meeting their BOD percent removal compliance requirements.

Second, the carbon load now provided by MPP indirect dischargers is advantageous to POTWs that both nitrify and denitrify. The proposed regulation would greatly reduce the carbon input from regulated MPP indirect dischargers, causing these advanced treatment POTWs to need either to purchase replacement carbon (perhaps methanol) or to make other costly changes to their operations.

Third, the potential required sharp reduction in MPP indirect discharger pollutant loads and concentrations will reduce POTW revenues they obtain from surcharges and from sewer user charge revenues, without a corresponding reduction in POTW operating costs. POTWs will need to seek additional revenues through rate increases for domestic (the public) and/or other industrial users.

Fourth, closure of an MPP industrial discharger that is unable to comply with EPA's proposed ELG would create even larger negative impacts in each of these areas.

EPA Provides Weak Environmental Justification for the Proposed Rule

EPA has provided no quantitative information indicating how often MPP facilities contribute meaningfully to water quality impairments and how often they do not. EPA cites a 2021 study in which the Agency reviewed 220 indirect discharging MPP facilities and 112 POTWs that received process wastewater from them. The study found that 73% of these POTWs had violations of permit limitations for pollutants found in MPP wastewater, including N, P, TSS, BOD, O&G, chloride, total residual chlorine, fecal coliform bacteria and metals.

EPA did not investigate the seriousness of the violations, nor the degree to which MPP indirect dischargers might have actually contributed to the violations. Many of the POTW – MPP indirect discharger pairs appeared to involve large POTWs and small MPP dischargers, which probably means that the MPP indirect discharger was unlikely to have been a significant contributor of pollutants generating any permit violations. In other words, EPA cannot assume that further restrictions on MPP discharges would have any impact on POTW compliance without any direct evidence to the contrary. EPA needs to complete a more thorough and definitive quantitative investigation of the relationship between MPP indirect dischargers and their POTWs.

We believe that MPP indirect dischargers very rarely, if ever, cause or contribute significantly to interference or pass through at their POTWs. 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. The damage cases all involved spills, leaks, accidents, upsets, groundwater pollution and/or gross negligence, not inadequate treatment of conventional pollutants and nutrients in MPP wastewater. EPA's study of water quality impairments downstream of direct and indirect MPP dischargers finds the impairments are much more often for varieties of pollutants not originating in significant quantities from MPP dischargers than due to pollutants that do originate in significant quantities from MPP dischargers.

EPA lacks data and information to demonstrate any passthrough or interference with POTWs. In fact, POTWs are designed to treat and rely upon conventional pollutant loads from MPP indirect dischargers to ensure consistent and efficient operations and overall pollutant removal. While not providing any actual justification for regulating indirect MPP facilities, EPA thus also lacks legal authority to regulate such entities for conventional pollutants.

Conclusion

For the reasons set forth above, EPA should take one or more of the following actions: (1) provide additional information that it has refused to provide, including studies that could readily be conducted to confirm the various bases for its proposal, and then publish a "Notice of Data Availability" in the Federal Register with an additional 90-day comment period; (2) withdraw the proposed rule completely and reissue a new, corrected proposed rule; or (3) stay the current rulemaking while collecting additional data to determine whether the 2004 MPP ELGs continue to reflect the BAT for the industry.

Thank you for the opportunity to comment.

Respectfully,

A handwritten signature in cursive script that reads "Eric Mayberry".

Eric Mayberry
President
Tennessee Farm Bureau Federation