



Nourishing Today
Sustaining Tomorrow

March 25, 2024

Michael S. Regan, Administrator, Environmental Protection Agency
Steve Whitlock, Engineering and Analysis Division, EPA Office of Water
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 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. Administrator:

The Meat Institute appreciates the opportunity to submit these comments in response to the unnecessary, exceedingly costly and unduly burdensome rulemaking contained in the Environmental Protection Agency's (EPA) 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) industries. Due to the issues noted below, the Meat Institute respectfully requests that EPA withdraw the proposed rule in its entirety and subsequently engage with necessary stakeholders to fully evaluate more appropriate and cost-effective alternative that ensure full capacity and resilience in the MPP industry while appropriately protecting the nation's water resources.

The Meat Institute is the United States' oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, poultry, and processed meat products. The Meat Institute has 330 general members, operating more than 800 facilities subject to daily federal inspection by the U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS). Some of our members also operate facilities that are subject to oversight by the Food and Drug Administration (FDA). Our members include not only the largest meat and poultry processors in the United States, but also many small businesses. In fact, more than half of our members have fewer than 100 employees.

The Meat Institute also has 200 supplier members, which provide a broad range of products and services ranging from large processing equipment to laboratory testing for food safety to packaging, all to help ensure Americans enjoy a safe and abundant supply of meat and poultry products. The U.S. meat and poultry processing industry produces nutrient-dense foods that play a unique role in healthy diets and are driving solutions for the environment, farmers' livelihoods, animal care, and more.

The Meat Institute and our members have been, and continue to be, progressive in striving to protect the environment in which live and operate. The Meat Institute and our partners in the Protein PACT for the People, Animals & Climate of Tomorrow are committed to accelerating progress and building momentum for public commitments in each of five focus areas: the environment, animal care, food safety, nutrition, and our workforce. Protein PACT is a commitment to continuous improvement toward a common set of ambitious goals across the industry. It empowers the animal protein industry to proactively meet the needs of its customers and consumers by accelerating continuous improvement across animal agriculture, transparently verifying progress toward ambitious targets, and proactively communicating that progress. In the second year of the meat sector's pioneering data collection and reporting on five key focus areas for continuous improvement, the number of companies submitting data grew by nearly 60% and now cover more than half of all establishments operated by Meat Institute members. With 93% of the Meat Institute's largest member companies (more than 2000 employees) submitting data, the report reflects commitments and actions covering an estimated 90% of meat sold in the United States. The Meat Institute's metrics and goals align closely with on-farm efforts in beef, pork, poultry and feed to drive supply chain-wide sustainability.

Protein PACT unites partners committed to sustaining healthy people, healthy animals, healthy communities, and a healthy environment.

Our member companies care deeply about water quality and strive to meet or exceed the requirements of the existing ELGs. The Meat Institute and our members support reasonable regulations that protect the environment and communities in which we live and operate. Along with other industry stakeholders and the Meat and Poultry Products ELG Coalition, which we are a member of and whose comments we join in and incorporate herein by reference, have a number of specific concerns that are outlined below.

EPA has not Provided an Adequate Opportunity to Evaluate and Provide Comments to the Proposed Rule

The Agency's work on the MPP effluent guidelines has proceeded under an unreasonably tight timeframe, particularly in light of the more "typical" comment period afforded to

many of the 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*. Despite multiple requests for extensions of time to comment being submitted by the Meat Institute and members of the Coalition, EPA was immovable and refused to extend the comment deadline.

EPA's assertions that the comment period was necessarily dictated by a federal consent decree that has mandated that 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 here, and EPA has a history of missing deadlines with no direct or significant liabilities, even if challenged in court. Finally, EPA's extremely slow and inefficient manner in which it masks important data needed for review behind Confidential Business Information tags and lengthy Freedom of Information Act reviews further supports the need for an extended comment period.

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

- (1) the high degree of technical complexity associated with strict new limits contained in the proposed rule;
- (2) the potentially more than ten-fold expansion of the scope of the proposed rule under the most stringent Option to more than a thousand additional facilities across the nation that were not previously regulated by MPP ELGs;
- (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 that 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 – and often opaque – 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 within the 60-day timeframe 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 is due to concerns over releasing CBI. We believe in many instances that the Agency's claim of CBI is not appropriate and not consistent with Agency CBI policy and regulations.

The Industry Coalition has suggested proposed solutions to the Agency such that the requested information can be released in some useable format. For example, the Industry Coalition suggested that 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. Absent the ability to check EPA's math and methodology, it is impossible for the public to fully evaluate and scrutinize EPA's technical analysis. Accordingly, EPA must fully withdraw its proposal.

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 that 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 at 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 large and small municipalities/communities, and an unnecessary burden on meat production and availability to the general public as we recover from a time of significant inflationary pressures.

EPA has Inadequately Developed and Justified the Rule

Despite the challenges the industry has experienced attempting to gain access to the documents and information purportedly forming the basis and rationale for EPA's proposed rule, as set forth above, we have been able to identify that the Agency has committed consequential errors, applied faulty analyses 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 that would be 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 (DAF). But in the costing 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 seem more cost-effective than it is. Stated differently, EPA is (intentionally or not) crediting the proposed requirements with pollutant removals that are already occurring.

These inconsistencies cannot form the basis of EPA's proposal. In EPA's development documents, it sets forth how the loadings analysis was performed, but fails to provide sufficient detail or calculations that 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. However, EPA has not provided this information for public and

industry verification in a timely way due to the Agency's CBI concerns. Accordingly, the proposed rule should be withdrawn.

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. Although the public is hamstrung in its ability to fully analyze the proposal due to EPA's failure to provide access to the record, the MPP industry has been able to determine that EPA has committed significant errors in this exercise. According to EPA's analyses, some well-designed and operated MPP facilities that currently employ the prescribed treatment technologies in the proposed rule would not comply with the proposed limits. This seems particularly true for the proposed total Nitrogen (TN) limits and for renderers. Many MPP facilities designed for full nitrification/denitrification would not achieve the proposed TN limits. Other calculation issues would result in exceedances of biological oxygen demand (BOD), total suspended solids (TSS), total Phosphorus (TP), Fecal Coliform, and E. coli, even with proposed technologies in place. If achieving the prescribed limits requires technology EPA did not account for, costs of compliance will be even higher. These results are contrary to the fundamental purpose of ELGs and EPA's obligation to ensure that 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. That information is critical for the public to review and confirm EPA's analyses, especially because we already have found mistakes in EPA's calculations and approaches. EPA needs to be transparent in how it derived the proposed rule and related effluent limitations. For these reasons, EPA should withdraw its current proposal.

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 CAPDET model was developed to estimate the cost of POTW biological systems that typically have low influent contaminant loadings such as BOD concentrations ranging from 200 to 400 mg/l. Unfortunately, the model was not intended or designed to be used as EPA is doing in this proposed rule and modifications

made to CAPDET by EPA are not justified or adequately explained in the docket. Meat and poultry processing wastewater has concentrations typically 10 to 20 times higher, and rendering in particular has concentrations even several times higher than that. EPA indicates that 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 development. The proposal should thus be withdrawn.

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

The industry expects that the problems with the Agency’s misuse and misapplication of the CAPDET model could be far-reaching for the industry. Among the specific and egregious examples of this is EPA’s adjustment of the model to have only a 1-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 one 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, which may not be possible at all for some locations.

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 also would face land use or setback restrictions in seeking to establish a larger wastewater treatment lagoon on their or adjacent property in an urban area. This also will 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 by at least a factor of two. Due to these issues, the proposal should be withdrawn.

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

The Agency's economic impact analysis is significantly flawed. It should be improved to better simulate the likely tax status and financial decision-making process by the owners of a facility that has 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 that 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 conveniently 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 the MPP Coalition recommends 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 perhaps 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 fifty percent to the doubling).

We note that the MPP Coalition has requested information from EPA to confirm these conclusions. EPA has declined to provide any further detail, even though we believe what the Coalition asked for is not CBI. EPA may have derived the detailed information requested by analysing 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 that the Agency presents in the Technical Development Document and in the Regulatory Impact Analysis rely similarly on analysing 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 has been requested, the MPP Coalition assumes simply that tripling the cost inputs to the CTR and discounted cash 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 impacts of the proposed rule on the industry as a whole. Impacts of this magnitude to the MPP industry and the nation's economy as a whole cannot stand. Accordingly, the proposal should be withdrawn.

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, because the 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 water quality-based effluent limits (WQBELs) rather than ELGs 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 EPA defining the term, it is not possible for the public to fully 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 also appears to have underestimated the costs for evaporation ponds, forced circulation evaporation or

crystallization, some other very limited-availability options. For these reasons, the proposal should be withdrawn.

The MPP 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 US 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. For this reason, the proposal should be withdrawn.

The Meat Institute Opposes Options 1, 2, or 3; However Proposes Corrections to Option 1

The Meat Institute 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 potentially could be made more acceptable and workable for industry with certain changes. Those changes cannot be accomplished in this rulemaking, however, because of lack of access to the full technical record. Accordingly, any workable revisions would have to be proposed in a new rulemaking after this current proposal is withdrawn.

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. EPA must withdraw its proposal and propose a new rulemaking within which it reanalyses and corrects deficiencies and revises 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. Thus, EPA should withdraw its rule and fully engage necessary stakeholders before taking subsequent regulatory action.

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

The great majority of POTWs are now operating under 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 entail even larger negative impacts in each of these areas. Clearly, EPA has not fully evaluated the potentially deleterious impacts of its proposal on POTWs. It should thus withdraw its proposal.

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 processed 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 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 impacts on POTW compliance without any direct evidence to the contrary. EPA needs to complete a more thorough, 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.

Further, and perhaps most importantly, 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. Without providing any actual justification for regulating indirect MPP facilities, EPA also lacks legal authority to

regulate such entities for conventional pollutants. Accordingly, EPA should withdraw its proposal.

Conclusion

For the reasons set forth above, EPA should withdraw the proposed rule in its entirety. If EPA wishes to reissue a new, corrected proposed rule in the future, it should do so per one of the following pathways(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 in the future; 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.

Respectfully,

A handwritten signature in black ink, appearing to read "Bryan Burns".

Bryan Burns
VP and Associate General Counsel
The Meat Institute