



Date: March 23, 2024

To: U.S. Environmental Protection Agency
EPA Docket Center, Water Docket, Mail Code 28221T
1200 Pennsylvania Avenue NW,
Washington, DC 20460

Attention: Steve Whitlock, Engineering and Analysis Division, Office of Science and Technology, Office of Water, Environmental Protection Agency

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

The Association of Clean Water Administrators (ACWA) submits this letter to the U.S. Environmental Protection Agency (EPA) in response to notice of proposed rulemaking for *Clean Water Act Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category* (proposed rule). ACWA is the independent, non-partisan, national organization of state, interstate, and territorial clean water program directors (hereinafter "states"), responsible for the daily implementation of the federal Clean Water Act (CWA), including the National Pollutant Discharge Elimination System (NPDES) which incorporated technology based effluent limitations derived from national effluent limit guidelines.

GENERAL OVERVIEW

States support EPA's decision to further research and study the Meat and Poultry Products (MPP) industry and the ultimate decision to propose a rule updating the technology-based effluent limitations guidelines and standards (ELGs) for the MPP point source category. We believe EPA has captured the MPP universe and relevant exceptions, but the final ELG could benefit from providing clarity regarding when gelatin manufacturing is or is not covered.

Recommendation 1: As states will be the primary regulators and implementors for most of this rule, EPA should share final draft language with states prior to issuing the final rule. This will help ensure there are no surprises and unintended consequences. Without providing actual regulatory language, states can be surprised by the final product and EPA can be surprised by states' reactions to it.

Recommendation 2: EPA should provide greater clarity as to when a gelatin manufacturing facility would be covered under the MPP ELG as a direct or indirect discharger, if covered at all.

Due to increasing costs, shortages of engineers, supply chain delays, and construction labor challenges, the need to evaluate and renegotiate relationships between facilities and POTWs, and the long time it can take to fully optimize new facility/POTW system updates, states believe this rule could benefit from a longer,

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phased implementation schedule. Likewise, some of these indirect dischargers may not already be regulated and may be difficult to identify and educate as to new requirements. States do not want to see an otherwise appropriate update to the MPP EGL end up contributing to a significant number of avoidable facility violations.

Recommendation 3: Once EPA has made final decisions on scope, number of direct dischargers impacted, number of indirect dischargers impacted, level of conventional pollutant treatment, and level of nutrient treatment, EPA should work closely with states and other stake holders to discuss an ambitious, but still reasonable implementation schedule.

Recommendation 4: Where the receiving water body is a drinking water source, the permitting authority should be provided with the option to pursue a more rigorous schedule as deemed appropriate.

Recommendation 5: EPA should either create a requirement that all of these direct and indirect dischargers self-identify or plan to provide assistance to states in getting them identified. One approach could be to work with both USDA and the FDA to create a database of facilities that generally meet the MPP definition and that use their data to help narrow the universe to those that meet the production thresholds.

DIRECT DISCHARGERS - UNIVERSE

Most states support EPA's use of facility size thresholds (e.g., >50M lb/yr for Slaughterhouses) envisioned by the proposed rule options and believe **Option 1**, covering ~126 facilities, is the preferred universe for the number of direct dischargers covered by the final ELG.

Recommendation 6: EPA should finalize **Option 1** as proposed for the universe of Direct Discharger facilities covered.

DIRECT DISCHARGERS – CONVENTIONAL POLLUTANTS

Most states support EPA's calculations for conventional pollutant reductions and believe these will be important in maintaining and/or improving water quality.

Recommendation 7: EPA should finalize **Option 1** for conventional pollutant reductions as proposed for Direct Dischargers.

Many states agree that some facilities have high chlorides waste streams, and this rule should provide a requirement for reducing the amount of chlorides directly discharged. Some states believe their WQS adequately address high chloride discharges and this rule does not need to duplicate or undermine these requirements. Several states noted that these chlorides may have less of an impact on waterbodies with high, naturally occurring/background chloride concentrations. Some states also expressed concerns that the most economical treatment processes for addressing chlorides requires a large amount of space.

Recommendation 8: EPA should consider setting a reasonably low, and cost-effective chloride concentration limit, based on volume/concentration of the high chlorides waste stream, and receiving water body type. Given facility size constraints, EPA needs to consider the cost for alternatives to the side-stream evaporation process, including options such as Underground Injection Control (UIC), where possible and appropriate. EPA should ensure there is understanding that WQBELs supersede these technology-based limits.

EPA is requesting comment on the inclusion of *E. coli* as a regulated parameter for direct dischargers. EPA is also soliciting comment on more stringent limits for bacteria. While many states believe *E. coli* can be a more reliable indicator of pathogen pollution, many states have moved away from fecal coliforms to *E. coli*. In their WQS, there was at least one state that did not want to see fecal coliforms replaced with *E. coli*. That state believed an either/or approach could work, with discretion left to the permitting authority.

Recommendation 9: EPA should work closely with states to identify the bacteria/pathogen indicator that will reduce monitoring requirements nationally, while still providing an appropriate pathway to reducing exposure and risk.

Several states indicated they thought there needed to be further discussion in the rule regarding Carbonaceous Biochemical Oxygen Demand (CBOD) and when/how it should be differentiated from BOD.

Recommendation 10: EPA should add a section in the final rule that provides for CBOD consideration.

DIRECT DISCHARGERS – NUTRIENTS

States understand that MPP facilities can be large contributors of nitrogen and/or phosphorus, and support updates to ELG that further restrict direct discharges of each. Specifically, most states support regulating total nitrogen more stringently and implementing new limitations on most pollutant subcategories, and adding a limit for total phosphorus to ensure that treatment systems used by facilities are achieving meaningful reductions across most pollutant subcategories. Some states noted their WQS adequately address Total N and or Total P, and this rule does not need to duplicate or undermine these requirements.

Recommendation 11: EPA should finalize **Option 1** as proposed for Direct Discharger facility nutrient reductions. EPA should ensure there is understanding that WQBELs may be more restrictive and could supersede the technology-based limits.

Some states raised questions regarding the technologies required to meet nutrient reductions. Does a facility have to use BAT if another solution for addressing Total N or Total P becomes available? If industry successfully makes the case that BAT is significantly more expensive than EPA's estimates, what alternative options will EPA consider? For instance, will EPA just increase calculated costs for the rule, will the amount of nutrient reduction change to more closely mirror the costs calculated in the proposed rule, or will fewer facilities be covered in a final rule? What options will EPA consider for a facility that does not have the space for the appropriate treatment technologies?

Recommendation 12: Once all the public comments are in and EPA has time to further consider nutrient reductions for Direct Dischargers, ACWA requests that EPA talk with states regarding implications for any "new" options the agency might be considering prior to finalizing the rule.

INDIRECT DISCHARGERS – GENERAL OBSERVATIONS

Preexisting relationships between facilities and POTWs can be different from community to community. As a general statement, most states would like to see this rule preserve existing relationships and not undermine fee structures supporting POTW operating costs. States support

the use of conditional limits, removal credits, local limits, and any other tools available that allows the facility, POTW, and community to collaboratively determine the most cost-effective way to meet the ultimate outcome of reduced conventional pollutants entering the local watershed from the POTW.

EPA may wish to consider as part of a rule discussion the following factors for indirect dischargers: 1) whether a formal, transparent relationship exists between the indirect discharger and the POTW; 2) whether the POTW has permit limits in place for all of the conventional pollutants listed in the final rule; 3) whether the POTW is meeting all of the conventional pollutants limits; 4) whether the indirect discharger's volume or concentration of conventional pollutants could cause interference or a bypass at the POTW; and 5) whether the costs for pollutant reductions are being fairly distributed between indirect dischargers and the community, with special consideration for low income and overburdened communities.

Recommendation 13: EPA should exercise considerable creativity in addressing indirect dischargers, whether existing or new¹. Requirements should be flexible and allow the facility and the POTW to upgrade in the future. Permitting authorities, facilities, POTWs, and their communities should collaboratively determine the best and fastest approach to meet pollutant reduction goals/outcomes.

States support EPA's use of facility size thresholds envisioned in the proposed rule and believe **Option 1**, covering ~720 facilities, is the preferred universe for the number of indirect dischargers covered by the final ELG.

Recommendation 14: EPA should finalize **Option 1** as proposed for the universe of Indirect Discharger facilities covered.

Recommendation 15: Should EPA decide to regulate the larger indirect discharger universe noted in **Option 3** (1,487 facilities), states recommend EPA consider pollution limits as a percent reduction based on the size of the facility and/or an approach that provides more time to the smaller facilities incorporated beyond **Option 1**.

INDIRECT DISCHARGERS – CONVENTIONAL POLLUTANTS

States support the level of conventional pollutant reduction across all parameters as an appropriate outcome of this rule. Several states indicated the level of treatment for conventional pollutants at MPP facilities was consistent with the current level of treatment already expected of other indirect dischargers. Many states believe it is appropriate to allow where the pollutant reductions occur (at the facility at the POTW) to change over time.

Recommendation 16: EPA should finalize **Option 1** for conventional pollutant reduction outcomes/goals as proposed for Indirect Dischargers.

Many states are aware that many downstream POTWs have had permit violations for pollutants found in MPP wastewater including BOD, TSS, chlorides, nitrogen, phosphorus, *E. coli*, total residual chlorine (TRC), coliforms, metals, ammonia, and oil & grease.

¹ There were a couple of states that expressed support for requiring conventional pollutant limits at the facility itself, consistent with the current pretreatment framework whether existing or new facilities, and at least one state that expressed support for traditional conventional pollutant limits for new MPP facilities only.

Recommendation 17: EPA should consider creating a phased in approach wherein, if a POTW continues to struggle with meeting conventional pollutant limits, the upstream MPP facility will then be required to directly treat and reduce their own conventional pollutant contributions.

Recommendation 18: EPA should consider direct discharger recommendations above related to chlorides, *E. Coli*, and CBOD as also applying to indirect dischargers, where appropriate.

INDIRECT DISCHARGERS – NUTRIENTS

EPA should limit application of nutrient reductions to those indirect discharger facilities discharging to a POTW that has nutrient limits. EPA should extend the same level of flexibility for how these nutrient limits will be met, as is being recommended above for conventional pollutants. When an existing POTW is given a new nutrient permit limit that did not previously exist, the indirect discharging MPP facilities should be given time to implement.

Recommendation 19: If EPA chooses to extend nutrient standards to indirect dischargers, states recommend those requirements only apply where the downstream POTW also has nutrient standards in place. Indirect discharging MPP facilities should be given one full one permit cycle to negotiate with the POTW and the community to determine how they will collectively share the responsibility of meeting these new nutrient requirements.

SUMMARY

We appreciate the opportunity to provide comments on EPA's proposed MPP rule. While ACWA's process to develop comments is comprehensive and intended to capture the diverse perspectives of states that implement these programs, EPA should also seriously consider the recommendations that come directly from individual states, interstates, and territories. Thank you again for the opportunity to provide comments on this draft guidance. Please contact ACWA's Executive Director at janastasio@acwa-us.org or (202) 756-0600 with any questions regarding ACWA's comments.

Sincerely,



Amanda Vincent
ACWA President

cc: Andrew Sawyers, Director, Office of Wastewater Management
Chris Kloss, Director, Water Permits Division