

September 19, 2023

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Regan:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for EPA's planned proposed rulemaking entitled "Meat and Poultry Products Effluent Limitations Guidelines Revision." This notice of proposed rulemaking is being developed by the U.S. Environmental Protection Agency (EPA) under the Clean Water Act (CWA).

The Meat and Poultry Products (MPP) industry includes approximately 5,000 facilities across the country which engage in meat and/or poultry slaughter, further processing, and/or rendering. The current MPP Effluent Limitations Guidelines (ELGs) were last amended in 2004 and apply to about 150 direct discharging facilities and zero indirect dischargers. In 2021, a detailed study by EPA of the MPP industry found that the MPP industry discharges high amounts of nutrients, wastewater from indirect dischargers can interfere or pass through publicly owned treatment works (POTWs), and that there are potentially available and affordable technologies that can reduce pollutant discharges from the MPP industry. In this rulemaking, EPA is considering revising and/or establishing new numeric effluent limitations for direct and indirect dischargers in the MPP industry. EPA is also considering changes to the subcategories in the current regulations and establishing additional subcategories. The possible ELG revisions and potential new pretreatment standards will be based on several factors enumerated in the Clean Water Act, including the performance of available treatment technologies, economic achievability, and non-water quality environmental impacts associated with regulatory options. This rulemaking is a part of EPA's strategy to reduce nutrient discharges to the nation's waters.

On July 3, 2023, EPA's Small Business Advocacy Chairperson convened this Panel under section 609(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel consists of the Director of the Engineering and Analysis Division within EPA's Office of Water, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of the Small Business Administration (SBA). It is important to note that the Panel's findings and discussion are based on the information available at the time this report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during this process as well as from public comment on the proposed rule. The options the Panel identified for reducing the rule's economic impact on small entities will require further analysis and/or data collection to ensure that the options are practicable, enforceable, protective of public health, environmentally sound and consistent with the CWA.

SUMMARY OF SMALL ENTITY OUTREACH

In September 2022, EPA presented information on the ongoing rulemaking to the US Poultry & Egg Association trade association environmental committee. At this event, EPA answered questions and requested feedback about the rulemaking. In January 2023, EPA presented information on the ongoing rulemaking to the Joint Poultry Environmental Committee during the International Production and Processing Expo, in Atlanta, Georgia.

Prior to convening the Panel, EPA conducted outreach with small entities that will potentially be affected by these regulations. In May 2022, EPA invited SBA, OMB, and 8 potentially affected small entity representatives to

a meeting and solicited comments from them on preliminary information sent to them. EPA shared the small entities' written comments with the Panel as part of the Panel convening document.

After the SBAR Panel was convened, the Panel distributed additional information to the small entity representatives (SERs) on July 3, 2023, for their review and comment and in preparation for another outreach meeting. On July 17, 2023, the Panel met with the SERs to hear their comments on the information distributed to them. The SERs were asked to provide written feedback on ideas under consideration for the proposed rulemaking and responses to questions regarding their experience with the existing requirements. The Panel received written comments from the SERs in response to the discussions at this meeting and the outreach materials. See Sections 6 and 8 of the Panel Report for a complete summary of all SER comments. Their full written comments are also included in Appendix A. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFA and developed the findings and discussion summarized below.

PANEL FINDINGS AND DISCUSSION

Under section 609(b) of the RFA, the Panel is to report its findings related to the following four items:

- 1) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.
- 2) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.
- 3) Identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule.
- 4) A description of any significant alternatives to the planned proposed rule which would minimize any significant economic impact of the proposed rule on small entities consistent with the stated objectives of the authorizing statute.

The Panel's most significant findings and discussion with respect to each of these items are summarized below. To read the full discussion of the Panel findings and recommendations, please see Section 9 of the Panel Report.

A. Number and Types of Entities Affected

The Panel recognizes that small entities could be included in the scope of the proposed MPP ELG. EPA currently estimates 1,732 of the 1,863 firms meet the SBA definitions for small entities for applicable NAICS codes listed in Section 3. These MPP facilities include direct and indirect dischargers across the country. The small entities conduct a variety of processes, such as meat and poultry slaughter, further processing, and rendering. During the Pre-Panel and formal Panel Outreach discussions, the SERs also mentioned and clarified that any new regulatory requirements would affect direct and indirect dischargers, facilities with a wide range of processes, and facilities of very different sizes. Due to mechanical processes, facilities with similar production levels may not have similar numbers of employees. The SERs noted many small facilities may not have any knowledge of wastewater regulations or technologies, and may be located in areas with no land available for treatment technologies. Thus, the regulated universe will include a wide range of facilities, that differ in terms of MPP processes, production, wastewater, number of staff, location, and knowledge, amongst other attributes.

B. Recordkeeping, Reporting, and Other Compliance Requirements

The proposed MPP ELG would necessarily consider new reporting and recordkeeping requirements for a number of MPP facilities. Some small entities are already required to monitor and report data to their permitting authority, and any new requirements such as monitoring for additional pollutants would be in addition to existing requirements. For small entities potentially covered by new regulations that don't have existing requirements related to wastewater, or don't often interact with their control authority, facilities may be required to monitor and report data to their permitting authority. Many of the SERs expressed that they were unfamiliar with wastewater regulations. These facilities may need guidance to identify and contact their control authority. Many of the smaller facilities will likely need instruction to understand how to comply with any proposed regulations.

The regulatory requirements in the current MPP ELG found at 40 CFR Part 432 are based on production thresholds. Some SERs mentioned small processors may not have detailed production information to enable them to determine if current or new requirements based on production thresholds apply to them. EPA and the SERs mentioned the possibility of including example wastewater flows that correlate various production thresholds to help facilities understand the applicability of the regulations. The SERs discussed using water bills to determine water usage. Some facilities may not have a water bill (e.g. using well water as source water). These facilities could install a water meter at the point(s) of discharge. One SER noted using water bills to determine water usage would put small processors at a further disadvantage by penalizing water usage that does not cause contamination (e.g., water baths for thawing). This was also noted in their written comments (see Appendix B). This possible disadvantage would affect small processors using water meters as well.

Many of the SERs discussed that they would need support in order to comply with any new regulatory requirements contemplated in a proposed rule. Some facilities may not understand how to comply with such requirements or may not have the knowledge and skills to operate wastewater treatment systems that could be necessary to comply with new requirements.

C. Related Federal Rules

The Panel is not aware of any Federal rules that duplicate, overlap or conflict with the planned proposed rule. However, there are regulations that MPP facilities must abide by, administration goals, and ongoing rulemakings that may indirectly affect the MPP industry.

The primary federal rules related to the proposed MPP ELG are U.S. Department of Agriculture (USDA) food and safety regulations. MPP facilities must comply with these regulations in order to sell food for human or animal consumption.

The SERs mentioned the current Administration's "Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain"¹. Under the Action Plan, the Administration is encouraging small MPP facilities to expand their capacities through USDA grants. The SERs mentioned some facilities planning to expand could become regulated by new requirements if their expansion caused them to cross a particular production threshold.

The Panel is also aware that there are other ongoing rulemakings related to wastewater treatment that could increase the general demand for wastewater treatment expertise and equipment, potentially delaying compliance activities until such expertise could be procured. One of the SERs mentioned that promulgation of

¹ See the January 3, 2022, White House Fact Sheet at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/fact-sheet-the-biden-harris-action-plan-for-a-fairer-more-competitive-and-more-resilient-meat-and-poultry-supply-chain/>.

new rules will increase demand for wastewater treatment expertise and technologies, which may cause a rise in prices.

D. Regulatory Flexibility Alternatives

1. **Exclude Small/Very Small Firms:** The Panel recommends EPA consider and take public comment in the notice of proposed rulemaking (NPRM) on production thresholds so as not to cause substantial economic hardship on small entities. As the MPP industry under the current regulations is split into 12 subcategories, the Panel recommends EPA consider adjusting production thresholds for the subcategories to account for differences across the industry.
2. **Wastewater Flows instead of Production Thresholds:** The Panel recommends EPA evaluate thresholds based on wastewater flows as an alternative to production thresholds for determining applicability for small facilities. EPA had explained that potential effluent limits could vary depending on production rate thresholds. Using wastewater flows was suggested by the SERs because some facilities do not monitor their production rates and wastewater flow is typically recorded or estimated by the sewer authority for billing. SERs expressed some concerns that not all process wastewater comes in contact with slaughtered animals or meat products and so does not contribute to the problem that EPA is trying to address. They felt that including this process water in flow calculations to determine regulatory compliance would unfairly penalize facilities with higher non-contaminated wastewater flows. Therefore, the Panel also recommends that EPA consider the fact that not all process water contains pollutants when they are considering the flow rates that might be used for setting thresholds.
3. **Implementation Timeline:** The Panel recommends EPA consider and take comment on a longer, or flexible, timeline for small entities. Allowing an extended implementation timeline could allow facilities to acquire the necessary finances, plan for the costs, and draw out the spending to reduce costs each year. A longer timeline for small entities could help facilities acquire necessary knowledge or personnel to install and operate wastewater treatment systems. Additionally, as small businesses may not be able to adapt to changing regulations as quickly as large businesses, a longer or flexible timeline could be helpful.
4. **Conditional Limits:** The Panel recommends EPA consider and take public comment in the NPRM on “conditional” limits for MPP facilities that discharge to POTWs with nitrogen and phosphorus limits and treatment capabilities equivalent to the treatment that would be needed to comply with any new proposed requirements. For these indirect discharging facilities, with documentation and approval by the POTW/control authority, and public posting of this information, the MPP facilities would not need to treat the wastewater for nitrogen and phosphorus before discharging to the POTW. The Panel recommends EPA consider and take comment in the NPRM on what documentation and approval by the POTW/control authority would be sufficient to establish conditional limits as a compliance mechanism.
5. **Guidance/Instruction Documents:** The Panel recommends that if EPA finalizes a rule that expands applicability to smaller facilities than those currently regulated, EPA will create and publish compliance guides after a final rule is published to help facilities determine rule applicability and requirements, with a focus on those facilities that may be unfamiliar with ELGs and wastewater regulations more generally even if a small entity compliance guide is not required by the RFA. The Panel recommends EPA take comment 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).

Sincerely,

**WILLIAM
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WILLIAM NICKERSON
Date: 2023.09.25
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William Nickerson
Small Business Advocacy Chair
Office of Policy
U.S. Environmental Protection Agency

**MAJOR
CLARK** Digitally signed by
MAJOR CLARK
Date: 2023.09.22
09:50:12 -04'00'

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

**DOMINIC
MANCINI** Digitally signed by
DOMINIC MANCINI
Date: 2023.09.22
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Dominic J. Mancini
Deputy Administrator
Office of Information and Regulatory Affairs
U.S. Office of Management and Budget

**ROBERT
WOOD** Digitally signed by
ROBERT WOOD
Date: 2023.09.21
15:15:11 -04'00'

Robert Wood
Director, Engineering and Analysis Division
Office of Water
U.S. Environmental Protection Agency

Enclosures