



March 25, 2024

Mr. Steve Whitlock
Engineering and Analysis Division, Office of Water (4303T)
U.S. Environmental Protection Agency
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RE: 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 Mr. Whitlock,

On July 9, 2021, President Joseph Biden signed an Executive Order on Promoting Competition in the American Economy.¹ In the Executive Order, President Biden noted that “[a] fair, open, and competitive marketplace has long been a cornerstone of the American economy, while excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers.”² Specific to the meat and poultry processing industry, four large meat-packing companies dominate over 80% of the beef market.³ President Biden highlighted the detrimental effect of consolidation in the agricultural sphere: “Farmers are squeezed between concentrated market power in the agricultural input industries [. . .] and concentrated market power in the channels for selling agricultural products. As a result, farmers’ share of the value of their agricultural products has decreased, and poultry farmers, hog farmers, cattle ranchers, and other agricultural workers struggle to retain autonomy and to make sustainable returns.”⁴ President Biden’s message was clear: the American economy thrives with competition, diversification, and investment in agriculture.

The Environmental Protection Agency (“EPA”) didn’t get the message.

¹ See Executive Order No. 14036 (signed July 9, 2021).

² See *id.*, section 1.

³ See White House Fact Sheet, available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/> (published July 9, 2021).

⁴ See *id.*





On January 23, 2024, the EPA announced its intention to decimate the meat and poultry industry by amending its effluent limitation guidelines (“ELGs”) for meat and poultry processing facilities. The proposed rule, entitled “Proposed Clean Water Act Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category,” increases existing requirements for nitrogen tolerance and introduces restrictions, for the first time, on phosphorous tolerance. EPA’s proposed rule presents three Options for how to implement these new, far-reaching requirements. All three Options are untenable.

EPA’s one-size-fits-all proposal is a solution in search of a problem that simply does not exist, at least not in the Bluegrass State. Kentucky meat and poultry processors are good neighbors. There is no systemic evidence of universal water quality or surface water issues in Kentucky because of Kentucky’s meat and poultry processing industry. With its reckless and ill-informed proposed rule, the EPA stands ready to nullify years of investment in and cultivation of Kentucky’s small and medium size processing capacity without so much as a working understanding of the different industries its regulation would eliminate.

These comments in opposition to the proposed rule are submitted by the Kentucky Department of Agriculture, through its duly elected Commissioner, Jonathan Shell, who is entrusted with the privilege and duty of promoting the interests of agriculture and horticulture. *See* KRS 246.020.

Background

The Clean Water Act (“CWA”), is the main federal law governing pollution control and the regulation of water quality. *See* 33 U.S.C. § 1251. The CWA regulates water quality by prohibiting the discharge of pollutants from a fixed-point source to protected waters unless the discharge is authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. *See* 33 U.S.C. § 1342. Under the CWA, “effluent limitations” are defined as restrictions “on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into [protected waters].” 33 U.S.C. § 1362(11). So, effluent limitations refer to the amount of pollution that a NPDES permit-holder may legally discharge.

In addition to establishing direct discharge effluent limitations, the CWA authorizes, in certain limited circumstances, the EPA to establish pretreatment standards to regulate indirect discharges. 33 U.S.C. § 1317(b). Indirect dischargers do not discharge pollution directly into protected waters. Instead, they discharge into publicly owned treatment works. 33 U.S.C. § 1317(b)(1). The CWA, defines publicly owned treatment works as “systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes,” including sewage collection and water recycling systems. 33 U.S.C. § 1292(2)(A).





The EPA has had effluent limitations for meat and poultry processors since the early 1970s. These limits have only been updated once, in 2004, since they were first established. *See* Proposed Rule at 4475. The current standards contain nitrogen effluent limits, but no similar limit for phosphorous exists. The current effluent standards do not have any pretreatment requirements for indirect dischargers. *See* Proposed Rule at *id.*; *see also* 40 CFR Part 432. Currently, the meat and poultry processor effluent limitation guidelines apply to roughly 150 of the 5,055 known meat and poultry processing facilities in the United States. *See* Proposed Rule at 4475.

In response to a lawsuit brought under the CWA by liberal environmental activist groups in 2022, *see Cape Fear River Watch et al., v. United States Environmental Protection Agency*, No. 1:22-cv-03809 (D. D.C), the EPA now intends to strengthen its existing standards and impose, for the first time ever, new pollution limits as well as new pretreatment standards on meat and poultry processors. *See generally* Proposed Rule. The environmentalists and the EPA reached a settlement agreement directing EPA to issue a proposed rule in December 2023 and a final rule by August 31, 2025. *See* 88 FR 12930. The proposed rule was published in the Federal Register on January 23, 2024 and is subject to public comment.

Despite publishing a 63-page rule, with over 600 accompanying documents (many of which are redacted or publicly unavailable due to containing confidential business information), the EPA declined several reasoned requests to extend the comment period beyond the originally designated 60-day public comment period provided for in the proposed rule. Sixty days is wholly inadequate to review and respond to proposed changes, assess necessary technology investments, and assess the resulting cost-of-business expenses. This hasty and self-imposed timeframe can only be meant to deter, rather than invite, public comment regarding the EPA's faulty proposed rule.

I. All three of the EPA's one-size-fits-all Options would devastate Kentucky's meat and poultry processing industry.

In its proposed rule, EPA presents three Options for revising the meat and poultry processor ELGs. *See* Proposed Rule at 4476–4477. Option 1, EPA's preferred Option, represents the greatest amount of pollution reduction coupled with the lowest level of cost to the industry. Option 3 would achieve the greatest amount of pollution reduction, but carries the highest level of cost to the industry. Option 2 is somewhere on the continuum.

Under Option 1, the guidelines would be revised to include new phosphorous limits and stricter nitrogen limits for large direct dischargers. This option would also include new pretreatment standards for large indirect dischargers. Large dischargers are any of the following: a meat slaughtering or processing facility that produces more than 50 million pounds per year of finished product; a poultry slaughtering facility that produces more than 100 million pounds per year; a poultry processing facility that produces more than 7 million pounds per year; and any rendering facility that





produces more than 10 million pounds of product per year. Poundage is calculated based on the live weight of the animal, before slaughter. EPA expects that of the 5,055 MPP facilities, 844 would be impacted by Option 1, with roughly 16 facilities expected to close.

Option 2 adds to Option 1 additional pretreatment standards for nitrogen and phosphorus to achieve full denitrification. These additional limitations would apply to meat and poultry slaughter facilities that process at least 200 million pounds per year, and to rendering facilities that process at least 350 million pounds per year. EPA expects that 22 facilities would close under Option 2.

Finally, Option 3 includes the same restrictions as Options 1 and 2, but would lower the production threshold to include more facilities. Under Option 3, limits for phosphorus would apply to all facilities that produce more than 10 million pounds of product per year, and new nitrogen limits would apply to all facilities that produce more than 20 million pounds of product per year. Option 3 would also impose new conventional pollutant pretreatment standards for facilities producing more than 5 million pounds per year, along with new phosphorus and nitrogen pretreatment standards for facilities producing more than 30 million pounds per year. While Option 3 would result in the greatest overall amount of pollution reduction, it also comes with the highest cost. EPA expects that Option 3 would impact 1,618 MPP facilities, with 53 facilities expected to close.

In Kentucky, the projected impact of each Option is severe. There are roughly 120 processors operating in Kentucky. Of those, 31 are USDA-FSIS processors. The Kentucky Department of Agriculture estimates that Options 1 and 2 would impact eight to twelve processors, even though the Options would affect the impacted companies to a different financial magnitude. Option 3 would impact nearly every processor in Kentucky. While Option 1 presents the best of all evils, Options 2 and 3 would be disastrous for meat and poultry processors, and therefore the entire supply chain, from the farm to the table.

This much is clear from reading the EPA's proposed rule: the EPA is uneducated on the meat and poultry processing industry. To start, the proposed rule treats all meat and poultry processors alike, whether the processor processes beef cattle, hogs, or birds. Each processors' production volume and operational size vastly differ from commodity to commodity.

For Kentucky poultry processors, the smallest non-privately held processing facility processes 1.25 million birds per week. Assuming the average bird is 7.5 pounds, Kentucky's smallest poultry processing facility processes 9,375,000 pounds per week, exceeding the Option 1 threshold after a mere six weeks. The next smallest plant processes 1.9 million birds per week. Each of Kentucky's four, larger poultry processors are covered by Option 1.

Kentucky's largest hog processing facility processes 10,500 heads every day in a five-day work week. Assuming the average live weight is 275 pounds, that facility will exceed the Option 1 threshold in roughly four weeks. For its operation, this





facility employs over 1,000 employees. The next largest hog processor in Kentucky processes a mere 315 hogs a day, but the average live weight of this facility's hogs is nearly double that of the largest plant's. Kentucky's second largest hog processor employs just shy of 300 employees. While currently exempt from the EPA's preferred Option, Option 1 would impact future expansion. Should Kentucky's second largest hog processor expand its operation slightly (*i.e.*, by 100 head of hogs a day), Option 1 of the proposed rule would apply to it the same way it applies to Kentucky's largest hog processor.

To say cattle is one of Kentucky's top livestock commodities is an understatement. Kentucky is the largest beef cattle state east of the Mississippi River. But Kentucky's red meat processing capacity is not reported. It's not Kentucky's fault; it's a function of existing federal regulation and the type of businesses that operate in Kentucky. USDA-FSIS plants are only required to provide a range of quantities produced within their facilities and only for products that bear the facilities' legend of inspection. Regulated facilities must provide to the USDA an average estimated daily product volume by type (*i.e.*, slaughter, raw intact, raw not intact, etc., and then by species) and the number of days per month produced on average. USDA rules do not require the type of detailed record-keeping required by the EPA's proposed rule. Simply put, USDA regulated facilities are not required to tally the number of pounds processed. Moreover, there is no requirement to track retail exempt or custom exempt pounds processed, as both products do not bear the facilities' USDA legend of inspection.

But cows are, obviously, large animals. They weigh more than a turkey, chicken, or hog. What's obvious to a farmer, though, is lost on the EPA. The average USDA-FSIS processing facility employs far less than 50 employees. Custom and exempt processors are even smaller. The largest beef cattle processor processes roughly 200 head a day, employing close to 50 employees. Many of Kentucky's smaller and mid-size beef cattle processors are family-owned, small business. A rule, intended to apply uniformly, then, disproportionately harms a signature Kentucky agricultural commodity.

Again, there are roughly 120 processors in the Commonwealth of Kentucky. The breadth of the rule is again incongruent with the realities of the meat and poultry processing industry. Most processors have less than 50 employees, and a large portion of them have less than 20. The number of employees a business employs does not necessarily correlate to production capacity as defined by the rule. As a result, business size may not be the best nexus for ensuring water quality.

Second, and more importantly, the cost of compliance is the chief reason the EPA's three Options are so devastating to Kentucky meat and poultry processors. The EPA estimates the total cost of compliance could go well into the millions for initial installation and hundreds of thousands in annual maintenance and testing. Regulations that require such capital costs as those projected by the EPA would undoubtedly cause processors to cease operation.





But even the EPA is unclear what the costs of compliance with the proposed rule might be. The EPA has estimated capital expenditures ranging anywhere from \$5,000 to \$4.5 million dollars. The costs to meet the requirements, especially in adding treatment technologies, are grossly underestimated by EPA. And let's not forget that some of the capital costs are not just one-time expenses. The types of technology contemplated by the rule require recurring upgrades, and depending on the discharge solution selected, could require significant real estate investment during a time with historically high real estate rates. It is appalling to learn the EPA finds the closure of 16 facilities acceptable when the only reason for closure would be the burdensome costs of regulatory compliance.

Even for a small to mid-sized facility, expenses are likely to total several million dollars per facility. Real world experience supports estimates of a hefty price tag. One Kentucky family-owned, mid-sized processor recently invested in a massive wastewater treatment system upgrade on its campus. The costs of adding or upgrading anaerobic biological treatments, a sequencing batch reactor, and dissolved air flotation devices, among other wastewater solutions currently considered to be the best practicable control technology currently available (BPT), carried a multi-million dollar price tag. And that was for a business that developed its innovative on-site wastewater solution over 50 years ago and is blessed with real estate on which to expand. Even still, this company's wastewater system is not currently programmed to detect or monitor the effluent limitations prescribed by the proposed rule, and the company is unclear on what additional financial costs might exist to expand or tweak its wastewater system. Luckily, this processor is averaging just under the proposed rule's regulatory cut off. Unfortunately, such a reality disincentives expansion. That's no way to treat a locally owned family business, in existence for decades, that has proactively implemented innovative wastewater solutions on-site.

All three Options would have a devastating effect on Kentucky's meat and poultry processing industry. But the devastation won't end there.

II. All three Options would devastate Kentucky's agricultural markets, supply chains, and consumers.

Agriculture is an economic driver. The EPA's rule myopically focuses only on the meat and poultry processors it would regulate. The EPA's analysis entirely disregards the ripple effects of its proposal.





Let's start with a case study. A large poultry processor in Western Kentucky employs 1,200 employees. The processor would be impacted by Option 1. As a result of the associated costs of compliance—easily in the multi-million-dollar range—the processor closes its doors. To the EPA, one processing plant has closed. To the Western Kentucky community, and the broader Kentucky agricultural community, the loss is nearly incalculable. First, poultry processors rarely raise the birds they slaughter. Farmers do. Poultry processors contract with local farmers to raise and harvest the birds the processors slaughter. Raising the birds includes feeding the birds, and the processor usually provides feed, but the processor doesn't produce it. Other farmers do. Poultry farmers rely on corn and soybean farmers to grow and produce livestock feed. This is called a supply chain. The loss of one poultry processor in one west Kentucky town decimates it.

Unable to bear the astronomically high costs associated with compliance under the proposed rule, processors will close. That's just the beginning. With fewer animals slaughtered and processed, the ripple effect will continue up the supply chain. Growers of feedstocks will lose a large portion of the market for their crops. In Kentucky, this loss would be devastating for row crop farmers like corn and soybean farmers. This will cause higher retail prices for consumers, shortages of finished product and variety of product, and job loss.

The narrative is repeated with every agricultural commodity. Beef cattle and dairy farmers rely on local markets to process their livestock. Livestock processing facilities offer such opportunities and assist rural communities in need of economic growth and development. More importantly, small to mid-sized meat and poultry processing facilities have a vital role in the supply chain economy. The EPA's memory may be short, but every Kentuckian remembers the supply chain strain that endured throughout the Covid-19 pandemic. The meat and poultry processing industry was no exception. The shutdown of the American economy resulted in temporary backlogs of meat processing, which led to meat shortages at grocery stores, and higher prices for the meat that was available. Whether the EPA elects Option 1, Option 2, or Option 3, it is certain that some processors will be forced to close. This type of unforced error should be avoided at all costs.

Kentucky has had tremendous growth with farmers venturing into retail meat sales to meet the demand created by a consumer wanting to know where his or her food comes from. These small processors are essential to converting a feeder calf with a value of \$1,500 today into a finished steer processed at \$3,500-\$4,000 in 18 months' time. This investment of time and resources requires no less than approximately 3,000 pounds of corn and 300 pounds of soybean meal. These value-added processes depend solely on businesses that cannot financially meet the requirements of any Option proposed in the EPA's rulemaking.

Regardless of the Option chosen, the Kentucky agriculture community, its consumers, and its broader supply chains would be impacted by EPA's proposed rule. The unprecedented nature of this proposal will result in substantial burdens on large





and small agribusinesses alike, and their supply chains, with little improvements in water quality. With families across our communities and country struggling due to record high inflation, no Kentuckian can afford the costs of the proposed rule. Without question, this will impact every retailer of meats, and every single consumer.

III. There is no demonstrated need for such a uniform and detrimental Rule.

Farmers are the best stewards of the land. They have to be. Their livelihood depends on it. The agriculture industry certainly does not oppose clean water. In many ways, the industry requires it. But any identified solution must be economically feasible for processors and financially responsible for consumers. The EPA's proposed rule is neither.

Considering the expected and anticipated consequences of the EPA's proposed rule, the industry should be able to trust that the EPA has done its due diligence on the necessity and effectiveness of its proposed Options. After all, the rulemaking is expected to devastate meat and poultry processing and impose (additional) unbearable economic burden on citizens. Unfortunately, the EPA has not. In fact, the EPA admits that it visited just *nine* sites in 2022 and sampled wastewater from only *six* sites. See Proposed Rule at 4485.

First, the wastewater sector is on record questioning the need for the EPA's approach, as existing practices are achieving important nutrient reduction targets already. "While pretreatment programs should certainly be aware of the BOD, TSS, and oil and grease discharges from MPP facilities, and limit them as needed, a pretreatment standard for these conventional pollutants would set a harmful precedent. Federal pretreatment standards are established for chemicals that would cause pass through or interference with the treatment processes, or if chemicals pose a danger to workers or harm the quality of biosolids. POTWs were designed to treat conventional pollutants, and if a POTW is not meeting its permit limits for conventional pollutants, then the POTW and the enforcement authority need to reexamine the local limits and evaluate treatment capacity and processes."⁵ The NACWA's commonsense approach puts ratepayers and businesses first and relies on POTWs to appropriately treat water for consumers.

Second, in establishing the standards, the EPA's technical documents rely heavily on research conducted by its litigation adversary, the Environmental Integrity Project. The EIP represented the environmental group leading the litigation that resulted in the settlement to adopt new ELGs. This is unthinkable. Kevin Minoli, former EPA principal deputy general counsel in the Obama and early Trump administrations, said it isn't unusual for the EPA to rely on a litigant's research, but

⁵ See 2024 Regulatory Update available at <https://www.nacwa.org/news-publications/news-detail/2024/02/29/february-2024-regulatory-update> (published Feb. 29, 2024).





in this case, the EPA's reliance stands out because EIP's report is self-published and not peer-reviewed.⁶ The EPA was undeterred. Instead, "EPA cites to the report more than twenty times," Minoli said. *Id.* "To the extent those conclusions became the basis for EPA's regulatory decision, it would create a valid question as to whether the agency should have relied on this particular report in the way that it did." *Id.*

Had the EPA done its own research, at least with respect to Kentucky, the EPA would have learned that since 1994, the Kentucky Agriculture Water Quality Act has served as a backstop, protecting Kentucky's surface and groundwater resources from agricultural and forestry related activities. Kentucky recognizes the importance of clean water, and as of the date of this submission, the undersigned has been informed that there are no known, or historic, claims of a meat or poultry processor in Kentucky with any reported violation to the Kentucky Agriculture Water Quality Authority. In sum, Kentucky meat and poultry processors are good neighbors.

IV. Kentucky's Meat Processing Industry is robust.

The Covid-19 pandemic and outbreaks at meat processing plants triggered massive supply chain issues leading to meat shortages at grocery stores and higher consumer prices. In response, state and local governments spent more than \$84 million in Coronavirus Relief Funds to butchers, processing plants, and farms between April 1, 2020 and June 30, 2021.

In the spring of 2020 the Kentucky Agriculture Development Board (KADB) established the Meat Processing Investment Program (MPIP) to expand Kentucky's beef, dairy, pork, lamb, sheep, goat and poultry processing capabilities. The MPIP was created to address the capacity issues in the supply chain that were brought to light by the coronavirus pandemic. In the fall of 2020, \$2 million in Kentucky's CARES Act funding was allocated to enhance the KADB's efforts to assist Kentucky meat processors and expand USDA certified processing facilities to increase meat supplies impacted by the coronavirus pandemic. KADB has assisted over 80 meat processors in the Commonwealth since implementing its program in 2020.

Significant federal dollars have been expended to strengthen, expand, and rehabilitate meatpacking capacity. In February 2022, the U.S. Department of Agriculture (USDA) first announced a \$215 million grant program to support expansion of meat and poultry processing.⁷ On November 22, 2022, the USDA a \$73 million investment in 21 grant projects through the first round of the Meat and

⁶ See "Meat Packers Set for Legal Fight Over Water Pollution Standards" available at <https://news.bloomberglaw.com/environment-and-energy/meat-packers-set-for-legal-fight-over-water-pollution-standards> (published Jan. 9, 2024).

⁷ See "USDA Commits \$215 Million to Enhance the American Food Supply Chain" available at <https://www.usda.gov/media/press-releases/2022/02/24/usda-commits-215-million-enhance-american-food-supply-chain> (published Feb. 24, 2022).





Poultry Processing Expansion Program (MPPEP).⁸ In the press release announcing the investment, the USDA called the MPPEP a “deliver[]y on President Biden’s call to increase competition.” *Id.* Again, in 2023, the USDA announced \$89 million of investments to finance the startup and expansion of independent meat processors. The grants were part of the second round of MPPEP and focused on small businesses and rural entrepreneurs. Additionally, USDA Rural Development made \$150 million of American Rescue Plan Act funds available through the MPPEP.

These millions and millions of dollars do not grow on trees. They are hard-earned taxpayer dollars purposefully and meaningfully invested to grow, protect, and cultivate small and mid-sized facilities, with a focus on rural economic development.

Kentucky’s commitment to agriculture didn’t begin in 2020, though. Going back to 2000, the Commonwealth of Kentucky made a recurring commitment to agriculture by codifying a law requiring a significant portion of the Commonwealth’s tobacco settlement dollars to be reinvested in agriculture. *See* 2000 Ky. Acts 530 (H.B. 611). Since the founding of the Office of Agricultural Policy in 2000, conservatively estimated, Kentucky has invested in agricultural development and financing to the tune of \$696,000,000.

Since 2020 alone, in addition to the meat processor program described above, the Office of Agricultural Policy has funded the start-up or improvement of 40 hog barns projects, 23 poultry barns projects, 6 beef cattle operation projects, 269 beginning farmers loans, 42 corn and soybean projects, and 16 microprocessor projects. The Commonwealth of Kentucky is steadfastly committed to sustaining agriculture. The Office of Agricultural Policy has invested in and nurtured Kentucky’s agriculture industry tremendously since its inception. The EPA should not destroy it.

Kentucky’s commitment to agriculture is not a recent trend. Coming on the heels of the Covid-19 pandemic, that commitment has been ten-fold. Kentucky, initially with the assistance of significant federal investment from the USDA through federal funds, carefully and thoughtfully cultivated and promoted its meat processing industry. Thanks to the EPA, overburdensome federal regulations will erase them.

⁸ *See* “Biden-Harris Administration Announces First Round of Historic Investments to Increase Competition and Expand Meat and Poultry Processing Capacity” available at <https://www.usda.gov/media/press-releases/2022/11/02/biden-harris-administration-announces-first-round-historic> (published Nov. 2, 2022).





V. If there is a problem, the EPA should use its available funding to implement an actual solution within its authority.

If the Biden Administration meant what it said in 2021, the EPA would not be promulgating this proposed rule. Instead, the EPA would be exploring exceptions for small and mid-sized processors. The EPA would be focusing on improving POWTs, strengthening regulations and standards for *those* facilities instead of the businesses that discharge into them. Recently, the Kentucky Department of Agriculture met with representatives from the EPA's regional office. During that meeting, the EPA representatives indicated that the EPA has an "unprecedented level of funds" for wastewater and water treatment infrastructure grants and loans to states. If true, the pretense of the proposed rule is loathsome.

The Kentucky Department of Agriculture is opposed to the current rulemaking in its current form for all Options. Additionally, the Kentucky Department of Agriculture urges the EPA to drop indirect discharging meat and poultry processors from the scope of the Rule, including Option 1. Indirect discharging facilities are 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 to achieve water quality standards. Repeatedly in its rulemaking, the EPA cites to prevalent POTW water treatment tools and processes to support its cost feasibility for BAT and BPT compliance. *See, e.g.,* Proposed Rule at 4490. Why, then, should individual indirect dischargers be forced to implement duplicative wastewater processes?

Moreover, the proposed pretreatment standards may well be beyond the EPA's statutory authority. The EPA relies on 33 U.S.C. § 1317 as its authority to implement pretreatment standards for indirect dischargers. But, for 33 U.S.C. § 1317(b)(1)4 to become effective, pollutants for which pretreatment standards are required must be "determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works." The EPA proposes to make no such finding. *See* Proposed Rule at 4482 ("[S]ome indirect MPP wastewater dischargers have pollutant loads that the receiving POTW cannot handle. These indirect dischargers *may* cause passthrough or interference[.]" (emphasis added)). The proactive regulation of pollutants, that the agency recognizes are already filtered by POTWs to any degree, is too far removed to provide statutory authority for the Rule.

With no empirical evidence of a systemic problem, no statutory authority to solve the problem that doesn't exist, and heaps of federal dollars to fix the infrastructure necessary to prevent a problem, the EPA's proposed rule can only be described as arbitrary, capricious, and an abuse of discretion. The proposed rule must be withdrawn.





VI. Conclusion

The EPA's one-size-fits-all rule misunderstands nuances of different commodities, processors, and the industry as a whole. There are no demonstrable or universal water quality issues linked to meat and poultry processing in Kentucky. And we would know, because we have been proactively regulating the agricultural industry on the issue of water quality since 1994. Instead, what we've learned is that Kentucky meat and poultry processors are good neighbors. They bring local jobs, community, and development to struggling rural parts of our state. Finally, Kentucky has invested considerable state and federal funding to improve, innovate, and support its meat processing industry. Each of the EPA's Options would destroy Kentucky's hard work with no discernable benefit to water quality.

Sincerely,

Jonathan Shell
Commissioner, Kentucky Department
of Agriculture

Heather L. Becker
General Counsel

