EPA Proposes New Effluent Guidelines for Meat Processors

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12.19.2023

Meat and poultry producers (MPP) have a unique opportunity to normalize costs anticipated for new EPA wastewater treatment requirements. The requirements appeared publicly for the first time in a pre-publication version of ?Clean Water Act, Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category? (?Pre-publication Proposal?), see here.

Background

Under Section 402 of the Clean Water Act, EPA is given broad authority to promulgate treatment requirements and effluent limitations for wastewater discharged directly or indirectly from industrial sources like the meat and poultry sector. According to EPA, ?[t]he MPP industry discharges large quantities of nutrients, such as nitrogen and phosphorus, that enter the Nation?s waters. Nutrient pollution is one of the most widespread, costly, and challenging environmental problems impacting water quality in the United States. Excessive nitrogen and phosphorus in surface water can lead to a variety of problems, including eutrophication and harmful algal blooms, that have negative impacts on human health and the environment.? Pre-publication Proposal, Part I, p.
8.

Proposed Changes

According to the Pre-publication Proposal, EPA will take comments on a preferred regulatory option and seeking comment on two other options. The preferred regulatory option, Option 1, would include new phosphorus limits and revised nitrogen limits for large direct dischargers and new pretreatment standards on certain conventional pollutants for large indirect dischargers; EPA defines large as existing production thresholds in the current MPP Effluent Limitations Guidelines (ELGs). Pre-publication Proposal, Part I.B, pp. 11-12. Option 2 would include the requirements in Option 1 and add nutrient limits for those facilities discharging to publicly owned treatment works (POTWs) above specified production thresholds. Option 3 would be similar to Option 2 but with lower production thresholds for the nutrient limits and conventional pollutant limits for both direct and indirect dischargers. Id. ?In contrast to

Options 1 and 2, Option 3 would use lower production and new effluent limitations on total phosphorus, updated effluent limitations for other pollutants, new pretreatment standards for indirect dischargers, and revised production thresholds for some of the subcategories in the existing rule.? Pre-publication Proposal, Part I.B, p. 12.

All of the Options involve drastic cuts (and therefor substantial changes to existing wastewater treatment systems) for nutrients, but existing dischargers may be hurt the most. The Clean Water Act generally requires such dischargers to provide treatment based on Best Practicable Technology (BPT) or Best Available Technology (BAT) depending on the type of discharge. Unlike BPT, the BAT factors omit a cost-benefit analysis, and replace it with a requirement to consider only the ?cost of achieving such effluent reduction?.

Under the preferred Option 1, for direct dischargers, EPA proposes to revise downward effluent limitations for nitrogen, phosphorus, and fecal coliform. For indirect dischargers, EPA proposes to establish effluent standards for total suspended solids (TSS), biochemical oxygen demand (BOD), and oil and grease.

These changes result in new and substantially lower limits on wastewater discharges. For example, in the case of process wastewater resulting from the production of meat meal, dried animal by-product residues (tankage), animal oils, grease and tallow, and in some cases hide curing, by a renderer, fecal coliform levels are reduced from 400 to 50 Daily Max (DM)/from 100 to 22 Monthly Average (MA) MPN or CFU per 100 ML for existing plants. Discharges to POTWs will be restricted for the first time under Option 1 with existing rendering operations required to meet the following limits: BOD 1945 mg/L DM 1323 mg/L MA; TSS 1578 mg/L DM 925 mg/L MA; and Oil and grease 1635 mg/L DM 1393 mg/L MA. Of course, new rendering plants would have to meet even lower numbers.

EPA is also requesting comment on potential effluent limitations on chlorides for high chloride waste streams, establishing effluent limitations for E. coli for direct dischargers, and including conditional limits for indirect dischargers that discharge to POTWs that remove nutrients to the extent that would be required under the proposed pretreatment standards in certain regulatory options. Each option would result in different levels of pollutant reduction and costs.

Comment Period

Industry may affect this rulemaking by illustrating the Pre-publication Proposal fails to meet Clean Water Act requirements. EPA does not have unfettered authority to revise effluent limits just to satisfy environmental groups.

The Clean Water Act authorizes EPA to set effluent limits and water quality standards but only if they comport with the statutory standards. Technology-based effluent limitations (TBELs) aim to prevent pollution by ?requiring a minimum level of effluent quality that is attainable using demonstrated technologies for reducing discharges of pollutants or pollution into the waters of the United States.? EPA Permit Writer?s Manual, Chapter. 5, p. 5-1 (September 2010). This is straight from the Clean Water Act and allows industry to challenge new effluent limitations (such as BPT and BAT) in the Pre-publication Proposal based on the following factors: (1) Are new ELGs ?minimum level of effluent quality?" (2) Are

the limits based on technologies that are ?demonstrated? to exist? (3) Do those technologies reduce pollutants?

The final ELGs may be reversed or vacated if (in light of the comments) the ELGs prove to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with requirements of Clean Water Act; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, limitations, or short of statutory right; without observance of procedure required by law; unsupported by substantial evidence or otherwise reviewed on the record of an agency hearing provided by statute; or unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

EPA will hold two public hearings about this proposed rule on January 24, 2024, and January 31, 2024. Visit EPA's website here for additional information about the public hearings and for any potential changes to the public hearing schedule.

Industry may also submit comments addressed to Docket ID No. EPA-HQ-OW-2021- 0736 by a variety of means: Federal eRulemaking Portal, found here (preferred method); U.S. Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460; Hand Delivery or Courier, EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The deadline for such comments will be set in the Federal Register when the rulemaking is published in final form.

Conclusion and Recommended Action

The meat and poultry industry have lived with and met wastewater effluent limits for more than 40 years. If Option 1 of the Pre-publication Proposal is adopted, those treatment systems will have to be upgraded to remove pollutants not currently restricted and meet lower effluent limits for pollutants currently regulated, even if the discharge is to a POTW.

In order to protect the industry, covered dischargers may wish to become involved in the rulemaking process by taking the following steps:

Step No. 1: Read. Review the Pre-publication Proposal and evaluate how proposed regulation of new pollutants and reductions in existing limitations may affect your industry.

Step No. 2: Comment. Develop comments along with technical and legal professionals and file them within the comment period. A final regulation must address each substantive and procedural comment raised during the comment period or the rulemaking is invalidated. The comments may include economic impacts and technical impracticability.

Step No. 3: Engage. Participate through your trade association or in person in the rulemaking process by speaking at public meetings.

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