

June 1, 2020

The United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

**Re: Comments in response to the U.S. Environmental Protection Agency's 2020 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges associated with industrial activity
Docket ID# EPA-HQ-OW-2019-0372**

On behalf of the poultry and egg industry and the feed and grain industry, The US Poultry & Egg Association, the National Chicken Council, the National Turkey Federation, United Egg Producers, the American Feed Industry Association and numerous State poultry associations respectfully submits the following requested comments on the Draft 2020 Multi-Sector General Permit (MSGP). Numerous proposed changes to the MSGP will have a direct impact on these industries, and we request your consideration of the points below when finalizing the 2020 MSGP. Our comments are focused on facilities that fall within SIC codes 2015, 2047, 2048, 2077, 4212 (local trucking associated with these Sector U facilities). However, our comments are also likely applicable to other facilities subject to industrial storm water discharge permitting requirements.

Industry Representatives Background

US Poultry & Egg Association (USPOULTRY) is the world's largest and most active poultry organization. Membership includes producers and processors of broilers, turkeys, ducks, eggs, and breeding stock, as well as allied companies. Formed in 1947, the association has affiliations in 26 states and member companies worldwide.

The National Turkey Federation (NTF) is the national advocate for all segments of the turkey industry. NTF provides services and conducts activities, which increase demand for its members' products by protecting and enhancing their ability to profitably provide wholesome, high-quality, nutritious products.

The National Chicken Council (NCC) is a nonprofit member organization representing companies that produce and process over 95 percent of the chickens marketed in the United States. NCC promotes the production, marketing and consumption of safe, wholesome and nutritious chicken products both domestically and internationally. NCC serves as an advocate on behalf of its members with regard to the development and implementation of federal and state programs and regulations that affect the chicken industry.

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The United Egg Producers (UEP) is a Capper-Volstead cooperative of U.S. egg farmers working collaboratively to address legislative, regulatory, and advocacy issues impacting egg production – through active farmer-member leadership, a unified voice, and partnership across the agriculture community. UEP's egg farming members are responsible for the production of 90% of total US egg production.

The American Feed Industry Association (AFIA), based in Arlington, Va., is the world's largest organization devoted exclusively to representing the business, legislative and regulatory interests of the U.S. animal food industry and its suppliers. Founded in 1909 as the American Feed Manufacturers Association, the name changed to the American Feed Industry Association in 1985 to recognize the importance of all types of companies involved in the feed manufacturing industry—from manufacturers of commercial and integrated feed and pet food to ingredient suppliers to equipment manufacturers. AFIA is also recognized as the leader on international industry developments, representing the industry at global forums, including within the International Feed Industry Federation. AFIA's members include nearly 700 domestic and international companies, such as livestock feed and pet food manufacturers, integrators, pharmaceutical companies, ingredient suppliers, equipment manufacturers and supply companies that provide other products or services to feed manufacturers. Several state, national and regional associations are also AFIA members. The feed industry plays a critical role in the production of healthy, wholesome meat, milk, fish, and eggs and supports policies that uphold U.S. food and feed safety, ensure the proper nutrition of animals, and protect the environment. More than 75% of the feed in the United States is manufactured by AFIA members. AFIA's members also manufacture approximately 70% of the country's non-whole grain ingredients, including soybean meal, distillers' co-products, vitamins, minerals, amino acids, yeast products and other miscellaneous and specialty ingredients.

Our response to the agency's solicitation for comment pertaining to several specific topics, along with our primary concerns regarding the MSGP proposal, include the following:

1. A quarterly Universal benchmark monitoring frequency for the entire permit term of five (5) years is excessive and will impose significant burden and sampling and analytical costs on permittees.

Avoiding Excessive Burdens: While it is understood that an improved database of benchmark monitoring data across all sectors may prove to be an invaluable tool for better understanding the relationship between industrial stormwater discharges and the water quality of receiving water bodies, the means of obtaining the data must not be an excessive burden to the individual facilities, and is not appropriate to be collected under a strictly regulatory approach. The responsibility of collecting such data should be held by the United States Environmental Protection Agency (USEPA) or contracted third parties to develop a comprehensive database and should not fall on industrial facilities as a requirement of their MSGP coverage. It should be noted that significant stormwater monitoring data is available in state environmental regulatory agency files and databases, and the USEPA could request this information through other available channels.

Analytical Monitoring Challenges: There are various factors that make storm water analytical monitoring challenging and cumbersome. Specifically, a rain event must be a qualifying storm, the facility must be

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operating, sampling personnel must be available to collect storm water samples within the first 30 minutes of a discharge occurring, conditions must be safe to allow facility personnel to collect samples (i.e., lightning storms, darkness, high stream flows, outfall accessibility during certain rain events, contract laboratories etc. prohibit safe sample collection), and samples must be delivered to the laboratory for analysis within USEPA specified holding times (i.e., per 40 CFR Part 136. Many facilities are located in rural areas where local laboratories are not readily available, which requires shipping samples to contract laboratories and/or driving samples long distances to labs for drop off to meet sample holding time requirements), and other factors. Furthermore, at some facilities such as livestock and pet food feed mills, there is a limited number of staff present onsite, who are there to perform other specific duties and tasks related to feed production, plant maintenance and repairs, recordkeeping for product QA/QC and feed safety (to meet FDA requirements) purposes, etc., which further limits the ability and resources available to collect additional storm water samples.

Less Burdensome Alternatives: The practicability of performing quarterly benchmark monitoring for the five-year permit term is overburdensome, costly and unnecessary for all industry sectors. Less burdensome and more cost-effective alternatives to quarterly analytical testing for COD, TSS, pH and other industry sector specific constituents of concern are available and provide more reasonable means of evaluating storm water pollution prevention effectiveness at regulated facilities.

Collection of Visual Examination Samples: We believe quarterly sampling and analysis of storm water discharges and visual examinations of these samples for pollutants provides sufficient data to determine the effectiveness of storm water pollution prevention practices. Data from visual monitoring has indicated this type of monitoring is a very effective tool and is much less burdensome and costly for permittees. Visual monitoring of storm water discharges is included in the proposed 2020 MSGP. Another more reasonable and cost-effective alternative is reduce the frequency of universal benchmark monitoring to annually for the entire permit term. If two (2) consecutive annual results for the universal benchmark parameters exceed the benchmark the applicable AIM response would be triggered, as proposed by the Agency. This approach would reduce the burden on facility personnel and simplify the benchmark monitoring requirements of the MSGP.

2. The Stormwater Control Measures (SCMs) presented in Appendix Q are overly prescriptive and should not be included in the 2020 MSGP, but rather should be included in regulatory guidance documents (e.g., USEPA Industrial Storm Water Fact Sheet Series, or “Developing Your Storm Water Pollution Prevention Plan, A Guide for Industrial Operators,” June 2015).

Proposed SCMs are Not Appropriate, and Others Should be Included: SCMs are very site specific, therefore prescribing a set list of SCMs in the Permit that are to be considered in an AIM Tier 2 response is not appropriate and is unreasonable. For example, the weekly frequency required inspection for certain activities/areas such as loading and unloading, material storage, etc. may be too frequent for some facilities, and not frequent enough for others. Also, there are various SCMs that are effectively employed by Sector U facilities that are not included in Appendix Q of the proposed 2020 MSGP (e.g., first flush storm water collection systems with diversion to treatment system). By including a set list of SCMs in the 2020 MSGP

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that cannot be readily updated and revised by the USEPA to accommodate changes in technologies or changes in industry processes significantly constrains both permittees, the USEPA, and state and local environmental regulatory agencies.

SCMs Should be Provided in Guidance Documents: In addition, including very prescriptive and extensive SCMs in the MSGP, will likely subject permittees to unnecessary scrutiny and possible third-party legal challenges on their selection and/or exclusion of the various SCMs. We anticipate permittees will be required to defend their choices and rationale for selecting some SCMs and not others, which will potentially take time and resources away from the most important task, enhancing their stormwater quality and storm water pollution prevention practices. The proposed 2020 MSGP requires permittees to develop a site-specific pollution prevention plan which must include all applicable SCMs. These SCMs should be based on a menu of SCMs included in: regulatory guidance documents (see above), the International Stormwater BMP Database (available at <http://www.bmpdatabase.org/>); and other various resources (e.g., SCMs developed by industry organizations).

Appendix Q is an Overstep on SWP3 Development Guidance Document: Additionally, the Appendix Q is an overstep into guidelines set forth by the EPA in the SWP3 development guidance document issued with the 2015 MSGP and the Sector Specific Fact Sheet Series issued in 2006, where they are referred to as Best Management Practices (BMPs). A SWP3 developed by qualified personnel (as defined by the EPA) would include all base level BMPs/SCMs deemed necessary and appropriate to minimize pollutants in stormwater discharges and avoid benchmark exceedances. Again, the SCMs or BMPs given in a site-specific SWP3 will be more relevant and useful to operators as they work to address potential benchmark exceedances.

Remove and Replace Appendix Q: As an alternative, we propose removing Appendix Q from the 2020 MSGP and updating the SWP3 guidance document, *Developing Your Stormwater Pollution Prevention Plan, A Guide for Industrial Operators* and the sector-specific fact sheets, to include a comprehensive list of potential SCMs/BMPs that may apply, such as those presented in Appendix Q. Doing so will allow for better development of SWP3s that include a comprehensive and current, yet site-specific, “menu” of SCMs. This may include SCMs that are standard to the site and a list of enhanced SCMs that shall be implemented should a benchmark exceedance occur.

SCMs are Better Located in Guidance Document: The SCMs/BMPs are better located in guidance documents where they are currently provided, rather than in the MSGP so that they can be continually updated as new technology and information becomes available. These SCMs/BMPs should serve as suggestions and guidance for operators facing difficulty with compliance. By placing them in the MSGP, there is greater potential for overlap with other regulatory requirements for wastewater, air, SPCC Program, and state and local environmental agency regulatory requirements, etc. which could result in confusion and ultimately increased noncompliance as operators struggle to implement all of the required SCMs/BMPs that may or may not be applicable or effective to their facility.

Change AIM Tier 2 Response Verbiage: We recommend changing the AIM Tier 2 response to “Implement Site-Specific Stormwater Control Measures” per the facility’s SWP3 instead of “Implement Sector-Specific

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Stormwater Control Measures” per Appendix Q. Inclusion of the SCMs in Appendix Q in the proposed 2020 MSGP, limit permittee, USEPA and state and local environmental regulatory agency flexibility to employ (and require/encourage in the case of regulatory agencies) the most applicable, technically feasible and cost effective SCMs.

Conclusion: The proposed MSGP should be modified to create a clear distinction between BMPs offered as a safe harbor for compliance with the MSGP and effluent limitations under that permit. The line between enforceable effluent limitations and BMPs should not be blurred by incorporation of BMPs into the body of the MSGP. Such a change has the risk of encouraging third-party citizen suit enforcement for BMP compliance and misdirecting limited agency resources to address the enforceability of BMPs by such third parties. Under the logic of the Clean Water Act permit writing guidelines, BMPs should not be incorporated as NPDES permit conditions and potentially permit effluent limitations. This distinction is no less important in a general permit context.

3. Allowing “low-risk” facilities to choose the option of an inspection only requirement, rather than benchmark monitoring is a good alternative for facilities with minimal potential for polluted stormwater discharge.

Light Manufacturing SIC Code Should be Used: Using the basis of “light manufacturing” SIC codes to determine inspection only eligibility is an appropriate approach to making this distinction. SIC Codes relevant to the poultry industry include 2015 for Poultry Slaughtering and Processing which includes egg processing, 2047 for Dog and Cat Food feed mills, 2048 for Prepared Feeds and Feed Ingredients for Animals and Fowls, and 2077 for Animal and Marine Fats and Oils, which are all considered “light manufacturing.”

- a. Data analysis for facilities in Sectors U1 and U2 indicates that these facility’s average benchmark parameters were well below the sector specific benchmarks included in Table 8.U-1 of the Draft 2020 MSGP and the proposed universal benchmark thresholds in Table 8.1.1 of the Draft 2020 MSGP (based on data harvested from state environmental regulatory agency databases for industrial storm water monitoring).
- b. Additionally, analysis of recent benchmark storm water monitoring data for 74 facilities in USEPA Region 4 across subsectors U1, U2 and U3 (SIC code 2015) indicated facilities to be significantly below the median values reported in 60 Fed. Reg. 31010 (September 29, 1995) for BOD, COD, TSS and Oil & Grease, and were also consistent with values given for pH (based on data harvested from state environmental regulatory agency databases for industrial storm water monitoring). This analysis indicates significant progress has been made in stormwater pollution control in these subsectors, further demonstrating the minimal risk associated with these facilities.

Local Trucking without Storage: SIC Code 4212 – Local Trucking without Storage should also be included in a “low-risk” category since the potential for stormwater pollution is generally very low for food and kindred related transportation facilities.

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Sufficiency of Proposed Inspection Frequency: The proposed inspection frequency of twice per permit term is sufficient for evaluating the effectiveness of a facility's SCMs. This option would allow for the discontinuation of quarterly benchmark monitoring. Therefore, facility resources can be allocated to other activities or tasks on site, rather than having personnel spend time performing benchmark sampling that would consistently show a facility is well under benchmark thresholds.

Role of Inspection Reports: Proposed contents of the inspection and Agency follow up actions are reasonable and sufficient. The inspection reports would provide the facility operators comprehensive feedback on their SWP3, their compliance with recordkeeping requirements per the MSGP, and the performance and effectiveness of their SCMs as well as recommendations to address any inadequacies found by the inspector or any questions or concerns the operators may have.

Role of Inspector Credentials: Required inspector credentials based on the current definition proposed for "qualified personnel" are reasonable and sufficient for a thorough and meaningful inspection to be performed. Working with third-party engineering and consulting firms for engineering and regulatory assistance is already common practice at many facilities. Therefore, retaining these third-party firms to perform the required inspections would be reasonable and practical for these low-risk facilities.

4. Imposing ineligibility for facilities that use coal-tar sealcoat to initially or reseal asphalt surfaces is unreasonable.

Maintenance and Repair of Asphalt Surfaces: Developing the standard that would deem the operator ineligible for MSGP Coverage if the facility used coal-tar sealcoat at an industrial facility would likely discourage the appropriate, routine maintenance and repair of asphalt surfaces from being performed. Adequate maintenance of these surfaces is critical, as it allows for efficient and effective dry clean-up methods to be utilized in the event of a spill and as general good housekeeping and pollution prevention practices. Many facilities use first flush and complete containment zones to capture and/or divert storm water runoff and incidental spillage in "high impact" areas to treatment systems. The effectiveness of these physical storm water pollution prevention systems would also likely be degraded if the new USEPA MSGP excludes coverage for facilities that use coal-tar sealcoat and results in permittees reducing maintenance and repair of asphalt surfaces.

Stormwater Management Practices: We believe there is a significant potential for this proposed provision to result in changes in asphalt surface maintenance and repair practices at regulated facilities. Changes in asphalt pavement maintenance and repair activities would likely result in significant cracking in paved surfaces as well as voids in and under paved surfaces, therefore degrading storm water pollution prevention practices related to storm water collection and/or diversion of storm water runoff to treatment systems or away from "high impact" areas, accumulation of sediment, dusts, debris and liquids that can contain pollutants and degrade the overall effectiveness of dry cleanup, general housekeeping and/or spill cleanup. In other words, the focus of the proposed 2020 MSGP on polycyclic aromatic hydrocarbons (PAHs) may

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result in significant adverse impacts and degradation of storm water runoff quality related to other more significant and common constituents of concern. These other constituents of concern likely pose a much greater risk to storm water runoff and/or receiving water quality than those posed by coal-tar sealcoat.

Agreement with Association: Our industries agree with the statements made by the associations representing the refined coal-tar based sealcoat (RTS) industry. Their remarks are as follows:

But most important, this permit proceeding is based on the CWA, not TSCA. The CWA directs EPA to reduce the discharge of pollutants via effluent limitations or other requirements. While EPA can establish technology-based limitations on discharges of pollutants, it must leave facilities free to choose the means by which they meet such limitations.² The courts have recognized that EPA's CWA authority extends only to regulating discharges, not to controlling how plants operate:

The CWA does not empower the agency to regulate point sources themselves; rather, EPA's jurisdiction under the operative statute is limited to regulating the discharge of pollutants. [T]he agency is powerless to impose permit conditions unrelated to the discharge itself...EPA may not...under the guise of carrying out its responsibilities under NEPA transmogrify its obligation to regulate discharges into a mandate to regulate the plants or facilities themselves. To do so would unjustifiably expand the agency's authority beyond its proper perimeters.³

This Administration's overall regulatory policy emphasizes the need "to alleviate unnecessary regulatory burdens."⁴ Banning a class of products without authority, and without any determination that this drastic step is actually necessary to protect water quality, runs directly contrary to this policy.

² EPA, NPDES PERMIT WRITERS' MANUAL at 49, available at https://www3.epa.gov/npdes/pubs/chapt_05.pdf.

³ See *Nat. Res. Def. Council, Inc. v. U.S. EPA*, 859 F.2d 156, 170 (D.C. Cir. 1988).

⁴ E.O. 13777, § 1 (82 Fed. Reg. 12285, Mar. 1, 2017).

FDA Product Safety Characteristics: We believe it is important to note coal tar has been designated by the U.S. Food and Drug Administration (FDA) as generally recognized as safe (GRAS), and coal tar is used for various over the counter medicinal products for control of dandruff, seborrheic dermatitis, or psoriasis for human use (See 21 CFR 358.701, 358.703, 358.710, 358.720, 358.750 and 358.760).

Permeable Pavement Challenges: One of the recommended alternatives in the proposed MSGP is the use of permeable pavements. Permeable pavements would not be appropriate for many industrial sites due to the cost associated with the amount of permeable pavement that would be needed, and the degree of difficulty and ineffectiveness associated with cleaning any potential spills. Spilled material would be able to seep through the pavement to the ground below, potentially causing other environmental concerns. Furthermore, in certain regions of the country such as the southeast where clay is very prominent in the soil profile, permeable pavements are not a viable option as the shallow clay is an impermeable layer and could cause drainage issues.

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Environmental Benefits of Coal-Tar Sealcoat: Application of sealcoats to asphalt surfaces occur at a relatively infrequent basis and are part of normal repairs and maintenance of asphalt surfaces. Many factors, including but not limited to costs (initial and ongoing costs); accessibility; application methods and time requirements for alternate sealant curing, etc.; durability (e.g., performance over time); quality of seal provided; anticipated life of alternate sealants in various applications; and other factors must be fully considered to make an informed decision on this issue. There are also various benefits provided by coal-tar sealcoats as compared to alternatives. Coal-tar sealcoats protect asphalt surfaces from oil, fuel, and other petroleum material spills as compared to asphalt based sealcoats, and they are reportedly significantly cheaper than acrylic sealants (see *PAHs in Coal Tar Sealants: Policy Analyses and Design* Thesis by Abigail R. Ames, University of Vermont 2018, page 22 available at: <https://scholarworks.uvm.edu/cgi/viewcontent.cgi?article=1050&context=envstheses>). It is also important to note that USEPA's MSGP Fact Sheet indicates:

West of the continental divide, the Washington State Department of Ecology conducted a watershed-wide analysis in the Puget Sound to estimate toxic pollutant loadings through major pathways such as surface water runoff and to provide data on pollutant concentrations in surface runoff from different land cover types, including commercial/industrial. This analysis found that combustion emissions and releases from creosote-treated wood account for most of the PAH release in the Puget Sound basin. Coal-tar sealant accounted for less than 1 percent of PAH releases as compared to other sources, ranging from 0.9 to 1.7 tons per year, or approximately 816 to 1,542 kg/year (Ecology and King County, 2011).

Presented Case Against Coal-Tar Sealcoat: The information presented by the USEPA in the draft 2020 MSGP documents is not overwhelmingly supportive of USEPA's proposed exclusion of eligibility of facilities that use coal-tar sealcoat to protect and maintain asphalt surfaces. The supportive information is not significantly compelling and some of the information provided on coal-tar sealcoats is anecdotal in scope and/or in some instances conflict with other information provided on this issue. **The one main point that is abundantly clear is properly maintained asphalt surfaces provide significant benefits for storm water pollution prevention associated with dry cleanup, good housekeeping and spill containment and clean-up.** Based on various information available, we believe the benefits of coal-tar sealcoats for asphalt surfaces outweigh the disadvantages when all aspects of storm water pollution prevention and costs are considered.

5. The USEPA has proposed developing national guidance for stormwater retention and infiltration system which we believe is inappropriate and unnecessary given this issue is generally addressed by other Federal, State and Local environmental regulatory agencies and/or governmental entities.

The sizing, design, construction, and maintenance of storm water retention and infiltration systems is area specific and based on existing state and local regulatory requirements, soil conditions and properties, planning and development requirements, climatic conditions, and various other factors. Discharges to ground water also generally falls under the jurisdiction and regulation of States.

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- 6. USEPA, state regulatory agencies and permittees have limited resources, and the MSGP should not include any significant new requirements specific to flood-prone areas, as the assimilative capacity of receiving waters for various constituents of concern is typically increased during extreme flooding conditions. Other Federal, State and Local governmental agencies generally have existing regulatory requirements specific to flood-prone areas that provide various water pollution protections.**

If you should have any questions concerning our comments please contact Paul Bredwell at pbredwell@uspoultry.org or by telephone at (678) 515-1973.

Respectfully,

U.S. Poultry & Egg Association
National Chicken Council
National Turkey Federation
United Egg Producers
American Feed Industry Association
Alabama Poultry & Egg Association
Georgia Poultry Federation
Indiana State Poultry Association
Kentucky Poultry Federation
South Carolina Poultry Federation
The Ohio Poultry Association
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Virginia Poultry Federation