



November 14, 2017

VIA CM/ECF

Mark Langer
Clerk of the Court
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Ave., NW
Washington, DC 20001

Re: *Waterkeeper Alliance v. EPA*, Nos. 09-1017 & 09-1104 (Consolidated)

Dear Mr. Langer:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28(f), Petitioners-Intervenors National Pork Producer's Council and U.S. Poultry & Egg Association ("Farm Petitioners") submit the following response to yesterday's letter to the Court from the Waterkeeper Petitioners.

In that letter, Waterkeeper Petitioners argue that the U.S. Environmental Protection Agency's November 13, 2017 update to its Interim Guidance ("Updated Interim Guidance"), which instructs farms to email their initial release reports rather than call the National Response Center ("NRC"), "directly addresses—and resolves—the primary rationale for staying the mandate raised in the NPPC Brief."

In fact, the inability of the NRC telephone system to handle many thousands of calls from farmers is (and remains) a real problem, but it is far from the only one. The many reasons that a stay is needed are explained in the post-judgment briefs submitted by EPA and the Farm Petitioners.

NRC and EPA are working hard to change a reporting system that is not designed to handle the volume and nature of reports that this Court's decision will require. They are making progress, but unless the mandate is stayed, their efforts will be too late.

NPPC and USPOULTRY have spent months trying to inform their members how to report using telephone calls (as required by the Code of Federal Regulations), but now it is too late to inform their members about how to use a different system by tomorrow.

Even for those who learn of this option, the web page/email submission system that was developed in one week is unlikely to work smoothly on November 15. Moreover, many producers will be unable to use it tomorrow, either because they do not have computers or access

to the internet, because they do not know how to use this option, or because they have not been informed of it in time. Those producers will try to call a telephone system that likely will be unequipped to receive their call.

Thank you for promptly bringing this letter to the attention of the panel.

Respectfully submitted,

/s/ David Y. Chung

Richard E. Schwartz

David Y. Chung

Elizabeth B. Dawson

CROWELL & MORING LLP

1001 Pennsylvania, Avenue, N.W.

Washington, DC 20004

Telephone: (202) 624-2500

Counsel for National Pork Producers

Council and U.S. Poultry & Egg Association

cc: All Counsel of Record (via ECF)