



May 15, 2017

Samantha K. Dravis
Regulatory Reform Officer and Associate Administrator
Office of Policy
U.S. Environmental Protection Agency (U.S. EPA)
Submitted electronically via www.regulations.gov

Subject: Evaluation of Existing Regulations – EPA Office of Pesticide Programs (OPP)
(EPA–HQ–OA–2017–0190)

Dear Ms. Dravis:

On behalf of Bay Area Clean Water Agencies (BACWA), thank you for this opportunity to provide input on pesticide regulations that may be appropriate for repeal, replacement, or modification. Our organization has an interest in this process because, on a recurring basis, uses of U.S. EPA-approved pesticides result in adverse impacts to water quality and to aquatic life in waters that receive urban runoff.

Bay Area Clean Water Agencies' members include 55 publicly owned wastewater treatment facilities ("POTWs") and collection system agencies serving 7.1 million San Francisco Bay Area residents. We take our responsibilities for safeguarding receiving waters seriously.

Bay Area Clean Water Agencies are especially interested in pesticides that are used by consumers for which there is a transport pathway to the sanitary sewer. Omitting or incorrectly evaluating this environmental exposure pathway can prove costly for POTWs, due to the potential for pesticides to cause or contribute to wastewater treatment process interference, NPDES Permit compliance issues, impacts to receiving waters, recycled water quality and/or biosolids reuse, in addition to exposing POTWs to the potential for third party lawsuits under the Clean Water Act.

OPP Regulatory Reform Questions

OPP has requested input from stakeholders on the following seven questions:

1. Is there a particular rule or regulatory provision in 40 CFR Parts 150-189 (pesticide regulations) that should be repealed, replaced or modified?
2. Which regulations could be updated to be less burdensome for small businesses and/or state and local or tribal governments while maintaining environmental protection?
3. Which regulations, including economically significant rules, could be transitioned from paper to electronic reporting?

4. How can EPA streamline or consolidate reporting requirements to reduce burden, including reducing the frequency of reporting, while maintaining effective programs?
5. Which regulations could be made less burdensome through the use of advance monitoring techniques to facilitate environmental protection?
6. Which regulations (or portion of a regulation) have achieved their original objective and become obsolete?
7. Which regulations are based on data, information or methods that are not publicly available or that are insufficiently transparent?

Our input responds to questions 1, 2, and 7.

Making Pesticides Regulation Less Burdensome for State & Local Governments While Maintaining Environmental Protection

Pesticides water pollution has been burdensome to local governments. Recent cases (e.g., urban runoff and wastewater pollution with diazinon, chlorpyrifos, pyrethroids, fipronil) have revealed gaps in the processes used to implement U.S. EPA's pesticide regulatory authorities. Our professional organizations have detailed the costly consequences of this water pollution in prior correspondence that is available in the U.S. EPA Reregistration and Registration Review dockets for these pesticides. Addressing these gaps through regulatory and procedural modifications would reduce burden on state and local governments while maintaining environmental protection.

While these gaps are primarily procedural, addressing them would provide greater regulatory relief than any regulatory change under existing law. Specific modifications that would provide the greatest benefit at the least cost to OPP include:

- Scientific review procedures need to be modified to completely analyze all urban pesticide uses, correctly identify exposure pathways, improve models such that they accurately estimate pesticide releases into urban runoff and municipal wastewater treatment plants. We encourage OPP to collaborate with California DPR, which has been actively engaged in examining these scientific gaps.
- Toxicity testing data requirements in 40 Code of Federal Regulations (CFR) Part 158 Subparts G and W for conventional and antimicrobial pesticides should be modified to ensure that minimum data requirements are harmonized with US EPA Office of Water testing requirements for NPDES permittees (i.e., same species, same time frames). Minimum required data sets should be sufficient to provide accurate species sensitivity distributions that are required for Endangered Species Act consultations. On its face this may appear to be an increased regulatory requirement, but it would actually lower the overall cost of the pesticides registration process by making the process more predictable and more scientifically reliable. This change would eliminate the regulatory gaps between the nation's pesticides, water, and endangered species regulatory programs that are costly and cumbersome for OPP, state and local governments, and registrants.

- Benefits Assessments should be modified to consider economic impacts on state and local governments such as costs arising from Clean Water Act compliance issues, and to include the costs of actual impacts on beneficial uses, e.g. drinking water and fisheries

It is essential that U.S. EPA’s pesticide regulatory processes adequately consider – and fully mitigate – impacts to wastewater treatment processes, wastewater effluent, recycled water, and biosolids. We strongly encourage OPP to continue to work with OW toward this objective.

Regulations that Should Be Repealed or Modified

We propose that EPA repeal or modify two regulations: the treated article exemption and the elimination of requirements to provide product performance data for urban pesticide products (i.e., residential, professional, institutional, and industrial products).

A. Treated Article Exemption

40 CFR Part 152, §152.25 lists regulatory exemptions from FIFRA for pesticides “of a character not requiring FIFRA regulation.” The first exemption, §152.25 (a), known as the “treated article exemption” is overly broad and burdensome for state and local governments. Because they can leach their pesticide content during use or at end of life, treated articles definitely are of a character requiring FIFRA regulation. There is no scientific basis for this exemption

This exemption has two consequences:

1. OPP does not assess the ecological risks of end-use treated articles when it registers pesticides. This scientific omission creates an enormous gap. Many treated articles leach pesticides into urban runoff or wastewater through outdoor exposure or indoor washing, such as treated wood, paint, roofing materials, other building products, and treated fabrics. This leaching has been linked to urban pollution, e.g., pentachlorophenol, creosote, and arsenic wood treatments.
2. The exemption blocks states rights to manage pesticide treated articles. For example, states cannot control sale and use of treated wood, building materials, or clothing. In some instances, this can preclude the most cost-effective means to address water pollution.

We request that EPA repeal this scientifically unsound exemption. If EPA prefers a narrower change, we suggest that consider the following options:

- (1) Modify the exemption to allow states to register treated articles
- (2) Require registration of all treated articles with pesticides content above a de minimis threshold (e.g., 1 part per million) that allows for preservative use in personal care products like shampoo and makeup.

If it elects the latter course, OPP should modify its ecological risk assessment procedures to include a full ecological assessment of all treated articles.



B. Product performance data requirements

In 1979, US EPA adopted an overly broad regulation for conventional pesticides (40 CFR §158.400) in response to Congressional authorization to waive data requirements pertaining to efficacy for individual pesticide registration applications (FIFRA 7 U.S.C. Part 136a [c] [5] [D]). The sweeping regulation exempted not just one product, as contemplated by Congress – it exempted every product that did not make microorganism or vertebrate control claims. This broad exemption was based on arguments that information from government and industry sources and market forces would ensure users would only purchase pesticides that are efficacious. These arguments may be appropriate for the agricultural marketplace but not in the urban marketplace. Recent discoveries of the lack of efficacy of antimicrobials used in healthcare have not significantly reduced their success in the urban marketplace, revealing that in this context market forces are ineffective in ensuring that a pesticide product will perform as claimed.

This regulation should be revised to require registrants to provide product performance testing data for all urban uses (i.e., residential, professional, industrial and institutional uses). This data is critical for establishing application rates and mitigation measures that can reduce environmental impacts while still preserving the efficacy of the products.

Regulations Causing Data to Not Be Publicly Available / Insufficient Transparency

One of OPP's regulations in 40 CFR Part 152, Subpart F (§152.199) keeps data in support of pesticide registration hidden until after the decision is finalized. Our scientific reviewers have been unable to provide meaningful input to OPP on proposed new pesticide registration decisions due because this information is unavailable to us. Our local government experts, who have on-the-ground understanding of urban runoff and wastewater, can only help OPP ensure the accuracy of its assessments if they can access the scientific data crucial for OPP's decisions. For example, data characterizing leaching of pesticides from treated materials and studies of pesticides transport to drinking water intakes have been withheld from our reviewers. Our input improves the accuracy of OPP scientific assessments, thus helping OPP make better decisions that avoid costly pesticides water pollution

Thank you for your consideration of our comments. If you have any questions, please contact Karin North, 650-329-2104, Karin.north@cityofpaloalto.org.

Sincerely,

David R. Williams

Dave Williams
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