



December 22, 2020

Stephen Savage  
Office of Pesticide Programs (OPP)  
Regulatory Public Docket Center (28221T)  
U.S. Environmental Protection Agency (EPA)  
1200 Pennsylvania Ave., NW  
Washington, DC 20460-0001

**Subject: Organic Esters of Phosphoric Acid (OEPA) – Registration Review Draft Risk Assessment and Proposed Interim Registration Review Decision- EPA-HQ-OPP-2013-0373**

Dear Mr. Savage:

On behalf of the Bay Area Clean Water Agencies (BACWA), we thank you for the opportunity to comment on the Combined Final Work Plan and Proposed Interim Registration Review Decision (PID) for OEPA. BACWA's 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. BACWA is especially interested in pesticides that are used in manners that have transport pathways to the sanitary sewer, as even the most sophisticated wastewater treatment plants cannot fully remove complex chemicals like pesticides.

As detailed below, we write to express our concern that in this case, EPA is not requiring pesticides registrants to be fully accountable for non-compliance with data requirements in accordance with FIFRA and its implementing regulations. Should EPA proceed with its PID, we request that EPA formally commit to providing the same transparency and the same public participation opportunities for OEPA as have been provided for other pesticides undergoing Registration Review.

Organic Esters of Phosphoric Acid (OEPA) are used in a variety of indoor and outdoor products including paint and non-clothing textiles such as mattress covers. OEPA is also used in carpet cleaning solutions at concentrations that are up to 50,000 ppm (about 5%) OEPA.

BACWA is concerned that although EPA issued a substantial set of data requirements—which included a request for data for wastewater discharge and aquatic toxicity—the registrants did not provide data to EPA. As EPA notes in the Proposed Interim Registration Review Decision:

*"No environmental or fate data were received from the registration review GDCI and are still required for registration review (see Section 1 A for a list of outstanding data). The agency does not anticipate calling in any further data for OEPA. The agency relied upon available data and used conservative assumptions to complete the risk assessments for OEPA; however, these outstanding data must be submitted to the agency to fulfill the*

*GDCIs and will be used to confirm if proposed mitigation will address any potential ecological risks of OEPA to the environment, including to make an endangered species determination. The Agency is working with the registrant to satisfy these data. Failure to submit called-in data or otherwise satisfy the GDCI may result in product suspension.”*

BACWA is concerned that EPA is not enforcing the law in a fair and equitable manner. OEPA registrants have not supplied any of the required data to EPA. EPA has robust authorities to enforce its data requirements, including suspension of product sales and distribution if necessary. EPA has a responsibility to be equitable in its treatment of regulated entities. Other registrants for products with similar uses have expended resources to fulfill data requirements. Our agencies must supply legally required data or face penalties. Pesticides registrants should be equally accountable under the law.

While we appreciate EPA’s interest in implementing mitigation measures to protect human health from direct exposure to OEPA, by postponing the scientific review of ecological risks to an unspecified future time, the EPA is eschewing a publicly transparent process and placing an unknown amount of risk and uncertainty on public agencies such as ourselves. Omitting evaluation of the sewer discharge environmental exposure pathway can be harmful to the environment and prove costly for POTWs.

In almost every US state – including California – state law precludes any local regulation of pesticide sales or use. As we have no local option to control use of pesticides consumer products, it is essential to us that OPP’s Registration Review adequately evaluates potential impacts to wastewater quality, and results in mitigation measures ensuring that impacts to the beneficial uses of the receiving water are *prevented*. For these reasons, it is of utmost importance to BACWA that OEPA pesticide products with pathways to the sewer be carefully, thoroughly, and accurately evaluated and that risk management decisions balance social and economic costs, such as those experienced by POTWs.

We have been reviewing EPA ecological risk assessments and risk management decisions for nearly two decades. We have found EPA’s scientists and risk managers to be thoughtful and hardworking, and whose work could be augmented by additional perspective and data. The agency wisely structured its Registration Review process to provide public participation opportunities that have allowed us to fill information gaps, complete scientific peer reviews, and provide information about social and economic costs. The information we have supplied has changed EPA’s risk assessments and decisions for many pesticides.

We request that EPA formally commit to providing the same transparency and the same public participation opportunities for OEPA as have been provided for other pesticides undergoing Registration Review.

If you have any questions, please contact BACWA’s Project Managers:

Karin North  
City of Palo Alto  
(650) 329-2104  
[Karin.north@cityofpaloalto.org](mailto:Karin.north@cityofpaloalto.org)

Autumn Cleave  
San Francisco Public Utilities Commission  
(415) 695-7336  
[ACleave@sfgwater.org](mailto:ACleave@sfgwater.org)

Respectfully Submitted,



Lorien Fono, Ph.D.  
Executive Director  
Bay Area Clean Water Agencies

cc: Edward Messina, Acting Director, EPA OPP  
Anita Pease, Director, Antimicrobials Division, EPA OPP  
Elissa Reaves, Acting Director, Pesticide Re-Evaluation Division  
Rose Kyprianou, Branch Chief, Antimicrobials Div., Reg. Management II  
Melissa Panger, Acting Branch Chief, Antimicrobials Div., Risk Asses. & Science  
Richard Fehir, Risk Management Branch (RMB) II, Antimicrobials Div  
Timothy Leighton, Antimicrobials Division, Risk Asses. & Science  
Judy Facey, Antimicrobials Division, Risk Asses. & Science  
Andrew Sawyers, Director, EPA Office of Water, Office of Wastewater Management  
SanYvette Williams, Antimicrobials Division, Regulatory Management Branch II  
Andrew Byro, Antimicrobials Division, Risk Assessment & Science Support Branch  
Deborah Burgin, Antimicrobials Division, Risk Assessment & Science Support Branch  
Shawn Garred, Antimicrobials Division, Risk Assessment & Science Support Branch  
Tracy Perry, EPA OPP Pesticide Re-Evaluation Division  
Tomas Torres, Director, Water Division, EPA Region 9  
Debra Denton, EPA Region 9  
Patti TenBrook, EPA Region 9  
Kathryn Meyer, EPA Region 9  
Karen Mogus, Deputy Director, California State Water Resources Control Board  
Philip Crader, Assistant Deputy Director, California State Water Resources Control Board  
Richard Breuer, California State Water Resources Control Board  
Tom Mumley, California Regional Water Quality Control Board, SF Bay Region  
Janet O'Hara, California Regional Water Quality Control Board, San Francisco Bay Region  
James Parrish, California Regional Water Quality Control Board, SF Bay Region  
Debbie Phan, California Regional Water Quality Control Board, San Francisco Bay Region  
Jennifer Teerlink, California Department of Pesticide Regulation  
Aniela Burant, California Department of Pesticide Regulation  
Cynthia Finley, Director, Regulatory Affairs, National Association of Clean Water  
Agencies  
Chris Hornback, Chief Technical Officer, National Association of Clean Water Agencies  
Kelly D. Moran, Urban Pesticides Pollution Prevention Partnership  
BACWA Executive Board  
BACWA Pesticides Workgroup