

January 23, 2024

Caleb Hawkins Office of Chemical Safety and Pollution Prevention Environmental Protection Agency 1200 Pennsylvania Ave. NW Washington, DC 20460–0001 hawkins.caleb@epa.gov EPA Public Comment Portal: https://www.regulations.gov/commenton/EPA-HQ-OPP-2023-0428-0001

Subject: Comments on Petition Seeking Rulemaking for Registration of Neonicotinoid Insecticides and Other Systemic Insecticides (EPA–HQ–OPP–2023–0428)

Dear Mr. Hawkins:

On behalf of the Bay Area Clean Water Agencies (BACWA), we thank you for the opportunity to provide comments on the Petition Seeking Rulemaking for Registration of Neonicotinoid Insecticides and Other Systemic Insecticides ("Petition"). BACWA is a joint powers agency whose members own and operate publicly-owned treatment works (POTWs) and sanitary sewer systems that collectively provide sanitary services to over seven million people in the nine-county San Francisco Bay Area (Bay Area). Every day, BACWA members provide wastewater treatment for millions of gallons of pesticide-containing wastewater that is discharged to fresh or saltwater bodies, including local creeks and rivers, bays, and the Pacific Ocean. We take our responsibilities for safeguarding receiving waters seriously.

In 1984, EPA amended its pesticide regulations¹ to include a waiver for the submittal of product performance (efficacy) data with a pesticide registration application (with a few exceptions for some vertebrate control and antimicrobial pesticides). Since then, pesticides have routinely been approved by the EPA without scientific data to support performance benefits claimed by the manufacturer.

In February 2023, the EPA received a petition from the Public Employees for Environmental Responsibility (PEER), the American Bird Conservancy (ABC), and 63 other co-petitioning non-profit groups under the Right to Petition Government Clause in the First Amendment of the United States Constitution and the Administrative Procedure Act.² The Petition asked EPA to

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Central Contra Costa Sanitary District • East Bay Dischargers Authority • City of San Jose • East Bay Municipal Utility District • City & County of San Francisco

¹"Data Requirements for Pesticide Registration," 49 Fed. Reg. 42856-42905, Oct. 24, 1984; p. 42897, footnote 1, 40 CFR § 158.160, Product performance data requirements table, later recodified at 40 CFR §1 58.400. https://archives.federalregister.gov/issue_slice/1984/10/24/42853-42905.pdf

² Petition for Rulemaking to Amend EPA'S 1984 Pesticide Regulation that Waived Efficacy Data Requirements,

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amend regulation for registrations of all neonicotinoid insecticides and other systemic insecticides so to require all registration and re-registration applicants to provide performance (efficacy) data ensure that the benefits of their products actually exceed their costs, including to society and the environment. The Petition specifically asks the regulation to be amended as below (with additions in <u>red underline</u>):

40 CFR § 158.400(e)(1). The Agency has waived the requirement to submit product performance data unless (a) the pesticide product bears a claim to control pest microorganisms that pose a threat to human health and whose presence cannot readily be observed by the user including but not limited to, microorganisms infectious to man in any area of the inanimate environment, or (b) a claim to control vertebrates (such as rodents, birds, bats, canids, and skunks) that may directly or indirectly transmit diseases to humans; or (c) is a neonicotinoid or other systemic insecticide. However, each registrant must ensure through testing that his or her product is efficacious when used in accordance with label directions and commonly accepted pest control practices. The Agency reserves the right to require, on a case-by-case basis, submission of product performance data for any pesticide product registered or proposed for registration. Each existing registrant of a neonicotinoid or other systemic insecticide who has not already submitted efficacy data must submit data on whether its product is efficacious within 180 days of the promulgation of this Rule, whereupon the Agency will consider the product's foreseeable benefits and costs to the environment. The Agency shall not register, and shall revoke any existing registration for, any neonicotinoid or other systemic insecticide that lacks a demonstration that its benefits exceed its environmental and overall costs.

BACWA Strongly Supports the Proposed Language Amendments, Based on Direct Experience with Ineffective Registered Pesticides Causing Significant Environmental Harm

BACWA strongly supports the Petition and the recommended language change, particularly with respect to the inclusion of both neonicotinoids and other systemic insecticides. The environmental damages caused by these pesticides can exceed the actual pesticidal benefits of these products. Efficacy data is especially important for non-agricultural pesticides used by non-professionals, where consumers lack the knowledge about pests to evaluate the value of their pesticide application in addressing a pest problem.

BACWA has first-hand experience with EPA registered pesticides that were ineffective while causing significant environmental harm. For years, copper-based products were applied in drains and sewers in the San Francisco Bay Area. The manufacturers of these products claimed that the products killed roots inside drain and sewer pipes. There are no public data to support this claim for the application method directed by the labels for these products. The EPA waived efficacy data from the manufacturers. The product claim was factually untrue, as documented in the attached report by the California Department of Pesticide Regulation (DPR).³ DPR's analysis

received by EPA on February 21, 2023, https://www.regulations.gov/document/EPA-HQ-OPP-2023-0428-0002.

³ Evaluation of Copper- and Tributyltin-containing Compounds, Nita A. Davidson, Ph.D., California Department of

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found that copper-based root control products had little potential to affect roots in sewer laterals and identified effective alternatives, noting "This method of chemical application for root control allows little control of actual concentration of the product or duration of exposure to roots in the *pipe line*."⁴ While copper-based root control products did not work as advertised, the application of copper-based pesticides directly into sewage collection systems amounted to a significant source of copper in treated effluent. This led several Bay Area POTWs to exceed their copper effluent limits based on the water quality objectives established by the California State Water Resources Control Board, exposing the POTWs to the potential of fines of up to \$25,000 per day.⁵ Copper is highly toxic to aquatic invertebrates and toxic to sensitive fish species. In particular, these effluent releases contributed to significant harm to mollusk populations in the South San Francisco Bay, as reported by Dr. Sam Luoma of the US Geological Survey.⁶⁷⁸ These findings led DPR to prohibit the use and sale of these copper-based root killers in the San Francisco Bay Area.⁹ Dr. Luoma's team subsequently observed a significant rebound in mollusk growth and reproduction in South San Francisco Bay due to use reductions in both copper and silver.¹⁰ Unfortunately, these copper-based root products are still allowed in other areas of the country. If EPA had required efficacy data at the time of product registration, years of environmental damage would have been prevented.

This is just one example of the significant harm being inflicted on the environment due to the nearly four-decade efficacy waiver. We strongly urge EPA to incorporate language to limit such waivers in the future.

Thank you for your consideration of our comments. If you have any questions, please contact BACWA's Project Managers:

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Pesticide Regulation, August 1995.

⁴ Page 40 of attached DPR report, August 1995.

⁵ Pages 2 and 3 of attached DPR report, August 1995.

⁶ Luoma, S.N. 1983. Bioavailability of trace metals to aquatic organisms-a review. Science of the Total Environment 28: 1-22.

⁷ Luoma, S.N. and J.E. Cloern. 1982. The impact of waste-water discharge on biological communities in San Francisco Bay, pp 137-160 In Kockelman, W.J., T.J. Conomos, and A.E. Leviton (eds.) San Francisco Bay; Use and Protection. Symposium Convened during the 6lst Annual Meeting Pacific Division A4AS. Davis, CA, June 22-27, 1980. Pacific Division-American Association for the Advancement of Science.

⁸ Luoma, S.N., D. Cain, and C. Johansson. 1985. Temporal fluctuations of silver, copper and zinc in the bivalve Macoma balthica at five stations in South San Francisco Bay. Hydrobiologia 129:109-120.
⁹ https://www.cdpr.ca.gov/docs/legbills/calcode/040301.htm

¹⁰ Cain, D.J., Thompson, J.K., Parchaso, F., Pearson, S., Stewart, R., Turner, M., Barasch, D., Slabic, A., and Luoma, S.N., 2018, Near-field receiving-water monitoring of trace metals and a benthic community near the Palo Alto Regional Water Quality Control Plant in south San Francisco Bay, California—2017: U.S. Geological Survey Open-File Report 2018–1107, 71 p., https://doi.org/10.3133/ofr20181107.

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Respectfully Submitted,

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

Attachment: Evaluation of Copper- and Tributyltin-containing Compounds, Nita A. Davidson, Ph.D., California Department of Pesticide Regulation, August 1995.

Edward Messina, Director, EPA OPP cc: Jake Ya-Wei Li, Deputy Assistant Administrator for Pesticide Programs, EPA Jan Matuszko, EFED Division Director, EPA Brian Anderson, EFED Associate Director, EPA Amy Blankinship, EFED Acting Deputy Division Director, EPA Anita Pease, Antimicrobials Division Director, EPA Elissa Reaves, Director, Pesticide Re-evaluation Division, EPA OPP Andrew Sawyers, Director, EPA Office of Water, Office of Wastewater Management Tomas Torres, Director, Water Division, EPA Region 9 Diana Hsieh, EPA Region 9 Rochelle Cameron, EPA Region 9 Karen Mogus, Deputy Director, California State Water Resources Control Board Philip Crader, Assistant Deputy Director, California State Water Resources Control Board Tom Mumley, California Regional Water Quality Control Board, San Francisco Bay Region Alessandra Moyer, California RWQCB, SF Bay Region Rebecca Nordenholt, California RWQCB, SF Bay Region Rich Breuer, California SWRCB James Parrish, California Regional Water Quality Control Board, San Francisco Bay Region Jennifer Teerlink, California Department of Pesticide Regulation Anson Main, California Department of Pesticide Regulation Aniela Burant, California Department of Pesticide Regulation Chris Hornback, Chief Technical Officer, National Association of Clean Water Agencies Cynthia Finley, Director, Regulatory Affairs, National Association of Clean Water Agencies **BACWA Executive Board BACWA** Pesticides Workgroup