

San Francisco Bay Regional Water Quality Control Board

May 15, 2017
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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:

The San Francisco Bay Regional Water Quality Control Board (Water Board) is responsible for restoring, maintaining, and protecting the beneficial uses of surface and ground waters in the San Francisco Bay Region. To protect waters within our jurisdiction, we issue federal NPDES permits to about 50 wastewater treatment plants and over 100 stormwater agencies. These permits require wastewater agencies to comply with effluent limitations to protect the beneficial uses of waters of the United States. The stormwater permits require municipalities to take actions to prevent the discharge of pollutants, including pesticides, from their storm drain systems into waters of the State.

Beneficial uses of waters of the State can be threatened when pesticides are discharged to wastewater treatment plants or storm drains, neither of which can reliably treat for these pesticides. Further, pesticides in wastewater discharge can disrupt and kill the biological processes at the plants that are necessary to treat effluent to standards protective of receiving water quality and beneficial uses.

We are especially interested in pesticides that can be readily transported to the sanitary sewer system. Omitting or incorrectly evaluating the sanitary sewer as an environmental exposure pathway for pesticides can prove costly for dischargers. We can pursue enforcement in response to NPDES permit compliance issues, which can be up to \$10 per gallon or \$10,000 per day in California. Should we choose not to enforce every pesticides-related violation, given the understanding that dischargers have little control over the pesticides discharged to their treatment plants, third parties can sue dischargers to enforce their NPDES permits under the Clean Water Act.

We appreciate the opportunity to provide input on pesticides regulations that may be appropriate for repeal, replacement, or modification. We also concur with the “Regulatory Reform” comments submitted by the National Association of Clean Water Agencies (NACWA).

U.S. EPA Office of Pesticides Programs (OPP) Regulatory Reform Questions

OPP has requested input from stakeholders on seven questions, and our input responds to questions 1, 2, and 7, which are reiterated here:

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

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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?
7. Which regulations are based on data, information or methods that are not publicly available or that are insufficiently transparent?

Response to Question 1: Regulations that Should Be Repealed or Modified

We propose that U.S. EPA repeal or modify two regulations: (1) the treated article exemption and (2) 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 the Federal Insecticide, Fungicide, and Rodenticide Act (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 treated articles can leach their pesticide content during use or at end-of-life, we believe they are of a character requiring FIFRA regulation. However, since are not reviewed under FIFRA, wastewater treatment plants and municipal stormwater agencies are burdened with managing the resultant pesticides.

This exemption has two consequences:

1. U.S. EPA OPP does not assess the ecological risks of end-use treated articles when it registers pesticides. Many treated articles leach pesticides into urban runoff or wastewater through outdoor exposure or indoor washing, such as treated wood, paint, roofing and other building materials, and treated fabrics. This leaching has been linked to urban pollution (e.g., pentachlorophenol, creosote, and arsenic wood treatments).
2. It blocks States’ rights to manage pesticide treated articles. For example, States cannot control the 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 U.S. EPA repeal this exemption to reduce the burden it creates on taxpayers who fund wastewater and stormwater agencies. If U.S. EPA prefers a narrower change, we recommend considering 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, U.S. EPA adopted a 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]). This regulation exempted every product that did not make microorganism or vertebrate control claims. This exemption was based on the idea that information from government and industry sources and market forces would ensure users would only purchase pesticides that are efficacious. While this point may be appropriate for the agricultural marketplace, it is not appropriate in the urban marketplace. For example, recent discoveries on the lack of efficacy of antimicrobials used in the healthcare industry 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. Recent scientific studies have revealed that labels instruct users to apply pesticides in quantities much greater than necessary to control pests in the urban setting. For example, labels for pyrethroid insecticides typically instructed users to spray a 7 to 10 foot band around a structure to control nuisance insects. Scientific studies funded by California Department of Pesticide Regulation and others determined that using the same pesticide application concentration while only treating a band of 2 inches around a building would be sufficient to control nuisance insects, a greater-than 95 percent reduction in pesticide used. This over-application allowed on labels has unnecessarily created substantial regulatory burdens for State and local governments (e.g., see comments in the bifenthrin registration review docket).

Response to Question 2: Making Pesticides Regulation Less Burdensome for State & Local Governments While Maintaining Environmental Protection

Pesticides-related water pollution has been burdensome to local governments. Recent cases (e.g., urban runoff and wastewater pollution with diazinon, chlorpyrifos, pyrethroids, and fipronil) have revealed gaps in the processes used to implement U.S. EPA's pesticide regulatory authorities. Our organizations have detailed the costly penalties 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 the 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 the following:

- Scientific review procedures should be modified to completely analyze all urban pesticide uses, identify exposure pathways, and improve models such that they accurately estimate pesticide releases into urban runoff and municipal wastewater treatment plants. We encourage OPP to collaborate with the California Department of Pesticide Regulation, which has been actively engaged in examining these scientific gaps.
- Toxicity testing data requirements in 40 CFR Part 158 Subparts G and W for conventional and antimicrobial pesticides should be modified to ensure that minimum data requirements are harmonized with U.S. EPA Office of Water (OW) testing requirements for NPDES permittees (i.e., same species, same time frames). Minimum required datasets should be sufficient to provide accurate species sensitivity distributions that are required for Endangered Species Act consultations. While this may appear to be an increased regulatory requirement, we believe 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).

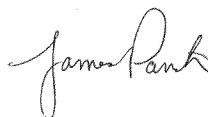
It is essential that U.S. EPA's pesticide regulatory processes adequately consider – and fully mitigate – impacts to wastewater treatment processes, wastewater effluent, recycled water, and biosolids. We strongly encourage OPP to continue to work with OW toward this objective.

Response to Question 7: Regulations Causing Data to Not Be Publicly Available or Transparent

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. We 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 the leaching of pesticides from treated materials and studies of pesticides transporting to drinking water intakes have been withheld from our reviewers. We believe our input is valuable to OPP scientific assessments, and can help OPP make decisions that avoid costly pesticides water pollution.

Thank you for this opportunity to offer our input on the regulatory reform. We sincerely appreciate the important work the Office of Pesticide Programs does through the pesticide registration review process. Please contact me at james.parrish@waterboards.ca.gov or 510.622.2381 as needed.

Sincerely,



James Parrish
Environmental Scientist

cc: *via email:*

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Tracy Perry, U.S. EPA OPP, Pesticide Re-Evaluation Division
Andrew Sawyers, Director, EPA Office of Water, Office of Wastewater Management
Betsy Southerland, Director, EPA Office of Water, Office of Science and Technology
Tomas Torres, Director, Water Division, EPA Region 9
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