To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Keigwin, Richard[Keigwin.Richard@epa.gov]; Perry, Tracy[Perry.Tracy@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Torres, Tomas[Torres.Tomas@epa.gov]; Denton, Debra[Denton.Debra@epa.gov]; TenBrook, Patti[TenBrook.Patti@epa.gov]; Karen Larsen[Karen.Larsen@waterboards.ca.gov]; Phil Crader[Phillip.Crader@waterboards.ca.gov]; Paul Hann[Paul.Hann@waterboards.ca.gov]; Dawit Tadesse[taded@dwq.swrcb.ca.gov]; Tom Mumley[Thomas.Mumley@waterboards.ca.gov]; Janet O'Hara[JOhara@waterboards.ca.gov]; Daniel McClure[dmcclure@waterboards.ca.gov]; Tessa Fojut[Tessa.Fojut@waterboards.ca.gov]; Peter Meertens[Peter.Meertens@waterboards.ca.gov]; Nan Singhasemanon[nsinghasemanon@cdpr.ca.gov]; Jennifer Teerlink[Jennifer.Teerlink@cdpr.ca.gov]; Scott Taylor[staylor@sfwater.org]; Chris Hornback[chornback@nacwa.org]; cfinley@nacwa.org[cfinley@nacwa.org]; Kelly Moran[kmoran@tdcenvironmental.com]; CASQA - Board 2017[geoff@brosseau.us]; CASQA - Executive Program Committee - 2017[geoff@brosseau.us]
From: Geoff Brosseau
Sent: Tue 5/16/2017 2:22:50 AM
Subject: CASQA Comments on the Evaluation of Existing Regulations - Select questions posed by EPA OPP
CASQA Comments on Evaluation of Existing Regulations-EPA OPP.pdf

Ms. Dravis,

Please accept these comments from the California Stormwater Quality Association (CASQA) regarding select questions posed by the EPA Office of Pesticide Programs. These comments have also been submitted to the e-docket.

Thank you,

Geoff Brosseau
Geoff Brosseau
Executive Director
California Stormwater Quality Association (CASQA)
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CASQA is a 501(c)(3) non-profit organization dedicated to the advancement of stormwater quality management, science, and regulation.

CASQA
California Stormwater Quality Association®
Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

May 15, 2017

Samantha K. Dravis
Regulatory Reform Officer and Associate Administrator
Office of Policy
U.S. Environmental Protection Agency (U.S. EPA)

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

Dear Ms. Dravis:

On behalf of the California Stormwater Quality Association (CASQA[1]), thank you for this opportunity to provide input on pesticide regulations that may be appropriate for repeal, replacement, or modification. CASQA 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 aquatic life beneficial uses in waters that receive urban runoff via municipal storm drain systems. Under the Clean Water Act (CWA), such impacts create potential liability and can lead to enforcement actions and expensive mitigation.

In recent years, numerous studies have documented the presence of pesticides and pesticide-caused toxicity in both surface waters and sediments in California's urban waterways.[2] Examples of beneficial uses that have been adversely affected by pesticides include warm and cold freshwater habitat, commercial and sport fishing, shellfish harvesting, wildlife habitat, estuarine habitat, marine habitat, fish migration, municipal and domestic supply, and preservation of rare and endangered species. Municipalities are held responsible for impacts to any receiving water beneficial uses and can be subject to enforcement actions under the terms of their National Pollutant Discharge Elimination System (NPDES) permits and face negative publicity as well as potential litigation under the citizen suit provisions of the Clean Water Act. Additionally, water bodies impaired by pesticide pollution are subject to being placed on a list under CWA section 303(d). A 303(d) listing triggers the need to develop a total maximum daily load (TMDL) of the pollutant for the listed water body. The costs of TMDL implementation activities to end impairment of a CWA section 303(d) listed water body often run into the millions of dollars. For example, the California Regional Water Quality Control Board, San Francisco Bay Region, estimated that the implementation cost for a pesticide-related TMDL for Bay Area urban creeks would be roughly $7 million *annually*.[3]

[1] CASQA is comprised of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout California. Our membership provides stormwater quality management services to more than 22 million people in California.
[2] c.f., Ruby, Armand (2013). Review of Pyrethroid, Fipronil and Toxicity Monitoring Data from California Urban Watersheds. Prepared for CASQA. July 10.
[3] Johnson, B. (2005). *Diazinon and Pesticide-Related Toxicity in Bay Area Urban Creeks. Water Quality Attainment Strategy and Total Maximum Daily Load (TMDL).* Final Staff Report. Prepared by the California Region al Water Quality Control Board, San Francisco Bay Region. November 9. Available on the Internet: http://tinyurl.com/cqw76j

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.

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 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, including treated wood, paint, roofing materials, other building products, and treated fabrics, leach pesticides into urban runoff or wastewater through outdoor exposure or indoor washing. This leaching of chemicals, such as from pentachlorophenol, creosote, and arsenic wood treatments, has been linked to urban pollution.

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 use of the most cost-effective means to address water pollution.

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

(1) Modify the exemption to allow states to register treated articles;

(2) Require registration of all treated articles with a 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

US EPA should revise 40 CFR §158.400 to require registrants to provide product performance testing data for all urban uses. As it stands, this regulation provides an overly broad exemption from data requirements pertaining to efficacy for individual pesticide registration applications, which is not required by the authorizing legislation (FIFRA 7 U.S.C. Part 136a [c] [5], and undermines the ability of US EPA and the States to obtain data necessary to mitigate unnecessary environmental impacts. The underlying argument for the exemptions, namely that market forces supplant the need for efficacy data because users would only purchase efficacious products, is not well supported for urban uses. For instance, recent discoveries of the lack of efficacy of antimicrobials used in healthcare have not significantly reduced their success in the urban marketplace.

Efficacy data are 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 7-10 foot band around a structure to control nuisance insects like ants. Scientific studies funded by the California Department of Pesticide Regulation (DPR) and others determined that using the same pesticide application concentration and treating a band of only 2 inches around a building would be sufficient to provide nuisance insect control, and result in a reduction of >95% in the amount 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).

Question 2 - Making Pesticides Regulation Less Burdensome for State and Local Governments While Maintaining Environmental Protection

Water pollution due to the presence of pesticides 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 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:

- 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 U.S. 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 in urban runoff and the surface waters that receive it. We strongly encourage OPP to continue to work with the Office of Water toward this objective.

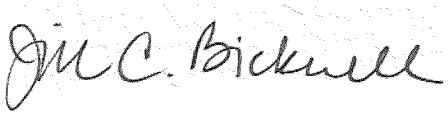
Question 7 - Regulations Causing Data to Not Be Publicly Available / Insufficient Transparency

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 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

pesticide 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 mitigation of water pollution from pesticides.

Thank you for your consideration of our comments. If you have any questions, please contact our Executive Director, Geoff Brosseau at 650-365-8620.

Sincerely,



Jill Bicknell, Chair
California Stormwater Quality Association

cc: Richard P. Keigwin, Jr., U.S. EPA Office of Pesticide Programs (OPP)
Tracy Perry, U.S. EPA OPP, Pesticide Re-Evaluation Division
Andrew Sawyers, U.S. EPA Office of Water, Office of Wastewater Management
Betsy Southerland, U.S. EPA Office of Water, Office of Science and Technology
Tomas Torres, Water Division, U.S. EPA Region 9
Debra Denton, U.S. EPA Region 9
Patti TenBrook, U.S. EPA Region 9
Karen Larsen, California State Water Resources Control Board
Philip Crader, California State Water Resources Control Board
Paul Hann, California State Water Resources Control Board
Dawit Tadesse, California State Water Resources Control Board
Tom Mumley, California Regional Water Quality Control Board, San Francisco Bay Region
Janet O'Hara, California Regional Water Quality Control Board, San Francisco Bay Region
Daniel McClure, California Regional Water Quality Control Board, Central Valley Region
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Nan Singhasemanon, California Department of Pesticide Regulation
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Scott Taylor, National Municipal Stormwater Alliance
Chris Hornback, National Association of Clean Water Agencies
Cynthia Finley, National Association of Clean Water Agencies
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