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July 2, 2020

Tracy Perry
Office of Pesticide Programs (OPP)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW.
Washington, DC 20460-0001
Submitted via www.regulations.gov

RE: Carbaryl – Draft Biological Evaluation (Docket ID No. EPA-HQ-OPP-2020-0090)

Dear Ms. Perry:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the Draft Revised Method for National Level Endangered Species Risk Assessment Process for Biological Evaluations (BEs) for pesticides. NACWA represents the interests of over 300 of the nation's publicly owned wastewater treatment agencies, serving the majority of the sewered population. NACWA's members continue to face challenges as they strive to meet increasingly stringent Clean Water Act (CWA) requirements while having limited control over the toxic pollutants and other substances in the wastewater and stormwater they manage. In addition to the comments below, NACWA also supports the more detailed comments of the Bay Area Clean Water Agencies (BACWA).

NACWA is interested in the carbaryl BE because it will likely set a precedent for how BEs are conducted in the future for other chemicals. An effective pesticide consultation system is important for publicly owned treatment works (POTWs) and for nationwide compliance with the Endangered Species Act (ESA). The National Pollutant Discharge Elimination System (NPDES) permits issued to NACWA member agencies include requirements that effluent limits and receiving water limits to protect the beneficial uses of waters including protecting rare, threatened, or endangered species. Through these CWA permits, water quality regulators make municipalities responsible for meeting ESA requirements.

POTW responsibilities extend beyond endangered species to include all other beneficial uses of receiving waters. However, POTWs do not have authority to control indoor or other upstream pesticide uses and their subsequent discharge into the sewer system. Since we understand that EPA intends for BEs to replace its ecological risk assessments in the future, we also seek to ensure that the pesticide Registration Review process will lead to mitigation for pesticides that protects all beneficial uses of surface waters.

The Carbaryl BE is the first to align with EPA's Revised Method for National Level Endangered Species Risk Assessment Process for BEs for Conventional Pesticides. NACWA supports EPA's efforts to develop a solid, functional BE process and asks that both the BE process and EPA's Registration Review appropriately evaluate risks associated with urban pesticide use, consistent with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the ESA, and the CWA.

EPA's BE does not mention exposures to aquatic organisms associated with the presence of carbaryl in POTW effluents. However, concentrations of at least half a dozen pesticides reported in undiluted POTW effluents – including carbaryl – exceed the EPA benchmarks for chronic exposure to aquatic invertebrates. The “chronic” benchmark comparison is made because POTWs continuously discharge. Information submitted by BACWA documents carbaryl detections in effluent and increased carbaryl concentrations downstream from a POTW.

EPA has been evaluating POTW discharges from indoor pesticide use and discharges to the sewer system in its pesticide risk assessments since the late 1990s. EPA uses simplified models like its Exposure and Fate Assessment Screening Tool (E-FAST) in combination with monitoring data and benchtop studies to estimate POTW effluent concentrations. As EPA noted in its pyrethroids ecological risk assessment, *this modeling approach is imperfect, but in combination with monitoring data it has been useful in understanding aquatic risks*. NACWA and BACWA have been in dialog with EPA scientists to improve the accuracy of this modeling approach.

Because local agencies in most states lack the statutory authority to regulate pesticide use in urban areas, it is essential that EPA and the Fish and Wildlife Service and National Marine Fisheries Service (“Services”) employ the pesticide consultation processes to assess and prevent urban water pollution as defined by the CWA and our NPDES permits. If the pesticides ESA Consultation process fails to identify and implement reasonable and prudent alternatives or measures (RPAs/RPMs) implemented by pesticides users to prevent toxic releases of pesticides to the aquatic environment, an undue burden to address the problem is placed on local governments.

Only with POTW-specific information will it be possible for the Services to develop practical, technically and financially feasible RPAs/RMPs to address (as necessary) the major uses and discharges of pesticides that pass through POTWs. If, as EPA staff have suggested, agricultural discharges were used to “represent” POTW effluent, the Services would not have the information they require. This would likely lead to inadequate RPAs/RMPs.

Since OPP controls pesticides labels, state pesticide regulatory agencies cannot readily address pesticide water pollution and compliance with NPDES permits if the pesticide discharges stem from consumer pesticide products. OPP action is imperative, because POTWs have no authority to control the discharge of consumer products to the sewer system.

To ensure that future BEs include the presence of pesticides in POTW effluents, NACWA recommends two procedural changes that EPA should make:

1. EPA should identify pesticide uses with pathways to POTWs, using the resources provided in BACWA's comments.

2. When developing a BE, EPA scientists should always be provided the time and resources to:
 - a. Conduct basic scientific literature reviews (a basic review can be accomplished using online resources such as Google Scholar and PubMed).
 - b. Consult with EPA's agency partners (e.g. state regulatory agencies, USGS) to obtain POTW monitoring data for pesticides.

Thank you for your consideration of these comments. Please contact me at 202-533-1836 or cfinley@nacwa.org if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Cynthia A. Finley". The signature is written in a cursive, flowing style.

Cynthia A. Finley, Ph.D.
Director, Regulatory Affairs