

EXECUTIVE COMMITTEE

PRESIDENT

Marian A. Orfeo

Director of Planning

& Coordination

Massachusetts Water

Resources Authority

Boston, MA

VICE PRESIDENT

Kevin L. Shafer

Executive Director

Milwaukee Metropolitan

Sewerage District

Milwaukee, WI

TREASURER

Jeff Theerman

Executive Director

Metropolitan St. Louis

Sewer District

Saint Louis, MO

SECRETARY

David R. Williams

Director of Wastewater

East Bay Municipal

Utility District

Oakland, CA

PAST PRESIDENT

Christopher M. Westhoff

Assistant City Attorney

Public Works General Counsel

City of Los Angeles

Los Angeles, CA

EXECUTIVE DIRECTOR

Ken Kirk

March 20, 2009

Attn: Docket ID EPA-HQ-OPP-2008-0650

Office of Pesticide Programs Regulatory Public Docket

Environmental Protection Agency

1200 Pennsylvania Ave., NW

Washington, DC 20460-0001

Submitted via: www.regulations.gov

Dear Sir or Madam:

These comments are submitted on behalf of the National Association of Clean Water Agencies (NACWA) regarding the "Petition for Rulemaking Requesting EPA Regulate Nano-Silver Products as Pesticides" filed by the International Center for Technology Assessment (ICTA) and others. NACWA represents the interests of nearly 300 publicly owned wastewater treatment works (POTWs) nationwide. After decades of controlling the discharge of toxic pollutants – including silver – to the sewer system, NACWA members are concerned that the increasing use of nanoscale silver may have adverse effects on the wastewater treatment process and the environment. NACWA supports the petition's request that EPA further assess the potential impacts of nanoscale silver and strengthen how the Agency addresses products with clear pesticidal properties in the registration process.

POTWs have developed and implemented sophisticated pretreatment programs to prevent the discharge of toxic pollutants to the sewer system from industrial and commercial sources. Since certain forms of silver can be toxic to aquatic life and can prevent clean water agencies from recycling their biosolids, pretreatment programs have been specifically designed to ensure that discharges of silver particles are minimized or eliminated. Pretreatment programs have no authority to control discharges of pollutants from domestic sources, however, and the recent proliferation of consumer products containing silver (e.g., silver treated socks, washing machines that discharge silver ions, and silver-coated food containers) jeopardizes the efforts of clean water agencies to keep silver out of the aquatic environment. Moreover, little is known about the environmental impacts of these nanoscale silver products: they could add to the silver loads that we already know are toxic, they could have completely different impacts due to the unique nature of their "nanoscale" size, or they could be relatively harmless. EPA should therefore study the potential environmental effects of nanoscale silver, as requested in the ICTA petition, and also determine how nanoscale silver affects the wastewater treatment process.

In 2006, NACWA requested that EPA require pesticide registration for consumer products that by design release contaminants into the sewer system, such as washing machines that release silver ions for disinfection purposes. EPA clarified its position on this type of ion-generating equipment in a September 21, 2007, *Federal Register* notice, stating that this equipment is regulated as a pesticide and requires registration. While this notice was a positive step toward controlling the release of nanoscale silver into the sewer system, manufacturers may still try to avoid pesticide classification and registration by eliminating explicit antimicrobial claims from product information. NACWA agrees with the ICTA petition's request that EPA close this regulatory gap for nanoscale silver and silver ion-generating products. EPA should clarify that the pesticidal intent and public health claims of products can be implicit, even if they are not specifically labeled as antimicrobials, and registration as a pesticide cannot be avoided by simply removing explicit claims from product labels and advertising materials.

NACWA appreciates the opportunity to comment on this petition. If you have any questions, please contact me at 202/296-9836 or cfinley@nacwa.org.

Sincerely,

A handwritten signature in dark ink, appearing to read "Cynthia A. Finley". The signature is fluid and cursive, with the first name "Cynthia" being more prominent.

Cynthia A. Finley
Director, Regulatory Affairs