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April 8, 2011

Office of Pesticide Programs
Regulatory Public Docket (7502P)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001
Via *Regulations.gov*

Re: Petition for a Ban on Triclosan; Notice of Availability

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) Notice of Availability regarding the petition filed by Beyond Pesticides and Food & Water Watch (Petitioners) to ban triclosan (December 8, 2010; 75 *Fed. Reg.* 76461). NACWA represents the interests of nearly 300 of the nation's publicly owned wastewater treatment works (POTWs) or clean water agencies. 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 they treat. Consistent with its past comments on EPA's pesticide registration process and its proposed additions and revisions to the existing data requirements for antimicrobial pesticides, NACWA agrees with Petitioners that EPA must do more to ensure its actions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) do not have negative consequences for clean water agencies or the water environment. EPA should not continue to register pesticides without a full understanding of the impacts those pesticides may have. NACWA strongly opposes, however, Petitioners' request to address triclosan through CWA-based regulation of wastewater effluent and biosolids.

NACWA believes that effective evaluation of the true impacts of pesticides during the registration process is necessary to assess whether the manufacture and use of these substances will negatively affect the environment or wastewater treatment processes. NACWA supported the Agency's 2008 proposal to require additional information from antimicrobial pesticides to better evaluate their impacts on the aquatic environment as a major advancement in this area. In the past, EPA has not considered the impacts of antimicrobial pesticides from homes and businesses, believing that dilution and degradation in the sewer system would prevent these pesticides from having a negative impact and the 2008 proposal was issued in part because the Agency recognized that such assumptions were no longer valid. Improved analytical capabilities have shown that antimicrobial pesticides and other

substances that were once dismissed may be present in environmentally relevant concentrations in wastewater and biosolids. As NACWA's members now know, triclosan, as one of the most common antimicrobial pesticides, has potential to pose a threat to a POTW's ability to comply with toxicity limits in CWA permits; may have the potential to harm the beneficial micro-organisms that treat wastewater at a POTW; and may compromise the ability to beneficially reuse biosolids.

The issue of triclosan in the environment and its impact on POTWs extends beyond EPA to other federal agencies such as the Food and Drug Administration (FDA), which has responsibility for a number of the products that are introducing triclosan into the water environment. NACWA believes that the problem of triclosan is symptomatic of the much larger failure at the federal level to coordinate product approval procedures with the various environmental statutes, including the CWA. This failure to coordinate at the federal level will continue to disproportionately impact the clean water community. The federal CWA provides clean water agencies the authority to regulate industrial and commercial discharges of toxics or other pollutants that might interfere with their treatment processes or pass through the plant untreated into the effluent or biosolids. Clean water agencies do not, however, have the authority to regulate residential discharges. Much of the triclosan entering the sewer system comes from hundreds of consumer products and other household applications, all of which are beyond the control of the municipal pretreatment programs NACWA's member agencies operate.

Regulation of Triclosan under the Clean Water Act Is Inappropriate

The risk-benefit standards of FIFRA require EPA to ensure that pesticides are used in a manner such that mitigation under the CWA is minimal or unnecessary. NACWA and its members continue to object to a federal system that includes the approval of products, either under FIFRA, through the FDA, or via some other system, which end up in the environment and ultimately lead to the imposition of regulations on clean water agencies. If at any time EPA believes that water quality criteria, water quality based effluent limits, or biosolids pollutant limits are necessary for triclosan or any other active ingredient in a FIFRA-approved or FDA-approved product, then those statutes have failed to meet their mandates to provide adequate environmental protection. The pressure for action on these pollutants is mounting. In fact, several environmental NGOs have already petitioned EPA to use its CWA authority to regulate some of these pollutants. Use of EPA's CWA authorities to address environmentally relevant concentrations of triclosan or other emerging contaminants, before the federal government applies a coordinated and comprehensive evaluation process at the point of approval, is inappropriate and would lead to the imposition of costly and likely technically-infeasible limits for clean water agencies.

Clean water agencies were not designed to remove triclosan or other contaminants of emerging concern. Research by our industry is being conducted to identify ways of maximizing our current treatment processes to potentially treat for some of the thousands of chemicals now being detected in municipal wastewater, but these types of 'end of pipe' solutions cannot be relied upon to address the growing challenge. Certainly wastewater treatment plants (through modified or new treatment processes) may be part of the solution in the long-term, but this will not work for all pollutants and cannot be relied upon to make up for shortcomings in the federal government's approval process. The only practical and cost effective means of controlling triclosan discharges is the use of existing authorities under FIFRA and Federal Food, Drug, and Cosmetic Act (FFDCA) to control its sale and use.

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The *Federal Register* notice seeking comment on the petition notes work EPA is already doing on possible water quality standards for triclosan. The fact that EPA believes these criteria may at some point be necessary indicates that the environmental safety nets under FIFRA and the FDA's various programs have already failed – a fact that must be addressed.

Again, thank you for the opportunity to comment on the Notice of Availability and the petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hornback", written in a cursive style.

Chris Hornback

Senior Director, Regulatory Affairs