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February 20, 2013

Wendy Cleland-Hamnett

Director, Office of Pollution Prevention and Toxics

U.S. Environmental Protection Agency, MC 7401M

1200 Pennsylvania Avenue, N.W.

Washington, DC 20460

Via email to: cleland-hamnett.wendy@epa.gov

Subject: Toxics Substance Control Act (TSCA) – Limit Inadvertently Generated PCBs

Dear Ms. Cleland-Hamnett:

The National Association of Clean Water Agencies (NACWA) urges the U.S. Environmental Protection Agency (EPA) to consider revising its implementing regulations for the Toxic Substances Control Act (TSCA) (40 CFR § 761) to decrease allowances for inadvertently generated PCBs in products. As representative of nearly 300 of the nation's publicly owned treatment works (POTWs) or clean water agencies who serve the majority of the sewered population in the country, NACWA and its members are dedicated to improving water quality in the nation's waterbodies.

POTWs have been subject to increasingly stringent regulation through the Clean Water Act (CWA) over the past 40 years, including those regarding the control of toxics, such as PCBs. Current water quality standards and CWA total maximum daily loads (TMDLs) are being developed to limit PCBs to orders of magnitude lower than the applicable water quality standards of the late 70's. During the same time, however, TSCA has not limited inadvertent generation of PCBs. Consistently lowering the allowable limits of PCBs in waterbodies, but maintaining their level of generation in manufacturing processes, makes it nearly impossible for the clean water community to meet its CWA obligations.

Even though PCBs were "banned" in 1979, there is still an elevated background level of PCB contamination in U.S. waterways due to the difficulty of in-situ PCB removal. In addition, there are significant quantities of PCBs still being introduced into the water environment from inadvertently generated PCBs in products and via chemical processes used in the manufacturing of detergents, agricultural chemicals and chlorinated solvents.

As you know, 40 CFR § 761.2 currently exempts “persons who inadvertently manufacture or import PCBs generated as unintentional impurities in excluded manufacturing processes”. TSCA allows inadvertently generated PCBs up to a maximum of 50 parts per million (ppm), and an annual average of 25 ppm. The impact of inadvertently generated PCBs on POTWs is twofold. First, when present in the waste stream inflow into a POTW, the POTW is often treated as the “source” of the contamination and threatened with technically infeasible permit limits. Second, products containing PCBs can ultimately end up in runoff into a waterbody, adding to the level of legacy PCB contamination and making any measurable increase in water quality difficult, no matter what level of incidental PCB removal a POTW accomplishes. Several of NACWA’s members in Delaware and Washington State are facing PCB TMDLs for their receiving waters under the CWA, and more of these types of TMDLs can be expected across the country.

TMDLs and other CWA regulations focus primarily on what the water community calls “point sources” including POTWs, as opposed to runoff which is termed “nonpoint source” and is difficult to regulate. Though POTWs are considered “sources” of pollution, in reality a POTW has little control over its influent, which can, and does contain a large number of toxic chemicals from residential, commercial and industrial water users. POTWs do have the authority to regulate some discharges into their systems, but controlling the source of PCBs flowing into a POTW is the best way to eliminate PCBs from entering our waterways. Source control can be achieved through strengthening TSCA and its implementing regulations.

To address the water quality concerns related to toxics in the Spokane River, in Washington State, the regulatory community, the CWA permittees, the tribes, and local conservation groups have formed the Spokane River Regional Task Force (SRRTTF) to reduce toxics in the river. SRRTTF and the Environmental Council of the States (ECOS) have also expressed an interest in seeing TSCA changed. NACWA supports SRRTTF and ECOS in their efforts to see that the EPA further limits the concentration of inadvertently generated PCBs allowed in products. EPA’s TSCA regulations should be revised to eliminate inadvertently generated PCBs in the environment that make their way into waterbodies and negatively impact water quality. If not, the addition of PCBs into the natural environment will continue, and we run the risk of spending hundreds of millions of dollars updating POTWs to remove PCBs, which will have minimal predictable success in markedly improving water quality.

TSCA impacts a variety of stakeholders, including state environmental regulatory programs and sister offices within EPA. TSCA modification has been an ongoing conversation amongst these groups and on Capitol Hill, and NACWA is committed to maintaining involvement as the conversation evolves.

Thank you for your consideration of our concerns. If you have any questions or seek further clarification please contact Brenna Mannion, Manager of Regulatory Affairs at bmannon@nacwa.org or 202-533-1839.

Sincerely,



Chris Hornback
Senior Director, Regulatory Affairs