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Office of Pollution Prevention and Toxics

U.S. Environmental Protection Agency

1200 Pennsylvania Ave. NW

Washington, DC 20460

Via www.regulations.gov

**Re: Docket No. EPA-HQ-OPPT-2010-0572, Chemical Substances When
Manufactured or Processed as Nanoscale Materials; TSCA Reporting and
Recordkeeping Requirements**

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the proposed rule, *Chemical Substances When Manufactured or Processed as Nanoscale Materials; TSCA Reporting and Recordkeeping Requirements* (80 FR 18330, April 6, 2015). NACWA represents the interests of nearly 300 public clean water agencies nationwide. After decades of controlling the discharge of toxic pollutants to the sewer system, NACWA members are concerned that the increasing use of nanoscale materials may have adverse effects on the wastewater treatment process and the environment.

NACWA supports EPA's proposed reporting and recordkeeping requirements for nanoscale materials. The current lack of information about nanoscale materials makes it difficult for publicly owned treatment works (POTWs) to determine the potential risks of discharges by the manufacturers and processors of these materials. Nanoscale materials in consumer products that are subsequently disposed of or washed down the drain may also present risks for POTWs. Nanoscale materials have the potential to interfere with the wastewater treatment process – for example, nanoscale silver has been shown to affect the bacteria that are used in the biological treatment of wastewater. Nanoscale materials could also pass through the treatment process unaffected and then be released into the environment. The biosolids produced by the wastewater treatment process could also contain nanoscale materials that were discharged into the sewer, potentially affecting a POTW's ability to beneficially reuse the biosolids for compost or fertilizer. Better information about nanoscale materials will give EPA the ability to analyze the risks from these materials and take appropriate actions to protect POTWs.

NACWA provides the following responses to the questions asked by EPA in the proposal, as well as recommendations for clarifications to the proposal.

Responses Requested by EPA on Specific Issues

Substances Subject to Reporting

NACWA recommends that EPA remove the reporting condition that substances exhibit “unique and novel characteristics or properties because of their size.” This determination about characteristics is difficult to make and there is currently no available protocol for assessing whether these characteristics are caused by the nanoscale size of the materials. This condition results in the reporting requirements being left too open to interpretation by the manufacturers and processors.

NACWA requests that zinc oxide not be excluded from reporting requirements. Nanoparticle forms of zinc oxide, such as those in sunscreens and cosmetics, are likely to be washed down the drain and transported to POTWs, contributing to total zinc loads and potentially bringing new hazards based on their unique chemical forms. Because it is a priority pollutant, zinc discharges into and out of POTWs are heavily regulated under the Clean Water Act. Zinc is among the most common causes of impairment for water bodies listed as impaired under section 303(d) of the Clean Water Act. Although zinc oxide is generally considered to be well characterized, EPA determined in 2012 that insufficient information was available to characterize the potential for zinc oxide to interfere with the biological treatment processes at POTWs and insufficient data existed to characterize hazards to aquatic plants and cyanobacteria. NACWA understands that these data are being required from pesticide registrants to support EPA’s zinc oxide Registration Review. Unless EPA has received and reviewed these data, it appears premature for the Agency to exempt nanoparticle forms of zinc oxide from reporting. Data should therefore be collected about zinc oxide to allow a full evaluation of this material and ensure that it does not present a risk to POTWs or surface water quality.

Reporting at Least 135 Days Before Manufacture or Processing

NACWA supports the 135-day reporting period and recommends that this period not be reduced. POTW pretreatment programs regulate industrial discharges and generally require that discharge applications be submitted by industries 180 days prior to discharging. POTWs therefore need at least the 135-day time period to evaluate the nanoscale materials that will be manufactured or processed and determine appropriate pretreatment measures for the industry. NACWA additionally recommends that EPA notify POTWs of nanoscale material manufacturing or processing in their service areas, to enable the POTWs to fulfil their pretreatment regulatory requirements.

Considerations for EPA’s Economic Analysis

NACWA recommends that the benefits of reporting for POTWs be included in the economic analysis. Active EPA management of nanoscale materials will ensure that the chance of costly incidents of wastewater treatment interference or restrictions on biosolids disposal will be reduced.

Considerations for Potential Periodic Reporting

NACWA supports a future rulemaking requiring periodic reporting of the manufacture of nanoscale materials. This would allow POTWs to have updated information about the amounts and types of materials being produced, which would enable more accurate assessments of risk.

Additional Recommendations for Revisions to Proposed Rule

Proposed Section (d)(6) – Use Information Reporting

NACWA requests that EPA specify the function and application categories to be used for reporting, and to do so in a manner that clearly distinguishes end use products with clear pathways for discharges to sewers (e.g., clothing, cosmetics) from products without direct or common pathways for discharges (e.g., electronics, sporting goods other than clothing). Similarly, consideration should also be given to distinguishing products with clear pathways for discharges to storm drains via urban runoff (e.g., paints, roofing materials, vehicle fuels) from other product categories. These specific data breakdowns are essential for EPA to achieve its goals of conducting risk screening, assessment, priority setting, and management activities with regard to water quality.

One possible approach would be to develop versions of Tables 8 and 10 in 40 CFR part 711 that are specific to nanoscale materials, with product categories selected on the basis of a conceptual model of transport pathways to POTWs and storm drains. NACWA would be pleased to assist EPA with developing category lists that provide the necessary level of distinction among product categories.

Proposed Sections (d)(8) and (9) – Exposure and Release Information

NACWA requests that EPA clarify its intent to require reporting of exposures and releases throughout the entire life cycle of the nanomaterial, from manufacture, through product use, and including end-of-life management. In regulations or accompanying guidance, NACWA requests that EPA ensure that manufacturers understand that POTW discharge is not a control technology for nanoparticles.

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,



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