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Office of Pesticide Programs (OPP)
Regulatory Public Docket (7502P)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

Submitted via email to: Rosanna Louie at louie.rosanna@epa.gov.

Attn: Docket No. EPA-HQ-OPP-2005-0558

Docket ID Number EPA-HQ-OPP-2005-0558: Coppers Reregistration Eligibility Decision

The purpose of this letter is to comment on EPA's Reregistration Eligibility Decision (RED) for copper-containing pesticides (coppers), which was made available for public comment on August 9, 2006 (71 FR 45550). Tri-TAC appreciates that EPA conducted an assessment of copper root-killer sewer treatments in response to our previous comment letter dated March 27, 2006. In the assessment, EPA found that the use of root-killers containing copper may affect aquatic organisms; however, EPA did not complete a risk-benefit analysis or propose mitigation measures and/or label language changes in the RED. Tri-TAC requests an opportunity to review the assumptions and data used in the "Down-the-Drain" analysis and to provide EPA with the necessary data to conduct a risk-benefit analysis for the root control use of copper prior to the reregistration of this use. As background, Tri-TAC is a technical advisory committee for Publicly Owned Treatment Works (POTWs) in California. It is jointly sponsored by the California Association of Sanitation Agencies, the California Water Environment Association, and the League of California Cities. The constituency base for Tri-TAC collects, treats, and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California.

"Down-the-Drain" Assessment

EPA regulates copper as a priority pollutant under the Clean Water Act (CWA); as such, POTWs often have stringent copper effluent limits in their National Pollutant Discharge Elimination System (NPDES) permits. The majority of POTWs have already implemented pollution prevention programs and local limits to reduce copper discharges into sewer systems from industries. These programs have been very successful in reducing POTW

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influent and effluent copper concentrations. However, in most instances POTWs do not have the authority to regulate the use of coppers from domestic sources.

Tri-TAC thanks EPA for revising the Ecological Risk Assessment for Reregistration (Risk Assessment)¹ for coppers to include a “Down-the-Drain” analysis. This analysis was performed to evaluate the potential risk to aquatic organisms from the use of root-killers containing copper in sewers. EPA states some of the assumptions used in the E-FAST model for this analysis in the RED, such as production volume; however, most of the inputs and assumptions were not disclosed. As a result, Tri-TAC was unable to thoroughly evaluate the “Down-the-Drain” analysis and provide specific technical comments.

Tri-TAC has previously submitted comments to EPA regarding our concerns with the E-FAST model. In our previous comments, Tri-TAC has requested the technical basis for translating surface water concentrations to acute and chronic concentrations and the consideration of POTWs that discharge to effluent dominated receiving waters and facilities nationwide that do not have dilution credits in their NPDES permits. In the “Down-the-Drain” analysis for coppers, EPA does not state the technical basis for using the 7 consecutive days of lowest flow over a 10-year period (7Q10) from the median USGS monitoring water quality data for acute concentrations and the 30 consecutive days of lowest flow over a 5-year period (30Q5) for chronic concentrations. Tri-TAC requests an opportunity to review the assumptions and data used in the “Down-the-Drain” analysis. In addition, Tri-TAC requests clarification on the flowrate assumptions and on EPA’s conclusion that the “Down-the-Drain” analysis for coppers provides “an upper bound estimate of potential risk” and “believes that actual exposures are significantly lower” considering that scenarios without dilution credits were not evaluated.

Label Language

In the Risk Assessment, EPA concludes that “Based on the concentration estimates generated by the “Down-the-Drain” analysis, use of copper sulfate crystals as a root killer in domestic sewer systems may result in receiving waters high enough to affect aquatic invertebrate populations, and fish on both an acute and chronic basis. Based on the assumptions used in the EFED analysis, approximately 85% of the USGS sites exceeded the acute risk for LOC for aquatic invertebrates and approximately 20% of the USGS sites exceeded the acute risk for LOC for fish.” Because of EPA’s conclusions, Tri-TAC requests that aquatic hazard language be added to the label of root-killers containing copper to inform the users of the product of the significant risk to aquatic organisms from the discharge of copper. This language should be similar to label

¹ EPA, Response to Comments on the Ecological Risk Assessment for Reregistration of Copper sulfate (Case#0636), Group II copper compounds (Case#0649), and Copper salts (Case#4029) for use on crops and as direct water applications, April 20, 2006.

language for manufacturing-use products. Tri-TAC suggests the label on root-killers containing copper state "This pesticide is toxic to fish and aquatic organisms. Do not use this product without notifying the local sewage treatment plant authority."

Risk-Benefit Analysis

The risk-benefit analysis standards of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) require that EPA ensure that pesticides are used in such a manner that CWA water quality standards are maintained and aquatic habitats are protected. EPA has not fulfilled its responsibility under FIFRA by proposing to reregister root-killers containing copper before the risk-benefit analysis is completed. EPA states in the RED that it was unable to perform a risk-benefit analysis because data regarding the extent of copper use as a root killer and the potential burden placed on POTWs by the use was not available. Tri-TAC objects to EPA's proposal to reregister the use of copper for root-killers prior to the risk-benefit analysis.

Tri-TAC stated in our last comment letter that we were aware of the August 2006 deadline for the reassessment of tolerances for pesticides with food uses that was required by the Food Quality Protection Act. Since copper for root killing is not a food use, Tri-TAC suggested delaying the reregistration of this use until after this deadline to give EPA enough time to perform a thorough analysis of root-killers containing copper. The proposal to defer the risk-benefit analysis and mitigation measures and/or label language changes for root-killers containing copper until after this comment period, which follows the publication of the copper RED, does not meet EPA's obligations under FIFRA.

Tri-TAC was not contacted prior to the RED to provide information regarding the potential burden on POTWs from root-killers containing copper. Tri-TAC has provided general information in the following three paragraphs regarding the potential burden to POTWs nationwide from the use of root-killers containing copper. EPA may contact Tri-TAC if more specific information is needed for the risk-benefit analysis.

Copper can potentially interfere with treatment plant operation, ability to recycle biosolids and reclaimed water, and compliance with NPDES permit effluent limits. Copper entering POTWs will partition onto biosolids, which are frequently land applied or used as soil amendments. In addition, some copper will remain in the water.

In addition to the adverse environmental impacts to aquatic organisms, non-compliance with CWA requirements can be extremely costly for POTWs. Costs are incurred for identifying the source of the pollutants causing non-compliance, source control to reduce impacts of the pollutants, and construction, operation, and maintenance costs to upgrade POTWs with advanced treatment to remove pollutants that cannot be adequately reduced with source control. Also, when surface water bodies become impaired by pesticides, POTWs discharging to the water bodies can be impacted

through additional requirements established as part of Total Maximum Daily Loads (TMDLs) set for the water bodies. The cost to POTWs to comply with TMDLs can be up to millions of dollars per water body per pollutant.

Many POTWs are also subject to mandatory minimum penalties for NPDES permit exceedences. In California, the Clean Water Enforcement Act requires the Regional Water Quality Control Boards (Regional Boards) to assess penalties for each NPDES permit exceedence, whether or not the POTW has the authority to prevent the violation. In addition, the Regional Boards are required to continue to assess penalties until the POTW is in compliance with its NPDES permit.² Since in most instances POTWs do not have the authority to regulate pesticides, if a pesticide causes an NPDES permit exceedence, the POTW would be fined until the California Department of Pesticide Regulation, EPA, and/or Food and Drug Administration regulates the pesticide. Nationwide, POTWs can also be subject to legal action, such as citizen suits, for NPDES violations, thereby causing the POTW to pay legal fees, settlements, and/or judgments.

Pool Products

Pool products are another non-food use of copper that may impact POTWs. Since the Risk Assessment did not evaluate pool products, Tri-TAC concludes the reregistration of pool products will be evaluated as an antimicrobial application at a later date. As mentioned in our previous comment letter, Tri-TAC requests that EPA include a “Down-the-Drain” assessment for pool products as part of the ecological risk assessment. By delaying the reregistration of root-killers containing copper, it will allow time for EPA to complete the risk-benefit analysis required by FIFRA and EPA will be able to evaluate “conventional” uses (root-killing) and “antimicrobial” uses (pools) together in one “Down-the-Drain” assessment. This would be beneficial to POTWs since NPDES permits do not distinguish between conventional and antimicrobial uses.

Pesticide Discharge Modeling

Tri-TAC appreciates EPA’s recent effort to evaluate “Down-the-Drain” uses of pesticides. EPA’s Office of Pollution Prevention and Toxics released E-FAST, Version 2.0 in April 2006. This tool contains a “Down-the-Drain” module that estimates concentrations of chemicals in surface waters that may result from the disposal of consumer products into household wastewater. POTWs would like to work with EPA’s Offices of Pesticide Programs and Wastewater Management to develop an improved

² The Clean Water Enforcement Act states that mandatory minimum penalties shall not be assessed if the violations are caused by one or any combination of (1) an act of war, (2) an unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or (3) an intentional act of a third party, the effects of which could not have been prohibited or avoided by the exercise of due care or foresight, see California Water Code, Section 13385(j) for further details.

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wastewater discharge methodology using the new version of the E-FAST model to evaluate impacts to aquatic organisms from pesticides discharged to sewers. This methodology would include an analysis of the input parameters needed to generate representative surface water concentrations from the use of pesticides discharged to sewers and consideration of POTWs without stream dilution credits. This methodology would be useful to both EPA and POTWs to evaluate impacts of pesticides in the future during registration review.

In conclusion, many sewerage agencies need EPA's assistance to protect surface waters from contamination from copper containing root-killers. Tri-TAC requests that EPA fulfill its obligation under FIFRA by completing a risk-benefit analysis for root-killers containing copper prior to reregistering this use. EPA should contact Tri-TAC if additional information is necessary to estimate the potential burden to POTWs from the use of root-killers containing copper. EPA should also work with the pesticide manufacturers to obtain the national use data of copper as a root-killer. Finally, POTWs request to work with EPA's Offices of Pesticide Programs and Wastewater Management to develop a wastewater discharge methodology for evaluating impacts to aquatic organisms from the discharge of pesticides to sewers.

Tri-TAC appreciates the opportunity to comment on the coppers RED. If you have any questions or require additional information, please contact Ms. Preeti Ghuman by phone at (562) 699-7411, extension 2904 or by email at pghuman@lacsdsd.org.

Sincerely,



Charles V. Weir
Chair, Tri-TAC

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