



**ASSOCIATION OF
METROPOLITAN
WATER AGENCIES**

LEADERS IN WATER

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August 18, 2020

The Honorable Alexandra Dapolito Dunn
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
Environmental Protection Agency

Re: Docket ID: EPA–HQ–OPPT–2020–0303, *Significant New Use Rules: Certain Chemical Substances (20-7.B)*

Dear Assistant Administrator Dunn,

The Association of Metropolitan Water Agencies (AMWA) is an organization representing the largest publicly owned drinking water utilities in the United States. Pollution prevention is paramount in protecting water sources for public water supply. For this reason, AMWA feels it is imperative to emphasize the importance of protecting drinking water sources through programs like the Toxic Substances Control Act (TSCA). These programs are the first line of defense against the growing number of contaminants that could pose a risk to drinking water supplies and the public.

Our ability to test for chemicals in our environment has grown exponentially, and we are now aware of the persistent, bioaccumulative, and possible toxic characteristics of chemicals we once thought inert or non-problematic. The most recent and dramatic examples of this are the complex issues surrounding per- and polyfluoroalkyl substances (PFAS). These chemicals have been used for decades, but as our knowledge of these substances has grown, PFAS have been shown to be increasingly problematic. PFAS have highlighted the overwhelming need to better evaluate chemicals before allowing them to be used in commerce to prevent those that may pose health risks from entering the environment and contaminating source waters.

Preventing pollutants from entering drinking water supply sources is a complex task. It is easier, more effective and more equitable to control pollutants at the source, where they are highly concentrated, than it is to remove them at the consumer’s expense after they have entered a water body or supply source. Controlling pollutants at the source – in this case at the point of manufacture, import or process – also helps ensure that those who pollute our natural resources are not allowed to pass the cost of correcting the problem onto others.

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AMWA has concerns with multiple substances listed in the latest Significant New Use Rule (SNUR) (85 FR 36175) and have expanded on these concerns below.

PMN Number(s): P-17-333

Chemical Name(s): 2-Propenoic acid, mixed esters with heterocyclic dimethanol and heterocyclic methanol (generic)

Within the notice, EPA identified concerns for aquatic toxicity, reproductive toxicity, and specific target organ toxicity. The notice goes on to require that there be no releases to waters of the United States that would exceed 1 ppb.

The information included in the docket states that migration of these chemicals to groundwater is expected to be moderate. As groundwater may be used as a source for drinking water, EPA should be especially cautious with chemicals that have this particular attribute. More concerning is the fact that removal of these substances during wastewater treatment is expected to be only 50%. AMWA is concerned with the allowance of this chemical into surface waters when there is information stating that removal from wastewater will be difficult.

AMWA cautions against allowing for releases of this chemical into surface waters, which are often source waters for drinking water utilities, due to possible unforeseen risks in the future. While the agency has determined low levels of this chemical pose no harm, AMWA recommends that EPA consider any possible discharges of this chemical into surface waters a significant new use which would require notification to the agency via a Significant New Use Notification (SNUN). Due to the fact that this chemical may migrate into groundwater if released to surface waters, and that drinking water utilities would struggle to fully remove it from their source waters using standard wastewater treatment methods, requiring a SNUN would allow the agency to track possible releases in the event that the chemical is deemed problematic at a later date.

PMN Number(s): P-20-38

Chemical Name(s): 1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3,5-tris[3-(2-oxiranyl)propyl]-

Within the notice, EPA identified concerns for acute toxicity, aquatic toxicity, reproductive toxicity, and specific target organ toxicity. The notice goes on to require that there be no releases to waters of the United States that would exceed 5 ppb.

The information included in the docket states that migration of these chemicals to groundwater is expected to be rapid. As groundwater may be used as a source for drinking water, EPA should be especially cautious with chemicals that have this particular attribute. More concerning is the fact that removal of these substances during wastewater treatment is expected to be between 0 and 25% AMWA is concerned with the allowance of this chemical into surface waters when there is information stating that removal from wastewater will be so difficult.

AMWA cautions against allowing for releases of this chemical into surface waters, which are often source waters for drinking water utilities, due to possible unforeseen risks in the future. While the agency has determined low levels of this chemical pose no harm, AMWA recommends that EPA consider any possible discharges of this chemical into surface waters a significant new use which would require notification to the agency via a SNUN. Due to the fact that this chemical may migrate into groundwater if released to surface waters, and that drinking water utilities would struggle to fully remove it from their source waters using standard wastewater treatment methods, requiring a SNUN would allow the agency to track possible releases in the event that the chemical is deemed problematic at a later date.

General Comments Related to EPA's Process for Evaluating Chemicals under TSCA Section 5

AMWA acknowledges EPA's continued assertion that the conditions included within each SNUR are "necessary and sufficient to protect against potential unreasonable risk to health and the environment" based on the agency's evaluation of each pre-manufacture noticed (PMN) substance under the TSCA new chemicals program. However, AMWA disagrees with the agency and maintains that chemicals which have problematic characteristics such as being highly persistent, easily migrating to groundwater, or are difficult to remove from waste waters should not be allowed to be discharged into waterways regardless of the agency's analysis.

If later data determines EPA's previous analyses were not protective enough and that these substances pose a health risk to the general public and therefore must be addressed under other regulatory frameworks, such as the Safe Drinking Water Act, drinking water utilities will be put into the undesirable position of having to address contaminants that are not readily removed using standard wastewater treatment. Other methods for drinking water treatment, such as granular activated carbon or reverse osmosis, may be used to remove problematic contaminants, but these are costly and pass the economic burden onto the water utility's customers. While AMWA is confident in EPA's abilities to conduct reliable risk assessments, the possibility that these analyses may not be protective enough, no matter how slim this chance may be, is an unnecessary risk.

From AMWA's understanding of the agency's use of SNURs, the requirements under these rules are not imposed on solely the initial manufacturer or importer but are applied to all parties to address reasonably foreseen conditions of use which may occur in the future. These SNURs then require that manufacturers, importers, or processors notify EPA at least 90 days before beginning any activity that EPA has designated as a "significant new use" within the rule. Without these designations it appears possible that releases could go unrecorded by anyone outside of the manufacturer or importer themselves. This could make it extremely difficult for drinking water utilities to determine where releases of these chemicals took place or who is the responsible party at a later date as no notification for releases below the levels included in the SNUR would have been required.

TSCA §5(a)(2) outlines examples of what the agency can claim is a significant new use for a chemical and therefore requires a significant new use notification. Two of these examples being the extent to which a use changes the type or form of exposure to a chemical substance and the extent to which a use

increases the magnitude and duration of exposure to a chemical substance. In the case of chemicals which migrate readily to groundwater and/or are difficult to remove using standard wastewater treatment, AMWA believes that a release of a chemical of this nature should qualify as a significant new use. Section 5 of TSCA is an invaluable tool for the agency to monitor the manufacturing and importation of new chemicals. The notification and tracking of possible releases of problematic substances is critical to any future remediation initiatives.

AMWA is concerned that EPA promulgates SNURs which would allow for releases into surface waters with no data on drinking water exposures. Within submitted PMNs, often the submitter does not include any drinking water exposure data because they do not anticipate any releases to surface waters. AMWA believes this makes sense and that requiring drinking water exposure data in these cases would be an increased burden onto those manufacturers and importers intending to use these substances without environmental releases. However, AMWA believes this provides a good argument for why releases into surface waters should constitute a significant new use. This would allow the agency time to review these substances further and to require data on drinking water exposures before any releases occur.

If EPA continues to allow chemicals such as those listed above to be released into surface waters without notification, at a minimum AMWA urges the agency to require entities submitting a PMN to provide more specific data related to wastewater treatment before the agency promulgates a SNUR. In particular, the agency should require entities to report on exact removal rates of these chemicals from wastewater and what particular treatment was used, not just ranges as is currently often reported within the docket. In general, for any chemicals which the agency is including under a SNUR that would allow for releases to surface water without notification, AMWA feels it would be extremely valuable for EPA to include data on wastewater removal within their requests for potentially useful information. This will help to ensure that the agency and the public are fully aware of the treatment options and availabilities for these chemicals and could help to better prioritize the risk concerning the release of these substances into surface waters.

In a recent response document from EPA, the agency stated that “[in EPA’s] efforts to increase transparency, the Agency is working to provide the public with electronic access to PMNs for new chemicals, including health and safety studies and other information relevant to EPA’s safety review. EPA is continuing to expand such content within ChemView, the Agency’s electronic chemicals database.” AMWA applauds the agency’s continued work to increase transparency throughout this process and greatly appreciates having access to this information.

In AMWA’s previous comment letters to EPA regarding SNURs, the association has continually encouraged the Office of Pollution Prevention and Toxics (OPPT) to coordinate with the EPA Office of Ground Water and Drinking Water (OGWDW). In recent response documents from EPA, the agency points out that the Safe Drinking Water Act typically “addresses comparatively data-rich existing substances now in commerce, while the TSCA new chemicals program reviews chemicals prior to entering the marketplace” and that the “two programs do coordinate, where applicable, but conduct risk assessments and take risk management actions consistent with the requirements of their respective laws.”

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AMWA appreciates the work that both offices have done thus far to coordinate their efforts to address drinking water concerns and encourages the two offices to continue.

However, AMWA is concerned that OPPT may not be coordinating with OGWDW to the degree necessary to ensure the office's risk assessments are as robust as possible. While these programs do work within different regulatory constructs, EPA can and should strive to look holistically at the entire system of statutes when conducting risk assessments. For example, many of the SNURs use data from "analogous chemicals" to perform these assessments. These would likely not be brand new to the marketplace seeing as they have data readily available for EPA to review. If these analogous chemicals are more established then it is possible that work on these chemicals are currently being undertaken, or have previously been addressed, by OGWDW under various SDWA programs. AMWA encourages OPPT to engage OGWDW on those analogous chemicals which the agency is using to inform new SNURs and to continue to work to find ways in which these statutes may function together to better protect our water resources. Additionally, it would seem beneficial for the agency to include the identities of these analogous chemicals within the docket in situations where confidential business information would not be compromised so that any individuals with additional information regarding those chemicals could be made aware of the agency's current work and requests for information.

TSCA provides significant tools to help prevent harmful pollution. In addition to TSCA, the agency should consider how our current system of environmental regulation can be leveraged to protect human health and the environment across multiple media. Preventing pollution at the source is a more cost-effective option for protecting public health rather than relying solely on end-of-pipe treatment to ensure safe drinking water. Additional loadings into the environment of minimally studied chemicals, such as the ones identified in this letter, could result in future problems for source water protection and ultimately necessitate additional drinking water treatment at a high cost to the public.

It is crucial to strive towards the prevention of pollutants entering drinking water sources. TSCA provides us with a unique opportunity to protect the environment and public health. AMWA thanks EPA for the opportunity to comment and looks forward to working with the agency to protect drinking water sources in the future. If you would like to further discuss our concerns, please contact Stephanie Hayes Schlea, AMWA's Director of Regulatory and Scientific Affairs, at schlea@amwa.net.

Sincerely,



Diane VanDe Hei
Chief Executive Officer

cc: David Ross, Assistant Administrator, Office of Water
Jennifer McLain, Office of Ground Water and Drinking Water
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