



Association of
Metropolitan
Sewerage Agencies

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December 15, 2000

Public Information and Records Integrity Branch
Information Resources and Services Division (7502C)
Office of Pesticide Programs
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Docket #OPP-34180B

Dear Sir/Madam:

The Association of Metropolitan Sewerage Agencies (AMSA) appreciates the opportunity to provide comments to the U.S. Environmental Protection Agency's (EPA) September 18, 2000 notice of intent to reclassify chlorine gas as a restricted use pesticide for water and wastewater treatment operations. AMSA represents the interests of 256 of the country's publicly-owned wastewater treatment works (POTWs), which collectively serve the majority of the sewered population in the United States, and treat and reclaim more than 18 billion gallons of wastewater each day.

Upon review of the September 18 notice, AMSA has several concerns and comments with EPA's intent to reclassify chlorine gas for water and wastewater treatment as a "restricted use" under federal pesticide labeling and application regulations. While AMSA members fully agree that adequate training and safety procedures are critical to ensure the safe handling and application of chlorine gas, AMSA opposes the proposed action by EPA to reclassify the chlorine gas use for the following reasons:

- 1) The reclassification of chlorine gas would result in duplicative training and certification requirements for wastewater treatment operators, and would not result in additional improvements in the safe handling and application of chlorine gas.
- 2) Regulation of chlorine gas as a pesticide for water and wastewater treatment is not consistent with traditional pesticidal applications, and will create a public

perception problem with regards to the application of a “pesticide” to municipal drinking water supplies and POTW effluents.

- 3) The data and reasoning for reclassifying chlorine gas as a restricted use was inadequate to justify the change and will unnecessarily and arbitrarily shift a resource burden from the manufacturing sector to the public sector, without any significant benefits.

The impact of the Agency’s proposed reclassification of chlorine gas use to wastewater operations would be significant. In a recent AMSA member survey¹, 24 percent of respondents indicated that chlorine gas was used at their facilities for disinfection. Coupled with EPA’s estimate that at least 16,000 publicly-owned treatment works are currently in operation², more than 4,000 wastewater treatment facilities may be affected by this proposal. Further discussion of above issues as well as some additional comments is presented below.

Proposal Would Create Duplicative Training and Certification Requirements

Making all chlorine gas use restricted under this proposal adds a significant and duplicative regulatory burden on publicly-owned wastewater treatment works (POTWs), which are already regulated under various Federal and State requirements that address the safe handling and use of chlorine gas. EPA’s proposed new classification of chlorine gas would require that anyone using it must be certified by a state pesticide program, or be supervised by someone who has undergone such training.

As discussed in EPA’s proposal (see Comment #3, FR 56306), POTWs are already regulated by the National Pollutant Discharge Elimination System (NPDES), and many POTWs are covered under the Clean Air Act Risk Management Program (RMP), and Occupational Safety and Health Administration (OSHA) Process Safety Management (PSM) Program. Contrary to EPA’s response in the notice, these programs are not limited to accidental releases of chlorine but also address the prevention of releases. Both regulations require adequate safety measures for all aspects of chlorine handling safety, including updated process safety information, process hazard analysis, written operating procedures, periodic safety training, and emergency response procedures. The required training is very comprehensive and addresses safe handling, chlorine chemistry and reactivity, and site-specific measures to ensure preparedness to handle emergency situations as well as responsible operation as a preventative measure. EPA should note that the PSM and RMP apply to facilities using large amounts of chlorine (i.e., 1500 lbs and 2500 lbs, respectively), while a “General Duty Clause” regulates smaller utilities.

¹AMSA 1999 Financial Survey, A National Survey of Municipal Wastewater Management Financing and Trends, March 2000 (119 survey respondents)

²EPA 1996 Clean Water NEEDs Survey

State Requirements

In addition to EPA and OSHA requirements, many State training and certification programs specifically address the handling and use of chlorine gas. For example:

- The Colorado Water and Wastewater Facility Operator Certification Program incorporates chlorine handling in the certification requirements for all levels of water and wastewater facility operators. Certification is mandatory for all water and wastewater operators in responsible charge of water and wastewater treatment plants in Colorado. Furthermore, the Colorado legislature, during the 2000 legislative session, adopted mandatory continuing training for all water and wastewater facility operators. The Colorado Operator Certification Board is currently undertaking a rulemaking process to incorporate those statutory changes in the State's Operator Certification Regulations.
- Current State of California requirements for Operator certification, the California Accidental Release Prevention Program (Cal- ARP), require strict controls regarding facilities that use chlorine gas in their treatment processes for facility designs, operations, and staff training. These existing regulations are extensive and detailed.
- The State of Washington and EPA's drinking water and wastewater Operator Certification Programs require water and sewer systems to employ certified water operators who are competent and knowledgeable in all facility operations. Water and wastewater operator certification programs established by the State of Washington focus on education, experience, and completion of written exams as a means of demonstrating competency. The State also requires water and sewer utilities to have written operating procedures that provide clear instructions for safely conducting activities involved in the use of chlorine and other chemicals in water treatment processes. Refresher training under the PSM/RMP program regulations must occur annually. The State requires continuing education credit to maintain an operator's certification at least every three years.

EPA has suggested that it may be advisable to include the pesticide application certification as part of water and wastewater treatment plant operators' certification programs at the state level. While an increased emphasis on the safe handling and use of chlorine gas in state certification programs may be warranted in some cases, we do not believe that the Agency needs to regulate chlorine gas use at water and wastewater treatment operations as a pesticide to achieve this goal. Knowledge of the laws and regulations governing the application of chlorine as a pesticide is unnecessary for the safe handling of chlorine gas injected into wastewater for disinfection. Chlorine disinfection of wastewater is a continuous automated process. The RMP and PSM programs of EPA and OSHA provide strong federal requirements for large users of chlorine and most State operator certification programs also address chlorine use and handling issues. If these existing programs are not adequate to address the dangers of chlorine gas, then EPA should work to amend the requirements of these programs rather than developing a third set of regulations that will require the involvement of another Federal agency division.

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Chlorine Gas Should be Viewed as a Disinfectant, Not as a Pesticide

This proposed action by EPA appears to “stretch” the definition of pesticide in an effort to include water and wastewater disinfection processes. Liquid and gaseous chlorine is used in these industries as a biocide or disinfectant - not as a pesticide. EPA’s own Office of Pesticide Program October 2000 “Restricted Use Products (RUP) Report,” available on the internet at <http://www.epa.gov/RestProd/rupoct00.htm>, is a compilation of both active and cancelled pesticide products classified as “restricted use.” All of these products are used as pesticides and include fumigants, weed killers, wood preservatives, insecticides, herbicides, and molluscicides. Water and wastewater operators do not use chlorine to control pests in these ways. Furthermore, another EPA website entitled “*Questions and Answers on the Chlorine Gas Reregistration Eligibility Decision*,” at <http://www.epa.gov/opp00001/test/cgas-test.htm>, provides “examples” of chlorine gas use as a pesticide. Each of these examples describes the uses of chlorine gas as a disinfectant or biocide, primarily in food processing. These kinds of uses currently are regulated by the U.S. Food and Drug Administration. Also, the public should not be misled into thinking that a harmful pesticide is being added to their drinking water or local receiving streams via POTW effluent, when in fact, chlorine is added to protect the public health from waterborne disease.

In addition, State agriculture departments typically enforce pesticide application regulations. By defining water and wastewater treatment facility operations that employ liquid and gaseous chlorine as pesticide application facilities, state agriculture departments would be obligated to inspect facilities and implement certification programs. This is a role typically handled through state health departments. Implementing the rule as currently proposed would increase the workload for state regulators by duplicating efforts while at the same time creating an additional regulatory and reporting burden for entities needing to comply.

Proposal Shifts Cost from Manufacturers to Public Sector

Eleven comments were received on the Reregistration Eligibility Decision of February 1999. No new information was introduced per these comments to support the decision to reclassify the chlorine gas. AMSA takes issue with the first comment addressed by EPA whereby the commenter states that the new labeling requirements create a burden for manufacturers who transport chlorine to customers who have both restricted and unrestricted use for it. EPA's solution is to transfer the burden to the thousands of water/wastewater treatment facilities that use chlorine gas for disinfection by reclassifying it as a restricted use pesticide. It would be more cost beneficial to amend the labeling requirements rather than institute additional regulatory requirements on POTWs.

EPA Reversed Position on Chlorine Gas Without Additional New Information

EPA acknowledges (see Comment #4, FR 56306) that the reclassification of chlorine gas will result in a significant burden to state agencies but believes it to be justified based on review of the available accident data. The EPA relied primarily on the California Pesticide Illness Surveillance Program data. EPA's latest interpretation of the accident data differs from that of their summary listed in the 1999 RED. In the RED, it states that there were ten incidents at water/wastewater treatment plants in 1992-1993. The majority of the incidents involved tank changing, maintenance operations or equipment failure of in-place gas chlorination systems. Of the two fatalities noted in Florida, the RED states that both victims were asthmatics which may have contributed to their death. All of this data was reviewed in 1999 with the conclusion that chlorine gas did not need to be classified for restricted use for the industrial uses of drinking water, sewage, and wastewater treatment. The RED states "Pesticide handler's training would be of marginal benefit since it is geared toward agricultural uses, and would add a regulatory burden without providing additional protection to workers."

Section 4(g)(2)(A) of FIFRA calls for the Agency to determine, after submission of relevant data concerning an active ingredient, whether products containing the active ingredient are eligible for reregistration. EPA actually completed the chlorine gas RED document in late 1995 but delayed its public release until 1999 in order to consider the concerns of internal and external stakeholders. The delay of the release allowed EPA to validate its decisions by gathering additional analyses and feedback. The fact sheet for the RED (updated November 17, 1999) states, "Chlorine products registered for drinking water, sewage, and wastewater treatment uses, and residential pool use will not be considered Restricted Use because few related accidents or incidents of poisoning have been reported, suggesting that existing requirements are satisfactory. Additionally, for water treatment, applicators are already trained and state-certified to perform these uses." Now EPA is reversing this decision barely one year later without offering any new information to back up their change of opinion.

Some relevant data is available in the OSHA web page (<http://www.osha.gov>) by conducting an "accident search" of the database using the keyword "chlorine." It is not apparent from the information in the OSHA accident database that additional training as related to the use of chlorine as a pesticide, would have made any difference in the types of accidents that occurred. In addition, the RMP and PSM programs of EPA and OSHA should provide up-to-date information regarding incidents involving chlorine gas but neither of these programs are referenced in the notice. Instead, EPA seems to be leaning towards adding another regulatory program without evaluating the impact of the two programs already in place.

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Inconsistent Requirements Still a Problem... Now for Municipalities

The EPA rationale for including the water and wastewater treatment plant operators under the reclassification cites private industry concerns regarding inconsistent certification requirements for personnel serving as both water treatment plant operators and cooling tower operators. The certification requirements under the February 1999 rule for water treatment plant operations were different than the requirements for cooling tower operations. With the changes proposed in September 2000, municipal water and wastewater operators would be subject to the same inconsistency the rule is attempting to correct, i.e., they would be required to be certified twice, in two different disciplines, for doing a single job. The existing plant operator certification program for water and wastewater treatment provides the appropriate mechanism for demonstrating competency when dealing with chlorine gas. The federally mandated training required for treatment plant operators to retain their certification status is designed to ensure that adequate skills are maintained.

Requiring the Presence of a Certified Applicator for all Operations

In the EPA response to comments following the publication of the February 1999 rule the Agency states that "one certified applicator needs to be present for all operations." Many small water and wastewater treatment facilities operate unattended for significant periods of time each day. To require an on-site certified pesticide applicator during all applications of chlorine at a water or wastewater treatment facility (as these operations run continuously) would be a substantial and unwarranted financial burden to all water and wastewater treatment facilities, especially small operations. Furthermore, for small rural systems, the on-site presence of a certified operator is simply infeasible.

The PSM and RMP regulations address such cases. The primary danger to workers or the public is during a chlorine cylinder change-out and shipping/transportation of chlorine. Of course, operators must be present whenever chlorine cylinders are being changed out. The safety aspect of transportation of chlorine cylinders is also thoroughly regulated under other statutes. Consequently, it is very important to municipalities that EPA clarifies the requirement for "applicators to be present for all operations".

Thank you for the opportunity to comment on this proposal. We hope that the Agency will reconsider its position on the classification of chlorine gas as a registered use pesticide. If you need additional information or data from AMSA, I would be happy to discuss this with you. Additionally, I would like to request a meeting after the comment period closes to continue a dialogue and exchange of information with EPA. If you have any questions regarding these comments, please contact me at 202/833-9106.

Sincerely,



Mark P. Hoeke
Director, Government Affairs