



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Chemical Safety

EPA Needs Policies and Procedures to Manage Public Pesticide Petitions in a Transparent and Efficient Manner

Report No. 16-P-0019

October 27, 2015



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Abbreviations

ACUS	Administrative Conference of the United States
APA	Administrative Procedure Act
EPA	U.S. Environmental Protection Agency
FFDCA	Federal Food, Drug, and Cosmetic Act
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FY	Fiscal Year
NRC	Nuclear Regulatory Commission
NRDC	Natural Resources Defense Council
OAR	Office of Air and Radiation
OCSP	Office of Chemical Safety and Pollution Prevention
OGC	Office of General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPP	Office of Pesticide Programs

Cover photo: A farmer in Watsonville, California, sprays crops with pesticides. (EPA photo)

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At a Glance

Why We Did This Review

We evaluated the effectiveness of U.S. Environmental Protection Agency (EPA) processes used to track the receipt, disposition and resolution of public pesticide petitions. Specifically, we evaluated whether the EPA has processes to ensure transparency and consistency when responding to public pesticide petitions.

The EPA regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act. Public petitions can be submitted to the Office of Pesticide Programs (OPP) for rulemaking; to modify or revoke pesticide tolerances; to cancel a pesticide's registration(s); or to request a specific action on a policy, guidance or agency process.

This report addresses the following EPA goals or cross-agency strategies:

- *Ensuring the safety of chemicals and preventing pollution.*
- *Embracing EPA as a high-performing organization.*

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The full report is available at: www.epa.gov/office-inspector-general/oig-reports.

EPA Needs Policies and Procedures to Manage Public Pesticide Petitions in a Transparent and Efficient Manner

What We Found

OPP does not have policies or procedures to ensure transparency when managing public pesticide petitions. Due to the lack of transparency and direct communication, some petitioners sued the EPA for "unreasonable delay," resulting in unnecessary costs to the agency and public. OPP did not effectively communicate with petitioners in the following manner:

OPP's lack of policies and procedures to manage public pesticide petitions in a transparent and efficient manner leaves petitioners unaware of petition status, which can result in unreasonable delay lawsuits costing the agency time and resources.

- Acknowledge petition receipt.
- Provide updates about the agency's work to resolve petitions.
- Provide petition decisions.

In addition, OPP lacks policies and procedures to manage petitions in a generally efficient or effective manner. Specifically:

- Petition documentation was not readily accessible, which was inconsistent with each of the EPA's Records Management Policies in place during the timeframe of our review.
- Some petition data were inaccurate, which resulted in the duplication of work to confirm data.
- According to OPP, petitions may take weeks to arrive at the correct office for action, because there is no guidance on how to submit petitions directly to OPP.
- OPP does not provide guidance to the public on how to submit complete petitions, which resulted in some petitioners providing supplemental information, and increased the time and resources to reach petition decisions.

By contrast, the EPA's Office of Air and Radiation and the Nuclear Regulatory Commission are considered to have best practices with policies and procedures for acknowledging petition receipt, directly communicating the petition decision to the petitioner, and tracking petitions.

Recommendations and Planned Agency Corrective Actions

We recommend that the Assistant Administrator for Chemical Safety and Pollution Prevention develop policies and procedures to manage public petitions in a transparent, effective, and efficient manner; communicate directly with petitioners; train staff to adhere to the Records Management Policy; implement an effective tracking system for public petitions; and provide guidance to the public on how to submit petitions with sufficient data for review. The EPA agreed with our recommendations and has proposed acceptable corrective actions. All recommendations are resolved. No further response from the agency is needed.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

October 27, 2015

MEMORANDUM

SUBJECT: EPA Needs Policies and Procedures to Manage Public Pesticide Petitions in a
Transparent and Efficient Manner
Report No. 16-P-0019

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Jim Jones, Assistant Administrator
Office of Chemical Safety and Pollution Prevention

This is a report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The EPA office having primary responsibility for the issues evaluated in this report is the Office of Chemical Safety and Pollution Prevention's Office of Pesticide Programs.

Action Required

In accordance with EPA Manual 2750, your office provided acceptable and complete planned corrective actions in response to OIG recommendations. All recommendations are resolved and no final response to this report is required.

We will post this report to our website at <http://www.epa.gov/oig>.

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Purpose

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), evaluated how the Office of Chemical Safety and Pollution Prevention (OCSPP) tracks the receipt, disposition and resolution of public petitions. This evaluation focused on OCSPP's Office of Pesticide Programs (OPP) and its policies and procedures used to ensure consistency and transparency when responding to pesticide-related public petitions.

Background

The EPA regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In summary, FIFRA defines a pesticide as any substance intended to destroy, prevent or repel pests, such as insects, weeds, fungi and rodents. FIFRA requires that pesticides produced, sold or distributed in the United States be registered by the EPA.

In addition to pesticide registration, the Federal Food, Drug, and Cosmetic Act (FFDCA) authorizes the EPA to set tolerances (maximum pesticide residue levels) of a pesticide allowed in or on food. The EPA must review and re-register pesticides every 15 years.¹

The Public's Right to Petition

The public can submit pesticide petitions to the EPA under FIFRA, FFDCA, the Administrative Procedure Act (APA), or any combination of these authorities.

The APA requires agencies to respond to public petitions "within a reasonable time."

According to the APA, "each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."² While the APA does not establish procedures for how agencies resolve petitions for rulemaking, it does require agencies to respond to public petitions "within a reasonable time."

FIFRA does not address how a person can petition the agency, whereas FFDCA states any person can file a petition for a regulation to modify a pesticide's tolerance with the Administrator. FIFRA does not set requirements for the EPA to respond to the petitioner within a specific timeframe. However, the petitioner can file a lawsuit, under the APA, claiming unreasonable delay if the petitioner finds the EPA has not responded within what the petitioner considers a reasonable amount of time.

¹ OPP is primarily a licensing office and receives many applications from pesticide manufacturers related to the issuance of pesticide registrations and the establishment of tolerances.

² The APA governs the federal rulemaking process. It establishes requirements for federal agencies to promulgate rules, such as requiring agencies to make information available to the public about new rules, and allowing the public to comment on notices of proposed rules.

OPP and the agency’s Office of General Counsel (OGC) work together to respond to various types of public pesticide petitions (Table 1).

Table 1. Types of public petitions managed by OPP

Public petition	Actions requested
Registration	A petition from the public to cancel (terminate), suspend or modify a pesticide registration or registrations.
Rulemaking	A petition from the public to request the agency initiate an APA rulemaking to change the EPA’s FIFRA pesticide regulations.
Policy	A petition from the public to request a specific action on a policy, guidance, or agency process.
Tolerance	A petition from the public to revoke or modify a pesticide tolerance or tolerances.

Source: EPA Office of General Counsel.

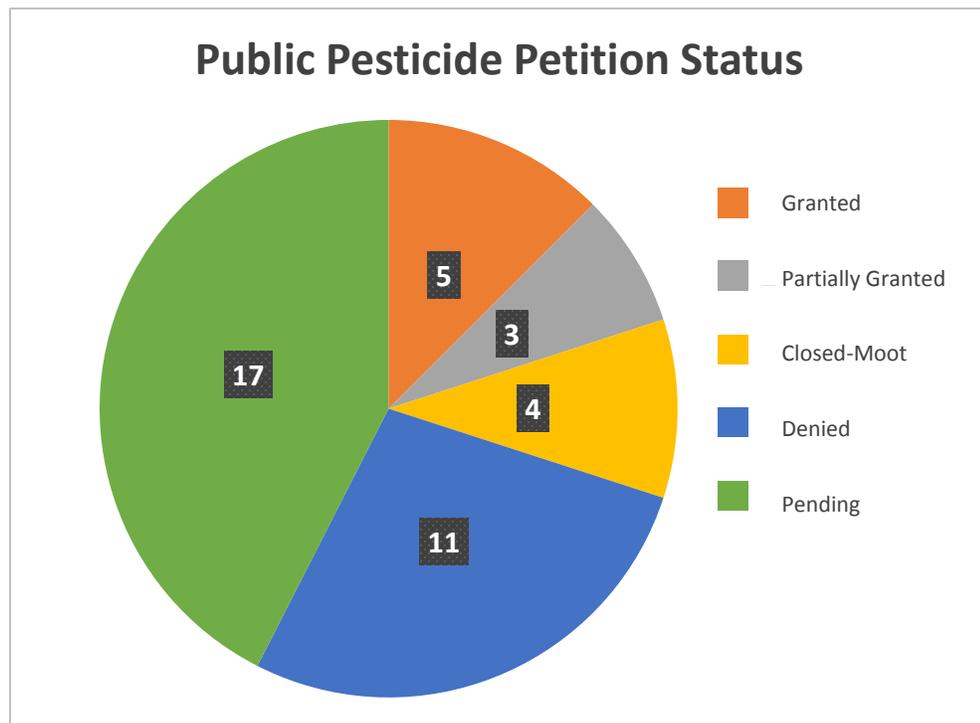
Petitions are received by the agency via mail, fax, email, or as online comments to ongoing pesticide regulatory work, such as a pesticide’s registration review.³ Public pesticide petitions can be directed to the EPA Administrator, sent directly to OPP and OGC officials, or sent to staff conducting assessments of the pesticide in question. When a public pesticide petition is received, both OPP and OGC assign staff to assess the scientific and legal requirements of the petition. When developing the final petition response, OPP and OGC work together to document a decision.

From fiscal years (FYs) 2005 through 2014, OPP received 40 public pesticide petitions that were submitted by members of the public. Most petitions addressed unique subjects, such as requests to revoke all tolerances, or to cancel or suspend specific pesticides. Some pesticide issues were the subject of more than one petition. OPP considered a petition closed/moot if the pesticide of interest was voluntarily canceled or the pesticide tolerance was revoked, rendering the petition “moot.” Based on OPP’s description of each petition’s status, we categorized the status as granted, partially granted,⁴ closed/moot, denied or pending (Figure 1).

³ To initiate a new pesticide registration or an existing pesticide registration review, the EPA opens an online public docket that will house risk assessments and supporting documents. The EPA allows the public to review and comment on the online dockets. When public petitions to revoke a pesticide’s tolerance are received as comments during the registration review process, OPP will typically open an online docket and publish a Notice of Receipt in the Federal Register.

⁴ When a petition is partially granted, it can mean that other aspects of the petition were partially denied.

Figure 1: Status of the 40 public pesticide petitions submitted (FYs 2005–2014)⁵



Source: The EPA.

OPP determines whether the petition includes the necessary scientific information to make a decision. When petitioners ask the agency to assess a pesticide in advance of the designated registration review timeframe, OPP will incorporate the petition into its ongoing work, based on established priorities. Making a petition decision requires review of complex technical and scientific data, which can be a lengthy process.

Management’s Responsibility to Promote Transparency and Efficient Use of Resources

The Administrative Conference of the United States (ACUS) provides recommendations and best practices pertaining to the management of petitions in a transparent and efficient manner.⁶ In 2014, ACUS adopted recommendations from the *Petitions for Rulemaking* report,⁷ which sets forth guidelines for agencies to follow when developing procedures for managing petitions.⁸ Best practices to

⁵ OPP verified petition data as of February 11, 2015.

⁶ An independent federal agency, ACUS provides recommendations and nonpartisan expert advice about improving administrative procedures. According to its website, ACUS promotes, “improved government procedures including fair and effective dispute resolution and wide public participation and efficiency in the rulemaking process.”

⁷ Schwartz, Jason A. and Revesz, Richard L (2014), *Petitions for Rulemaking Final Report to the Administrative Conference of the United States*. New York University Law School.

⁸ The *Petitions for Rulemaking* report is relevant to our evaluation because it provides best practices and recommendations for federal agencies managing formal requests from the public.

promote transparency and customer satisfaction include direct communication with petitioners to 1) acknowledge petition receipt, 2) provide status updates, and 3) provide petition decisions. Direct communication with petitioners throughout the petition process also reduces the risk of unreasonable delay lawsuits. Additionally, the *Petitions for Rulemaking* report recommends internal controls to promote efficiencies, such as using online platforms to educate the public about how to submit complete petitions and providing a point of contact for petition submissions.

The 2014 *Petitions for Rulemaking* report stated: “[O]ne of the biggest complaints among petitioners is that, after the agency sends an initial receipt and docketed the petition, the petition seems to enter a ‘black hole’: most agencies provide no regular updates and may disclose little about the petition’s status even if the petitioner reaches out to them.”

The EPA is responsible for managing its programs using internal controls, such as policies and procedures, to promote the efficient and effective use of resources. The Office of Management and Budget’s (OMB’s) Circular A-123 states that “[agency] management has a fundamental responsibility to develop and maintain effective internal control.” Further, OMB policy indicates that internal control includes policies, procedures and organization to meet agency goals, and reports on agency operations.

Responsible Offices

The EPA office with primary responsibility for the issues evaluated in this report is the Office of Chemical Safety and Pollution Prevention’s Office of Pesticide Programs. OGC also works in conjunction with OPP to determine petition requirements and draft the petition response.

Scope and Methodology

We conducted our work from November 2014 through August 2015. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We met with key OPP and OGC staff working on public pesticide petitions. We also met with other EPA program offices that manage public petitions (e.g., the Office of Solid Waste and Emergency Response, the Office of Air and Radiation and the Office of Pollution Prevention and Toxics).

From the 40 petitions received by OPP during the timeframe reviewed (FY 2005 through FY 2014), we randomly selected a sample of eight public petitions to determine the accuracy of petition information OPP managed and whether OPP

communicated directly with petitioners to acknowledge petition receipt, provide updates, or provide petition decisions. In addition, we also:

- Reviewed the prior EPA OIG Report No. 2006-P-0003, *Changes Needed to Improve Public Confidence in EPA's Implementation of the Food Quality Protection Act*, issued October 19, 2005.⁹ In response to the report, OPP said it would post petition responses on an EPA website or the Federal Register website. OPP also agreed to communicate petition decisions directly to the petitioners in order to increase transparency of the agency's work.¹⁰
- Reviewed the 2014 *Petitions for Rulemaking* report. The 2014 report assessed how federal agencies, including the EPA, processed formal rulemaking requests from the public and provided recommendations on how to improve the petition process.¹¹
- Met with one federal agency, the Nuclear Regulatory Commission (NRC), described in the *Petitions for Rulemaking* report as having best practices when responding to public petitions.
- Met with one stakeholder, the Natural Resources Defense Council (NRDC), which filed 11 of the 40 public petitions received by OPP during the timeframe reviewed.¹²

Results of Review

OPP does not have internal controls to manage public pesticide petitions in a transparent manner and does not effectively communicate with petitioners, which resulted in unreasonable delay lawsuits, costing petitioners and the agency time and resources. In our detailed analysis of eight petitions, we found OPP did not communicate directly in any instances with petitioners by sending letters acknowledging petition receipt. Further, OPP did not communicate updates of the EPA's ongoing work for five petitions, and four petitioners did not receive direct communication of the agency's petition decisions. The lack of transparency and direct communication with petitioners resulted in unreasonable delay lawsuits.

We also found that OPP lacks internal controls to manage petitions in an efficient and effective manner. OPP's petition documentation was not readily accessible, which is inconsistent with each of the EPA's Records Management Policies in place during the timeframe of our review. OPP informally tracks the status of

⁹ <http://www.epa.gov/oig/reports/2006/20051019-2006-P-00003.pdf>.

¹⁰ According to the EPA's audit tracking system, all recommendations have been fulfilled by OPP.

¹¹ The *Petitions for Rulemaking* report included an assessment of 26 federal agencies and 18 external stakeholders that were interviewed and/or responded to questionnaires concerning their perspectives on rulemaking petitions.

¹² NRDC submitted 11 public pesticide petitions to OPP from FYs 2005 through 2014; seven petitions were submitted independently by the NRDC, and four petitions were submitted in conjunction with other organizations.

some petitions, but we found the petition data were inaccurate. In addition, OPP lacks policies or procedures to provide the public guidance on how to submit a petition directly to its office, or how to submit a complete petition. Poor record-keeping practices, and the lack of guidance concerning how to submit petitions, create resource inefficiencies.

OPP Has No Policies or Procedures for Managing Public Petitions

OPP does not have policies or procedures to ensure a consistent and transparent process to support the efficient use of EPA resources when managing public pesticide petitions.¹³ Specifically, OPP does not have policies or procedures for:

- Communicating directly with petitioners, such as:
 - Acknowledging petition receipt directly with the petitioners.
 - Posting a Notice of Receipt to an appropriate website.
 - Providing petitioners with updates on the EPA’s work to resolve the petition.
 - Sending petition decisions directly to the petitioner, along with posting the decision to an appropriate website.
- Ensuring staff are trained to manage petition documentation so that the information can be retrieved in a timely manner.
- Tracking petitions in a formal and consistent manner.
- Providing the public with guidance for submitting petitions directly to OPP, and directions for submitting a complete petition with sufficient data for review.

Effective Communication With Petitioners Does Not Occur

The 2014 *Petitions for Rulemaking* report stated: “Stakeholders may anticipate that costly and unpredictable litigation over unreasonable delay would end up being necessary to prompt an agency to respond to a petition.”

In our review of eight petitions, we found that OPP did not effectively communicate petition receipt, status of petition review, or petition decisions directly to petitioners. NRDC stakeholders we interviewed said direct communication with petitioners, starting with acknowledgment of petition receipt, is important and would reduce risk of unreasonable delay lawsuits and

increase stakeholder confidence. Among our sample of eight petitions, OPP was unable to provide documentation that it communicated directly with petitioners to acknowledge petition receipt for any of the eight petitions. OPP said it may have

¹³ In contrast, OPP has procedures in place to manage petitions submitted by industry applicants to modify a pesticide’s tolerance. For example, OPP has procedures to receive and review industry tolerance petitions, prepare a Notice of Receipt for inclusion in the Federal Register, post decisions in the Federal Register, and maintain records of petitions submitted by industry applicants.

contacted petitioners to acknowledge petition receipt, but OPP did not have documentation.

OPP did not provide evidence of direct communication during the petition review process for five of eight petitions in our sample. OPP sent letters directly to one petitioner in our sample, providing partial responses and information about the EPA's ongoing work. However, OPP sent its letter almost 5 years after the petition was submitted, and only after the petitioner filed a lawsuit for unreasonable delay. In an effort to promote transparency with petitioners, OPP created public online dockets for four petitions in our sample, but not all petition information was available for review. In addition, OPP noted that it disseminates petition information through public meetings, online dockets, and flash news alerts posted on EPA websites.¹⁴

Among the 40 public petitions received by OPP from FYs 2005 through 2014, nine were associated with unreasonable delay lawsuits. The NRDC is responsible for initiating most of these (seven of nine, or 78 percent). NRDC stakeholders we interviewed stated that if the EPA had directly communicated petition status updates, they might not have initiated lawsuits.

During the review of petitions in our sample, we found that petition decisions are inconsistently communicated directly to the petitioner. In our sample of eight petitions,¹⁵ only three petition decisions were mailed directly to petitioners. NRDC stakeholders said that although they are sometimes aware that EPA petition-related work could be available in online dockets, it is not always clear if the work was conducted in response to the stakeholder's petition.

Records Management Requirements Are Not Met

The EPA's records management policies establish principles, responsibilities and requirements for managing agency records in compliance with federal laws and regulations. Each of the policies require that data be maintained in such a way to allow for easy or timely access and retrieval. For the eight petitions we reviewed, OPP staff were unable to quickly or easily retrieve petition documentation. In some cases, this was because the staff who worked most closely with the petition were no longer working with the agency.

Updated in February 2015, the EPA's Records Management Policy states each office within the EPA must establish and maintain a records management program, which includes a requirement to, "maintain records so they can be accessed by staff with a need to know the information for appropriate business reasons and maintained for the required retention period." The Records

¹⁴ NRDC stakeholders stated that posting information to public online websites is not the same as direct communication with the petitioner, because the petitioner could be unaware that the petition is being addressed in the online posting.

¹⁵ In our sample of eight petitions, seven petitions were resolved; one was still pending.

Management Policy also states that all employees transferring or leaving the agency identify and transfer records to another EPA employee.

Petition Tracking Data Were Inaccurate

During our review, we found several instances where the petition data initially provided by OPP were inaccurate concerning status, date of petition resolution, the statute under which the petition was submitted, or litigation record. We asked OPP and OGC to review their original petition data. Table 2 notes where OPP made changes to the original petitions information after we requested additional agency review.

Table 2: Agency corrections made to petition status due to OIG review

Status of public pesticide petitions	Initial OPP petition status	Corrected OPP petition status
Granted	2	5
Partially granted	4	3
Closed/moot	3	4
Denied	11	11
Pending	17	17
Unknown	3	0
Total	40	40

Source: The EPA.

When we requested OPP to reconfirm the petition tracking data provided to us, OPP and OGC changed the status of three petitions from pending to resolved,¹⁶ and the status of another two petitions changed from resolved to pending. OPP currently tracks petitions to revoke tolerances manually via a chart, but it does not have a policy to track the status of public petitions. Inaccurate petition status tracking resulted in the duplication of work and inefficient use of resources.

OPP Does Not Provide Guidance on How to Submit Public Petitions

OPP does not provide guidance on how to submit a public petition directly to its office, or how to submit a petition that provides sufficient data for review. According to the OGC, when petitions are sent only to the Office of the Administrator, it may take weeks before the petition arrives at OPP for action. OPP stated that because every petition is unique, the office does not have uniform processes for how petitions are received or routed through the agency. Moreover, OPP does not provide a point of contact for public petition submissions.

In addition, OPP does not provide guidance on what information must be submitted to ensure a petition is complete and has sufficient data for review. OPP noted that the petition review process is resource intensive, especially

¹⁶ Resolved indicates a petition was granted, partially granted, closed/moot or denied.

when petitions do not have sufficient data for review. Both OPP and OGC said petitioners can submit supplemental information or amendments to petitions, but both offices believe this practice can impact OPP's ability to resolve petitions in a timely manner. If petitioners receive guidance on how to submit public pesticide petitions with adequate data, the time and resources required to reach petition decisions could be reduced.

Best Practices for Managing Petitions

We documented best practices for managing petitions in another EPA office and federal agency. The EPA's Office of Air and Radiation (OAR) has internal controls to manage its petitions and prioritize transparency and efficiency. OAR sends letters acknowledging receipt of a petition, directly communicates the petition decision to the petitioner, and announces the decision in the Federal Register. The OAR also tracks petitions.

The *Petitions for Rulemaking* report recognized the Nuclear Regulatory Commission for numerous best practices when responding to rulemaking petitions.¹⁷ During our interview, we also confirmed that the NRC:

- Sends a letter to the petitioner acknowledging the receipt of a petition.
- Communicates with the petitioner if necessary.
- Places rulemaking petitions in online dockets for public access.
- Sends a letter to the petitioner with a notification of the petition decision.
- Publishes the petition decision in the Federal Register.

The NRC also has formal processes to manage petition resolution and maintains a comprehensive petition website detailing approximately 100 regulatory petitions received over the past 10 years. Adopting similar best practices would help the EPA improve its petition management processes.

Conclusion

OPP's lack of policies and procedures to manage public pesticide petitions in a transparent and efficient manner resulted in unreasonable delay lawsuits, duplication of work, and reduced customer satisfaction. The agency will reduce the risk of unreasonable delay lawsuits by effectively communicating with petitioners about petitions received, provide status updates, and provide petition decisions. OPP can reduce errors in its petitions tracking data by effectively tracking public petitions. OPP can also improve its record-keeping practices and adherence to the EPA's Records Management Policy.

Providing guidance to the public concerning how to submit a petition directly to OPP will reduce delays in OPP's receipt and subsequent action on a petition. In addition, providing guidance to the public concerning information the agency

¹⁷ The NRC stated the timeline to provide a response is "within 3 months."

considers necessary or sufficient in a petition supports higher quality petition submissions. Such guidance can also reduce the EPA's petition review and response time, and increase customer satisfaction.

Recommendations

We recommend that the Assistant Administrator for Chemical Safety and Pollution Prevention:

1. Develop policies and standard operating procedures to manage public petitions received by OPP in a transparent and efficient manner. These procedures should include direct communication with petitioners by:
 - a. Providing a letter to the petitioner acknowledging receipt of the petition.
 - b. Communicating petition decisions to the petitioner in writing.
 - c. Providing updates to petitioners about the status and progress of pending petitions.
2. Train staff managing public pesticide petitions to adhere to the EPA's Records Management Policy.
3. Develop and implement an effective petition tracking system for public pesticide petitions.
4. Provide criteria and guidelines for submission of public pesticide petitions that provide sufficient information for EPA review.

Agency Comments and OIG Evaluation

The agency agreed with our recommendations, and provided corrective actions and estimated completion dates that meet the intent of the recommendations. All recommendations are resolved. No further response to this report is required. The agency's detailed response is found in Appendix A.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	10	Develop policies and standard operating procedures to manage public petitions received by OPP in a transparent and efficient manner. These procedures should include direct communication with petitioners by: <ul style="list-style-type: none"> a. Providing a letter to the petitioner acknowledging receipt of the petition. b. Communicating petition decisions to the petitioner in writing. c. Providing updates to petitioners about the status and progress of pending petitions. 	O	Assistant Administrator for Chemical Safety and Pollution Prevention	10/2016		
2	10	Train staff managing public pesticide petitions to adhere to the EPA's Records Management Policy.	O	Assistant Administrator for Chemical Safety and Pollution Prevention	11/2016		
3	10	Develop and implement an effective petition tracking system for public pesticide petitions.	O	Assistant Administrator for Chemical Safety and Pollution Prevention	10/2016		
4	10	Provide criteria and guidelines for submission of public pesticide petitions that provide sufficient information for EPA review.	O	Assistant Administrator for Chemical Safety and Pollution Prevention	10/2017		

¹ O = Recommendation is open with agreed-to corrective actions pending.
 C = Recommendation is closed with all agreed-to actions completed.
 U = Recommendation is unresolved with resolution efforts in progress.

Agency Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

MEMORANDUM

SUBJECT: Comments on OIG Draft Report “EPA Needs Policies and Procedures to Manage Public Pesticide Petitions in a Transparent and Efficient Manner,”
Project No. OPE-FY15-0004

FROM: James J. Jones
Assistant Administrator

TO: Arthur A. Elkins, Jr.
Inspector General

This memorandum is in response to the Office of Inspector General's (OIG) Draft Report entitled “EPA Needs Policies and Procedures to Manage Public Pesticide Petitions in a Transparent and Efficient Manner” (August 3, 2015). The Office of Chemical Safety and Pollution Prevention (OCSPP) appreciates the OIG’s effort in evaluating the effectiveness of EPA’s processes used to track the receipt, disposition, and resolution of public pesticide petitions. OCSPP agrees with the OIG’s four recommendations. Accordingly, our response includes our proposed corrective actions and a timeframe for their implementation.

I. Background

As the OIG’s analysis revealed, OCSPP’s Office of Pesticide Programs (OPP) processes several different types of “petitions” in the normal course of its regulatory business. By far the most numerous of these are petitions for tolerance actions. Under section 408(d) of the FFDCA, any person can file a petition proposing the issuance of a regulation establishing, modifying, or revoking (a) a tolerance for a pesticide chemical residue in or on food, or (b) an exemption from the requirement to have a tolerance for such residue.

Petitions for tolerance actions must comply with the procedures detailed in 40 CFR §180.7(a) – (d). Such petitions generally fall into one of the four categories listed below:

- Petition to establish a new tolerance
- Petition to amend a codified tolerance
- Petition to revoke a codified tolerance
- Petition to establish an exemption from the requirement for a tolerance

Under 40 CFR §180.7(e) – (h), the Agency follows well established procedures for tracking, processing, and providing updates (online) to petitioners for tolerance actions. OPP receives and processes over a hundred tolerance action petitions annually. However, OPP also receives a much smaller number of other requests for Agency action, for which OPP does not currently have comprehensive procedures. These requests include:

- Petitions to promulgate regulations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Administrative Procedures Act (APA); and
- Petitions to take non-rule, regulatory actions under FIFRA (e.g., cancellation of pesticide registrations).

OCSPP agrees with the OIG recommendations that the Agency needs to standardize operating procedures to manage the latter category of public petitions in a more transparent manner.

OIG Response: OPP has procedures in place to manage tolerance petition actions submitted by industry applicants, as noted above. This evaluation did not address requests for action related to individual pesticide products and tolerances received from the pesticide industry (or other persons, such as growers or food importers, seeking the establishment of a tolerance). Instead, the focus of this evaluation was primarily on petitions for actions OPP receives from members of the public to revoke a tolerance. These petitions may ask the EPA to exercise its statutory authority to cancel or suspend the registrations of the pesticide that is the subject of the tolerance revocation petition.

II. OCSPP Responses to OIG’s Recommendations

Recommendation 1: The Assistant Administrator for Chemical Safety and Pollution Prevention should develop policies and standard operating procedures to manage public petitions received by the OPP in a transparent and efficient manner. These procedures should include:

1. Direct communication with petitioners by:
 - a. Providing a letter to the petitioner acknowledging receipt of the petition.
 - b. Communicating petition decisions to the petitioner in writing.
 - c. Providing updates to petitioners about the status and progress of pending petitions.

OCSPP Response:

OCSPP agrees with this recommendation. The program will develop appropriate policies and standard operating procedures (SOPs) to manage public petitions received by OPP in a transparent and efficient manner. The procedures will include the direct communication protocols listed in the OIG’s recommendation. Estimated date of completion: October 2016.

Recommendation 2:

Train staff managing public pesticide petitions to adhere to the EPA's current Records Management Policy.

OCSPP Response:

OCSPP agrees with this recommendation. The standard operating procedures described in Corrective Action 1 will address maintaining appropriate records for covered petitions. When the SOP is final, OPP will issue a memo informing appropriate staff and management of their responsibilities for maintaining these records, and directing the use of the SOPs to meet their responsibilities under the Agency's Records Management Policy. Estimated date of completion: November 2016.

Recommendation 3:

Develop and implement an effective petition tracking system for public pesticide petitions.

OCSPP Response:

OCSPP agrees that OPP does not have a formal tracking system specifically for pesticide petitions not covered by 40 CFR §180.7, such as petitions seeking FIFRA/APA rulemaking or cancellation of registrations. The standard operating procedures described in Corrective Action 1 will include procedures for tracking these petitions. Estimated date of completion: October 2016.

Recommendation 4: Provide criteria and guidelines for submission of public pesticide petitions that provide sufficient information for EPA review.

OCSPP Response:

OCSPP agrees, and commits to develop and post to the Agency Pesticides website criteria and guidelines for public submission of pesticide petitions not covered by 40 CFR §180.7. Estimated date of completion: October 2017.

III. Contact Information:

If you have any questions regarding this response, please contact Janet L. Weiner, OCSPP's Audit Liaison at (202) 564-2309.

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