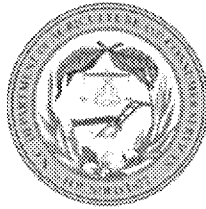


STEVE TROXLER
COMMISSIONER



State of North Carolina
Department of Agriculture and Consumer Services
Raleigh

November 29, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460-0001

Re: ***Request for Extension to Worker Protection Standard Implementation Timeline***

Dear Administrator McCarthy:

The North Carolina Department of Agriculture and Consumer Services requests that the U.S. Environmental Protection Agency extend the implementation of all revised provisions of the Agricultural Worker Protection Standard (40 CFR 170, as published in the Federal Register on November 2, 2015) until January 2, 2018, or until EPA has: (1) finalized and delivered adequate enforcement guidance, educational materials and training resources to the state lead agencies, and (2) provided the agencies the tools and financial resources necessary to effectively implement the rule changes and assist the regulated community with compliance activities.

NCDA&CS has prioritized outreach, compliance assistance and enforcement in regards to the Worker Protection Standard since the initial regulation was enacted in 1992. North Carolina's specialty crops and hand-labor-intensive crops have placed the state in the forefront of the national WPS program. NCDA&CS appreciates the EPA program staff's ongoing efforts to develop, revise, finalize and disseminate complete and accurate training materials, enforcement guidance, compliance materials and other necessary educational resources to assist EPA's state regulatory partners with successfully implementing the final rule changes. We have been working diligently with EPA program staff since the final rule was published in November 2015 to review, improve and facilitate the expeditious development and delivery of these materials prior to the January 2, 2017, and 2018 implementation dates, respectively. Unfortunately, much of EPA's work to develop and provide these critical compliance and enforcement materials to state regulatory agencies remains incomplete, and the release date in late 2015 did not allow for adequate outreach to occur during last year's grower meetings.

Frustrating the development and delivery of these critical training, guidance and compliance materials was the insertion and final articulation of the Application Exclusion Zone, which EPA has publicly acknowledged goes beyond the Agency's stated intent. Our Department expressed concerns in a December 4, 2015, letter to Jim Jones. NCDA&CS understands EPA's Office of General Counsel is working to issue interpretive guidance clarifying the Agency's intent under the final regulation; however, Agency guidance does not carry the weight and authority of a codified federal regulation and does not provide the necessary clarity to assist state regulatory agencies with compliance and enforcement activities. The N.C. Attorney General's Office has advised that we would be on shaky ground were we to regulate on the basis of interpretive guidance and ignore the plain language of the Standard.

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In August 2016, the Association of American Pesticide Control Officials sent a letter to EPA's Office of Pesticide Programs outlining their concerns with the lack of availability of train-the-trainer materials and the OGC's interpretive guidance regarding the AEZ. These concerns, along with the lack of implementation materials, remain unaddressed and further demonstrate the need for an extension to all pending WPS revisions until January 2018.

In September 2016, the National Association of State Departments of Agriculture's membership voted and approved an Action Item¹ during its annual meeting urging EPA to delay implementation of the revised WPS provisions. NASDA emphasized the new WPS regulations require significant additional staff time to provide outreach to workers, handlers, applicators, agricultural employers, trainers and other stakeholders. Under the WPS rule changes, trainers will now require retraining, and according to EPA's implementation timeline, this retraining must take place during the same period the state agencies are expected to conduct outreach and education to the producers in their states. In addition, the average actual on-site inspection under the former WPS rule averaged three hours in duration, but under the new rule these same inspections are anticipated to require approximately 50% more time due to the enhanced record keeping and site-information requirements. These enhanced compliance and record-keeping requirements require EPA's timely delivery of educational resources or training materials to assist SLAs and the regulated community in understanding, complying and enforcing the new requirements.

At this time, even if all the compliance and enforcement materials were completed and distributed to all the appropriate state enforcement agencies, there simply are not enough calendar days or training opportunities available in 2016 for SLAs to conduct necessary outreach and educational activities for the regulated community to facilitate a successful implementation of the provisions scheduled to take effect January 2, 2017.

We concur with NASDA's observations that this request to extend the implementation timeline is consistent with EPA's delay in implementation and enforcement to the WPS² rule promulgated in 1992, which was implemented in the field in 1995-96. The previous WPS implementation delay was required due to the lack of necessary training materials for pesticide workers and pesticide handlers, compliance assistance materials for agricultural employers, and inspection guidance materials for state regulators. Therefore, as the co-regulatory partner with EPA for the past 42 years, the NCDA&CS respectfully requests EPA delay the implementation dates of any further revised provisions to the WPS until January 2, 2018.

The implementation and compliance with the WPS rule changes are the responsibility shared by EPA, state regulatory agencies, agricultural employers, trainers and workers. This requested extension to the implementation timeline is essential to ensure EPA's state regulatory partners and the regulated community have the appropriate information, training and resources necessary to successfully implement the WPS rule changes. Implementing these regulatory changes without providing the necessary educational resources or training materials to assist state regulatory agencies and the regulated community in understanding the new requirements and how to comply with them is inappropriate and in direct conflict with the fundamental principle of "educate before you regulate."

We look forward to your reply.

Sincerely,



Steven W. Troxler
Commissioner

¹ NASDA Action Item H: *Implementation of Revised Agricultural Worker Protection Standard* (Sept. 2016); <http://www.nasda.org/File.aspx?id=45396>

² 40 C.F.R. §170