National Association of State Departments of Agriculture
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November 16, 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 National Association of State Departments of Agriculture (NASDA) requests the U.S. Environmental Protection Agency (EPA) extend the implementation of all revised provisions of the Agricultural Worker Protection Standard (WPS) (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 (SLA); and (2) provided the SLAs the tools and financial resources necessary to effectively implement the rule changes and assist the regulated community with compliance activities.

NASDA represents the Commissioners, Secretaries, and Directors of the state departments of agriculture in all fifty states and four U.S. territories. State departments of agriculture are responsible for a wide range of programs including food safety, combating the spread of disease, and fostering the economic vitality of our rural communities. Conservation and environmental protection are also among our chief responsibilities. In forty-three states and Puerto Rico, the state department of agriculture is a co-regulator with EPA and responsible for administering, implementing and enforcing the production, labeling, distribution, sale, use and disposal of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)[1] and other applicable laws and regulations.

NASDA appreciates EPA's program staffs' on-going 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 executing a successful implementation of the final rule changes. The state departments of agriculture 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, NASDA notes much of EPA's work to develop and provide these critical compliance and enforcement materials to state regulatory agencies remains incomplete.

[1] 7 U.S.C. §136, *et. seq.*

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Frustrating the development and delivery of these critical training, guidance, and compliance materials was the insertion and final articulation of the Application Exclusion Zone (AEZ), which EPA has publicly acknowledged goes beyond the Agency's stated intent. NASDA understands EPA's Office of General Counsel (OGC) 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.

In August 2016, the Association of American Pesticide Control Officials (AAPCO), which is a NASDA Affiliate Organization, 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 NASDA membership voted and approved an Action Item[2] during our 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 of the compliance and enforcement materials were completed and distributed to all the appropriate state enforcement agencies, there are simply not enough calendar days or training opportunities available in 2016 outreach and educational activities between the SLAs and the regulated community necessary to facilitate a successful implementation of the provisions scheduled to take effect on January 2, 2017.

NASDA notes this request to extend the implementation timeline is consistent with EPA's delay in implementation and enforcement to the WPS[3] 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-

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

[3] 40 C.F.R. §170

regulatory partner with EPA in forty-three state and Puerto Rico, NASDA 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 effectuate a successful implementation of 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."

NASDA looks forward to your reply. Please contact Dudley Hoskins (dudley@nasda.org) if you have any questions or would like to discuss this request further.

Sincerely,

Nathan Bowen
Director, Public Policy
NASDA

cc: Hon. Tom Vilsack, Secretary, U.S. Department of Agriculture (USDA)
Mr. Michael Scuse, Acting Deputy Secretary, USDA
Mr. Doug McKalip, Senior Advisor to the Secretary, USDA
Dr. Sheryl Kunickis, Director, Office of Pest Management Policy, USDA
Mr. Jim Jones, Assistant Administrator, Office of Chemical Safety and Pollution Prevention, EPA
Mr. Jack Housenger, Director, Office of Pesticide Programs, EPA
Mr. Ron Carleton, Agricultural Counselor to the Administrator, EPA

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