John McMillan
Commissioner

STATE OF ALABAMA
DEPARTMENT OF AGRICULTURE AND INDUSTRIES
1445 Federal Drive • Montgomery, Alabama 36107-1123

November 22, 2016

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

The Alabama Department of Agriculture and Industries (ADAI) 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); (2) provided the SLAs the tools and financial resources necessary to effectively implement the rule changes and assist the regulated community with compliance activities; and/or (3) empower the EPA Office of Compliance and Enforcement Assurance (OCEA) set a timeframe for compliance assistance where the applicators falling under the new WPS rules can be properly educated and allowed time to implement the new requirements.

ADAI has actively worked to monitor the progress of the WPS rule implementation. The Alabama Cooperative Extension System (ACES) is our statutory partner in all of the educational aspects of the implementation of the Alabama Pesticide Act, including WPS. The ADAI and ACES partnership in regulating and educating applicators is well established and robust. Neither ADAI nor ACES have had sufficient time to outreach to our applicators. In fact our first Train the Trainer workshop for ACES Extension Agents is not scheduled until mid-December 2016. No education to our application community has commenced to date. It is a situation that is unfortunate for all involved parties. The SLA's are charged with the enforcement of the new rule implementation, however, because of the timing of the training material development and rollout we do not have sufficient time to reach out and educate our applicators. Alabama applicators will be subject to the full implementation of the requirements dated January 2, 2017. Due to no fault of their own, Alabama applicators could be in violation of the new requirements of the WPS rule without any education or training on this rule. Internally, EPA and the SLA's are still working to agree on how to implement the new rule provisions

including interpretation of key components. This sets an unreasonable and unfair precedent for the roll-out of a Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) rule. A fair and reasonable compliance assistance timeframe has always been part of any new FIFRA rule rollout. This places SLA's in an untenable position. States, through the Association of Pesticide Control Officials (AAPCO) and the National Association of State Departments of Agriculture (NASDA), have clearly voiced the need to recognize this enforcement implementation timing issue. EPA should strongly consider this letter, along with the AAPCO and NASDA letters as an urgent need to address this serious issue with a reasonable approach.

As regulatory partners, EPA depends on the regulatory framework and resources of the SLA's to achieve the goals of full implementation of the WPS rule revisions. ADAI takes our role in this process seriously and we ask for due consideration and a common sense compromise to achieve our mutual goal of protecting workers and handlers from pesticide exposure.

Sincerely,

John McMillan, Commissioner

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
Ms. Beverly Bannister, Director, Air, Pesticides. And Toxics Management Division, EPA Region 4