LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY
MIKE STRAIN DVM
COMMISSIONER

November 20, 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: Gina

The Louisiana Department of Agriculture and Forestry (LDAF) 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.

The LDAF 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, as NASDA notes, much of EPA's work to develop and provide these critical compliance and enforcement materials to state regulatory agencies remains incomplete.

Moreover, the insertion and final articulation of the Application Exclusion Zone (AEZ), which EPA has publicly acknowledged goes beyond the Agency's stated intent, has frustrated the development and delivery of these critical training, guidance, and compliance materials. While I understand EPA's Office of General Counsel (OGC) is working to issue interpretive guidance clarifying the Agency's intent under the final regulation, 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) 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

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implementation materials, remain unaddressed and further demonstrate the need for an extension to all pending WPS revisions until January 2018.

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.

As 2016 is almost behind us, 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.

This request to extend the implementation timeline is consistent with EPA's delay in implementation and enforcement to the WPS 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, I respectfully request EPA delay the implementation dates of any further revised provisions to the WPS until January 2, 2018. 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."

Thank you for your consideration of this request. I welcome the opportunity to discuss these matters further with you.

Sincerely,

Mike Strain, DVM
Commissioner