



December 6, 2016

U.S. Environmental Protection Agency

Re: **Comments on Proposed 2018-2021 FIFRA Cooperative Agreement Guidance**

To Whom It May Concern:

The Tribal Pesticide Program Council (TPPC) is pleased to submit these comments and recommendations regarding the U.S. Environmental Protection Agency's (EPA's) proposed 2018-2021 FIFRA Cooperative Agreement Guidance (hereinafter "Guidance").

INTRODUCTION

The TPPC is an autonomous organization with more than 60 member Tribes and Tribal organizations. The TPPC is a Tribal technical resource, and program and policy development dialogue group, focused on pesticides issues and concerns. The TPPC assists Indian Tribes in building Tribal pesticide programs, providing pesticide education and training, and researching, developing, and presenting a broad range of Tribal pesticide-related issues and concerns. It is important to note that the views expressed by the TPPC may not be agreed upon by all Tribes. There are 567 federally recognized Tribes whose views and circumstances are unique. Hence, "one size does not fit all." As such, it is important that EPA understand interactions with the TPPC do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Tribes.

The TPPC would like to thank EPA for giving the organization an opportunity to review the Guidance and provide its comments and recommendations regarding the following issues: FIFRA work plan-report template; pesticide application certification; pesticides in water; state and tribal coordination; and time factor values.

FIFRA WORK PLAN-REPORT TEMPLATE

The Guidance provides that EPA has developed a FIFRA Cooperative Agreement Work Plan-Report Template (Template), with "extensive input" from states,¹ to be used by states and tribes² to enter work plan and report data for their FIFRA Cooperative Agreements with the

¹ The TPPC finds it problematic that the Guidance mentions states as the only contributors to the Template. The TPPC is aware of several Tribal representatives who also provided input to EPA during the design process of the Template.

² All grantees must use beginning in Fiscal Year 2017.

goal of reducing the administrative burden for the grantees and EPA regional personnel involved in putting this information together.³ The TPPC finds that this goal will be unachievable until EPA replaces the container for the Template, *i.e.*, an Excel spreadsheet, with something more user-friendly.

The Excel spreadsheet used for the Template is something that a number of Tribal inspectors have found difficult to use. For example, some Tribal inspectors found that, in completing their latest annual end of year reporting, it was difficult to match work items and field efforts to the categories on the Template because work items overlapped in the required or pick list row. Several other Tribal inspectors have found that the Template is difficult to manipulate and the size of the folder exceeds email capacity. If incorrect data is entered into the Template, Tribal inspectors find it difficult to make a correction due to the size of the document. These problems are compounded further when Tribal inspectors are required to print off the Template. One Tribal inspector shared with the TPPC that it took her over two hours to print out the Template which she had to do as part of a quarterly report for her Tribe's Contracts and Grants Department. Finally, the Template is state-specific in some areas and includes both states and tribes in other areas, thereby causing the Template to be inconsistent.

The TPPC recommends that EPA commit the resources necessary to develop a web-based application in place of the current Excel spreadsheet to be used by state and Tribal inspectors to enter work plan and report data for the purpose of improving the experience of the state and Tribal inspectors in entering such data into the Template; better insuring that accurate data is entered; and providing appropriate references to states and/or Tribes throughout the Template.

PESTICIDE APPLICATOR CERTIFICATION

The TPPC finds that several of the Required Activities for Pesticide Applicator Certification are not truly required of Indian Tribes with FIFRA Cooperative Agreements such as Required Activities 03.01.02, 03.01.03, and 03.01.07.

Required Activity 03.01.02 provides:

Continue implementing pesticide applicator certification programs in accordance with current EPA-approved certification plans and Part 171 requirements until such time that revised, EPA-approved certification plans complying with the new revised Part 171 rule requirements are in place.⁴

Required Activity 03.01.03 provides:

Develop and submit to EPA revised certification plans that meet the requirements of the revised certification rule. This includes making any necessary regulatory and legislative changes and

³ Guidance at 3. *Also see* Appendix 10 for Template guidelines.

⁴ Guidance at 7.

establishing requisite policies or procedures to comply with the revised rule requirements and all applicable Part 171 program guidance regarding development, submission, approval and maintenance of certification plans.⁵

Required Activity 03.01.07 provides:

Meet state and tribal certification plan requirements for certification plan maintenance and annual reporting using the Certification Plan and Reporting Database (CPARD).⁶

Title 40 C.F.R. Part 171 provides that an Indian Tribe *may* develop its own plan for certifying private and commercial applicators to use or supervise the use of restricted use pesticides (RUPs); use a state's plan with that state's concurrence; or EPA can implement a federal plan for the certification of applicators of RUPs. Hence, a Tribe can choose to take action regarding the certification of applicators by adopting its own plan or that of a state, or do nothing with the expectation that EPA will address such certification.

The TPPC recommends that the Guidance make clear that the aforementioned activities are not Required Activities for Indian Tribes with FIFRA Cooperative Agreements, and to do the same for other Required Activities in the Guidance that may be not be required of such Tribes.

PESTICIDES IN WATER

Required Activity 06.01.01 provides:

For pesticides scheduled for registration review, submit existing water quality monitoring data not already provided to EPA, housed in the USGS National Water Information System (NWIS), entered into EPA's STORET Data Warehouse, or otherwise readily/publicly accessible to the EPA via the web. See OPP Guidance for Submission of State and Tribal Water Quality Monitoring Data, Appendix 6.⁷

The TPPC is aware of at least one Indian Tribe with a FIFRA Cooperative Agreement that has never been able to enter water quality monitoring data into EPA's STORET Data Warehouse. If EPA is making this a required activity of FIFRA Cooperative Agreement grantees, it must insure that these grantees are able to enter the necessary data.

The TPPC recommends that EPA consult with each Indian Tribe having a FIFRA Cooperative Agreement to determine whether it is able to enter water quality monitoring data into EPA's STORET Data Warehouse and any other such systems to which EPA expects data to

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 8. The Guidance has the Required Activity mislabeled as 04.01.01.

be entered. The TPPC is willing to help EPA coordinate this effort with the Tribes. Further, the TPPC recommends that, for any Tribe unable to enter the required data, EPA work closely with the Tribe to enable the data to be entered or negotiate with the Tribe to remove this as a requirement of its FIFRA Cooperative Agreement.

STATE AND TRIBAL COORDINATION

Pick-List Activity 12.02.02 provides:

Offer tribes an opportunity to ride along with state pesticide inspectors as training for tribal pesticide inspectors.⁸

The TPPC finds this activity as too limiting and recommends the following as replacement language for Pick-List Activity 12.02.02:

Offer tribal pesticide inspectors an opportunity to ride along with state or other tribal pesticide inspectors as training for the tribal pesticide inspectors, or offer state pesticide inspectors an opportunity to ride along with tribal pesticide inspectors as training for the state pesticide inspectors about working in Indian Country.

TIME FACTOR VALUES

Appendix 9 of the Guidance provides a set of time factor values as a guidance in evaluating pesticide enforcement cooperative agreement applications with respect to inspection and sample analysis activities.⁹ These time factor values are the result of a survey conducted by EPA in 1997 in consultation with the State FIFRA Issues Research and Evaluation Group.

The TPPC finds that the time factor values are outdated, *i.e.*, approximately 20 years old, and unrepresentative of the concerns of Indian Tribes that were never consulted in development of the factors. Specifically, Tribes have had a longstanding concern about the failure of the time factors values to reflect, with any accuracy, the amount of time necessary to conduct Tribal FIFRA inspections in Indian Country. In 2016, EPA met with members of the TPPC to discuss this concern, and at which meeting the members identified several reasons for a need to reflect increased hours and new time factor values for Tribal FIFRA Cooperative Agreements.

Inspectors under a Tribal FIFRA Cooperative Agreement perform a number of activities likely beyond those required of state inspectors. These additional activities are inherent for Tribal programs that typically have small budgets and few employees. Most often, Tribal FIFRA Cooperative Agreements are managed by one person who is responsible for all of the inspection and administrative activities. The increased administrative workload for a single

⁸ *Id.* at 12.

⁹ *Id.* at 97.

person prevents a Tribal program from obtaining the same efficiencies that many state programs have with infrastructure and administrative support functions in place. Tribal inspectors often have to maintain their program vehicles, upgrade their own computer equipment or continue to use outdated and slow computers, and develop and manage their own systems for tracking inspections and reporting performance. Further, a Tribal inspector for a circuit rider program generally spends additional time coordinating with the partner Tribal government before and after each inspection, and may have to travel considerable distances several times to complete a single inspection.

The TPPC recommends that the Guidance provide for time factor values that reflect with better accuracy the amount of time necessary for Tribal inspectors to conduct FIFRA inspections in Indian Country. To this effect, the TPPC also recommends that EPA engage in meaningful government-to-government consultation with Indian Tribes having FIFRA Cooperative Agreements as a means to define the appropriate time.

CONCLUSION

In summary, the TPPC is pleased to provide the aforementioned comments regarding the Guidance. If EPA should have any questions of the TPPC, please feel free to contact the TPPC via e-mail at fcory@micmac-nsn.gov.

Respectfully Submitted,

A handwritten signature in black ink that reads "Fred Corey". The signature is written in a cursive style with a large, looped "F" and "C".

Fred Corey, Chair
Tribal Pesticide Program Council
Aroostook Band of Micmacs, Environmental Department