August 22, 2014

OPP Docket
U.S. Environmental Protection Agency Docket Center (EPA/DC)
Mail Code: 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Subject: Comments on the Proposed Agricultural Worker Protection Standard Revisions

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 Agricultural Worker Protection Standard Revisions (hereinafter "Proposed Rule").[1]

INTRODUCTION

The TPPC is an autonomous organization with approximately 45 member Tribes and Tribal organizations. The TPPC is a Tribal technical resource, and program and policy development dialogue group focused on pesticide issues and concerns. The TPPC assists Tribes in building Tribal pesticide programs, providing pesticide education and training, researching, developing and presenting a broad range of Tribal pesticide-related issues and concerns. Although the TPPC always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the TPPC may not be agreed upon by all Tribes. Furthermore, it is also important that EPA understands 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 Indian Tribes.

The TPPC approves generally of the Proposed Rule. The TPPC finds that revisions to the worker protection standard (WPS) for agricultural workers and handlers are necessary and will help to further ensure that such workers and handlers are adequately protected. However, the TPPC finds it necessary to provide EPA with its comments and recommendations regarding the

[1] *See* Pesticide; Agricultural Worker Protection Standard Revisions, 79 Fed. Reg. 15444 (March 19, 2014).

following issues: clarity of the WPS regulation, pesticide safety training, mandatory postings, personal protective equipment, and Tribal consultation.

CLARITY OF WPS REGULATION

EPA proposes to revise and reorganize the WPS regulations into the following four sections to help employers understand better their responsibilities as a means to increase their compliance with WPS:

1. General requirements;
2. Responsibilities of agricultural employers;
3. Responsibilities of handler employers; and
4. Exceptions.[2]

The TPPC finds this a welcome and necessary approach. The TPPC has a genuine concern about WPS compliance by employers, particularly those who operate on or near Tribal lands. As such, the TPPC supports any and all means to revise and reorganize the WPS regulations to enhance compliance among employers, and to also help increase the understanding of workers and handlers and their representatives about what is required of employers regarding the regulations.

PESTICIDE SAFETY TRAINING

1. Retraining Intervals. Current WPS regulations require workers and handlers to be retrained once every five (5) years.[3] EPA proposes to reduce this retraining interval so that workers and handlers are retrained annually.[4]

Based on the input from some tribes that deal with workers and handlers, the two (2) year retraining interval would be sufficient and would also match closely with the Proposed Rule's requirement of employers maintaining training records of workers and handlers for two (2) years.[5] Based on some of the tribes comments regarding training intervals a two (2) year retraining interval offers a much better opportunity for workers and handlers than current WPS regulations to learn about and retain WPS information critical to the safety of them and their families.

EPA acknowledges that it considered a two (2) year retraining interval.[6] Its primary rationale for not proposing such a retraining interval is that it doesn't foster the retention of information by workers and handlers like an annual retraining interval. The TPPC finds this a poor rationale because arguably, a six (6) month retraining interval is better than an annual

[2] *Id.* at 15448.
[3] *Id.* at 15459. *See also* 40 C.F.R. §§170.130(a), 170.230(a).
[4] *Id.* at 15460.
[5] *Id.* at 15462.
[6] *Id.* at 15460.

retraining interval, and a three (3) month retraining interval is better than a six (6) month training interval, etc.

EPA also indicates that, if a two (2) year retraining interval was used, it could be more burdensome to employers who would be required to track WPS retraining on a schedule different than those OSHA trainings required on an annual basis by the Department of Labor (DOL).[7] However, the TPPC sees no logic in EPA's claim. Employers are already doing this, having to track WPS retraining on a five (5) year schedule while also having to track annual OSHA trainings.

2. Train-the-Trainer Programs. EPA proposed to require trainers of workers to complete an EPA-approved Train-the-Trainer program by which certified applicators would no longer be automatically considered qualified to train workers.[8]

The TPPC agrees with this approach in principle. However, we find that it is problematic in at least three ways. First, Train-the Trainer programs are difficult to find in rural areas, the same areas in which many Tribes are located. Related to this fact is that few of these Tribes oversee pesticide enforcement programs that would allow them to designate someone as a trainer of certified applicators. While some Tribes have communicated with nearby state agricultural departments about partnering in development of Train-the-Trainer programs, many more Tribes are not in a similar position to do the same. Second, the funds to support Train-the-Trainer programs is shrinking, with agencies offering such training having to compete for dollars against other pesticide-related priorities such as compliance, outreach, and enforcement. Third, any proposed trainings, not just those related to Train-the-Trainer, can cause hardships for employers, particularly small orchards, nurseries, and farms with limited resources to adequately train seasonal employees. The TPPC seeks an opportunity to discuss these problems with EPA to determine possible solutions.

3. Expanded Training Content. EPA proposes to expand the content of pesticide safety training for the purpose of better protecting workers and handlers from the adverse effects of pesticide exposures.[9]

The TPPC agrees with the additional training content, but we must provide two recommendations specific to this training. First, the TPPC recommends that the arsenal of WPS EPA-approved training materials be diverse enough so that sufficient materials are available for every type of employee trained. For example, existing training materials on CD-ROM show a group of migrant Hispanic workers watching a Caucasian employer. However, many local farmers and ranchers with whom TPPC members work have indicated that such materials are inapplicable to their circumstances since they do not employ migrant workers. Training materials must be available that is applicable to the specific circumstances of these farmers and

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[7] *Id.* at 15460-15461.
[8] *Id.* at 15465. EPA or a state or tribal agency responsible for pesticide enforcement could also designate someone as a trainer of certified applicators. *Id.*
[9] *Id.* at 15467-15471.

ranchers. Second, the TPPC recommends that new WPS EPA-approved training materials be provided on DVD and Blu-Ray Discs. This would allow workers and handlers, in areas where large screen TV's or monitors may not be available, enabling them to view such materials more easily as compared to having them huddle around a single computer screen where they might be unable to hear and understand the training content related to the hazards of pesticides.

MANDATORY POSTINGS

EPA proposes that to protect workers against pesticide applications, employers, for "outdoor" production, post warning signs where the pesticide to be applied has a restricted-entry interval (REI) greater than forty-eight (48) hours; and for "indoor" production, post warning signs where the pesticide to be applied has an REI greater than four (4) hours.[10]

The TPPC agrees about the need to post under both circumstances, but recommends for greater protection of workers against pesticide applications. Specifically, the TPPC recommends that, for outdoor production, employers should post warning signs when a pesticide has an REI equal to or more than forty-eight (48) hours; and that for indoor production, employers should post warning signs when a pesticide has an REI equal to or more than four (4) hours.

PERSONAL PROTECTIVE EQUIPMENT

EPA proposes to adopt the California (CA) closed system standard for personal protective equipment (PPE) as outlined in a Director's Memo (Memo) in the Proposed Rule.[11] Further, CA is considering changes to the Memo criteria and EPA has indicated that it will consider any such changes when developing a final standard for closed systems in the WPS.[12]

The TPPC does not disagree that a closed system standard is necessary. However, we do not find that the Director's Memo is sufficiently detailed enough for us to conclude that the CA standard is the best to use, nor do we have any understanding about what changes to the Memo that CA is considering which EPA may adopt as part of its own closed standard. As such, the TPPC recommends that EPA's adoption of a closed system standard for WPS be considered in a separate rulemaking and that this rulemaking include any changes to the Memo by CA that EPA might consider including in its closed system standard.

EPA proposes to also require handlers to comply with the respirator fit testing, training, and medical requirements set by the Occupational Safety and Health Administration (OSHA) at 29 C.F.R. §1910.134.[13]

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[10] *Id.* at 15472.
[11] *Id.* at 15497.
[12] *Id.*
[13] *Id.* at 15499.

The TPPC finds that, for many of our members, training is not readily available in their areas, and that medical evaluations are difficult to obtain for handlers. The TPPC recommends that EPA provide increased training resources, particularly in rural areas where Tribes largely reside, and to work with other federal agencies to increase the availability of medical evaluations in these areas for handlers.

TRIBAL CONSULTATION

EPA provides that the Proposed Rule does "not have tribal implications as specified in Executive Order 13175."[14] The rationale for EPA's finding is that the Proposed Rule "would not regulate tribal governments directly; agricultural employers are the directly affected entities."[15] The TPPC finds that this is contrary to what EPA states in the Proposed Rule:

> It is appropriate for these employers to [b]ear the cost of the protections for their employees, rather than to impose the costs on workers and handlers themselves. Through the WPS and these proposals, EPA seeks to have those responsible for making pesticide use decisions and applying pesticides internalize the effects of their decisions.[16]

Hence, the cost of the Proposed Rule would be borne by employers which include a number of Tribes that own and operate farms and greenhouses. As such, the Proposed Rule does have implications to Tribes and, as Executive Order 13175 provides, EPA must develop an accountability process to ensure "meaningful and timely input by development of regulatory policies that have tribal implications." This necessitates that EPA consult with Tribes and their leaders on a government-to-government basis. Until this is done, the TPPC finds that the EPA will have failed to meet its obligations under Executive Order 13175 and its trust responsibility to Tribes.

CONCLUSION

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

Respectfully Submitted,

Fred Corey

Fred Corey, Chair
Tribal Pesticide Program Council

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[14] *Id.* at 15514.
[15] *Id.* at 15514-15515.
[16] *Id.* at 15449.

Aroostook Band of Micmacs, Environmental Department

cc: Kathy Davis
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