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State House, Second Floor
Indianapolis, Indiana 46204

Eric J Holcomb
Governor

May 15, 2017

Administrator Scott Pruitt
Environmental Protection Agency
Washington, D.C. 20460

RE: Evaluation of Existing EPA Regulations, 82 FR 17793-01

Dear Administrator Pruitt,

The following comments are provided by the Indiana State Department of Agriculture (ISDA), the Indiana Environmental Management Agency (IDEM), and Office of Indiana State Chemist & Seed Commissioner (OISC), pursuant to the Environmental Protection Agency's call for comments under the President's regulatory reform Executive Order (EO 13,777).

The purpose of these comments is to express our general concerns about federal regulatory over reach, regulatory inefficiencies, and limited value added benefits of parts or all of the referenced items. Below regulations are listed, state impact described, and proposed EPA fixes are outlined addressing concerns for each of our agencies.

Indiana State Department of Agriculture

Regulation: Renewable Fuel Standard (RFS), Energy Independence and Security Act

State Impact: Ethanol is a critical component of a diverse agricultural economy, particularly when commodity prices remain low and farm incomes are experiencing a steep decline in four consecutive years. The RFS bolsters rural economies by creating an additional market for corn, promotes energy independence, creates jobs, and reduces air pollution. Unfortunately, the EPA has set proposed volume standards below the levels called for by law. This creates market uncertainty which can stall the growth in the renewable energy sector and in rural communities.

Proposed Fix: EPA should abide by its statutory directive and set forth the volume standards called for in the law. This will provide clarity and certainty in regulation and in the market place.

Regulation: Restricted sale of E15 blended fuels from June 1 through September 15.

State Impact: Indiana farmers and consumers suffer an economic disadvantage because of the regulatory blockade EPA imposes upon the sale of E15 during the summer months. From June 1 through September 15, EPA prohibits the sale of E15 in much of the country, and all of Indiana, in order to limit evaporative emissions from fuels, which occur at higher rates in hotter temperatures. The emissions rate is determined using the

Reid Vapor Pressure (RVP) standard – the higher the RVP of a fuel, the worse its emissions. E15 is a cleaner burning, lower emitting fuel than straight gasoline, which is allowed to be sold year-round.

Proposed Fix: EPA should extend the Reid Vapor Pressure waiver to E15 or higher blend fuels to allow for their sale year-round. Congress should pass legislation to make this change permanent.

Regulation: Renewable Enhancement and Growth Rule (REGS Rule)

State Impact: Under this proposed rule, EPA purports to facilitate further expansion of ethanol blended fuels. However, as part of this rule, EPA would classify midlevel ethanol blends (E16-E83) as suitable only for Flex Fuel Vehicles (FFVs) on the grounds that such fuels are not “substantially similar to any fuel or fuel additive utilized” in the certification of new motor vehicles. Under this misinterpretation EPA would have to grant a waiver to allow midlevel blends to be sold for use in non-FFVs. But ethanol is presently used in the certification of new motor vehicles and therefore meets the “substantially similar” fuels test.

Proposed Fix: EPA should revisit its interpretation of the Clean Air Act as to allow the use of midlevel ethanol blends in gasoline vehicles dated 2001 or newer. This would promote public health, create more choice for consumers, and spur additional demand in the agricultural sector.

Regulation: Waters of the U.S. Rule, Clean Water Act

State Impact: Although designed to provide clarity from EPA as to the definition of a “waters of the United States” the proposed rule generated more confusion and concern as it vastly expanded the breadth and scope of the definition to capture large swaths of dry land. If implemented, this expansion might have required farmers to seek permits from the U.S. Army Corps of Engineers for conducting basic farming operations on their land.

Proposed Fix: EPA should withdraw the rule and replace it with a definition that complies with the intent of the Clean Water Act and respects the States’ jurisdictions over their own water ways.

Regulation: Draft Ecological Risk Assessments: Atrazine, Simazine, and Propazine Registration Review, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

State Impact: Crop protection products are crucial to many of Indiana’s farmers because they assist in the safe and efficient production of our nation’s food, fuel, and fiber supply. FIFRA imposes an exacting process for evaluation and review of these products and requires the use of reliable science in determining the registration and re-registration of these technologies. EPA’s use of questionable studies for evaluating these products raises concern and confusion in the regulated community; and the draft ecological risk assessment for these products does not comply with the agencies obligations under the statute.

Proposed Fix: Rely only on reliable science in the evaluation of these products and conduct ecological risk assessments according to the obligations imposed by FIFRA.

Indiana Department of Environmental Management

Regulation: Clean Power Plan (40 CFR Part 60)

State Impact: The rule called for large reductions in emissions from Indiana power plants and did not give us the time to make wise decisions about how to accomplish this with minimal cost or interruption of power. The rule is currently on hold by the US Supreme Court.

Proposed Fix: EPA should rescind the rule. Incoming EPA Administrator, Scott Pruitt, recently stated in an interview with the Wall Street Journal that “he expects to quickly withdraw both the Clean Power Plan (President Obama’s premier climate regulation) and the 2015 Waters of the United States rule (which asserts EPA power over every creek, pond or prairie pothole with a “significant nexus” to a “navigable waterway”). “There’s a very simple reason why this needs to happen: Because the courts have seriously called into question the legality of those rules,” Mr. Pruitt says. He would know, since his state was a party to the lawsuits that led to both the Supreme Court’s stay of the Clean Power Plan and an appeals court’s hold on the water rule.”

Regulation: Waste Water Rule requiring 85% removal requirement in the secondary treatment standards (40 CFR 133.102).

State Impact: This is a requirement from the 1970’s that has not evolved since then and we got away from in permits a long time ago and issued permits for 20 years without it and not a blink from EPA until the end of 2013 when it blew up. They threatened to object to permits if we did not include the requirement so we have been putting it back in to permits and it is causing problems for facilities with low strength/dilute influent. We fought this as we only included the 85% removal in instances where the effluent limits were based on secondary and didn’t have more stringent Water Quality-Based Effluent Limitations (WQBELs). Illinois is still taking the exact same approach we used to have apparently without comment from EPA. Here is Illinois’ approach on this: “IEPA includes 85% removal requirements for municipal wastewater treatment plant permits where the biochemical oxygen demand/carbonaceous biochemical oxygen demand and total suspended solids concentration limits are based on the federal secondary treatment standards. The percent removal requirements are not included in permits when the concentration limits for these parameters are more stringent than the secondary treatment concentration limits. All municipal major dischargers and all dischargers with a dilution ratio of less than five to one (design average flow for the facility to the 7Q10 flow for the receiving water) have concentration limits more stringent than those required under federal secondary treatment standards. IEPA believes that by meeting these limits, dischargers will also satisfy the percent removal requirements.” This quote was taken from https://www3.epa.gov/npdes/pubs/illinois_final_profile.pdf Page 8.

Proposed Fix: In lieu of a regulation re-write and/or revision to give states immediate relief from the requirement EPA should apply that when final effluent limitations are more stringent than secondary, then the 85% removal requirement does not apply.

Regulation: NPDES Electronic Reporting Rule (40 CFR 127). The table of required elements is Appendix A found at: <https://www.gpo.gov/fdsys/pkg/FR-2016-09-09/pdf/2016-21204.pdf>

State Impact: The Federal eReporting Rule, which became effective in December 2015, is generally a good thing, as it transitions permittees away from preparing and submitting paper monthly Discharge Monitoring Reports (and other reports as well) and to electronic reporting. EPA billed the rule as simply requiring the switch from paper reporting to electronic reporting, with no additional data being required. Even though there was a great deal of public input, including from IDEM, the final rule came out with many fields that will have to be reported to EPA electronically that are new. In some sense their claim is at least partially true, in that some of these fields could have been reported to EPA in the past but were generally ignored by the states. Now with the eReporting Rule, this flexibility is disappearing. If you open the attached spreadsheet, you will see that Columns L & M identify fields required by this rule and where there is no corresponding field in the ICIS data system to record the data. This sort of thing tells us that EPA is asking for information they might be able to collect without really considering what it really takes to collect and submit it, or even what they would do with it if they had it.

Proposed Fix: EPA could simply declare that certain fields are required and others optional until a time where they understand the purpose for gathering this information. When the rule passed there were around 1000 fields. Since then EPA has deleted around 200, but there are still many that some states use and others don't, and likely some fields that no one uses, yet as written they pretty much all become mandatory.

Regulation: Section 425 of the Consolidated Appropriations Act of 2016 (40 CFR Parts 122 and 123)

State Impact: All CSO communities in Indiana currently must comply with public notification requirements specified in 327 IAC 5-2.1, which already requires notice to the public and affected entities when CSO discharges occur or are imminent. Reported CSO discharge volumes and information related to CSO community Long Term Control Plans is already available to the public. The proposed rulemaking would not result in reduction of CSO flows, nor provide the public with meaningful information that is not already otherwise available. In practice, this rule would triple the regulatory burden to CSO communities and affected State regulatory agencies by the requirement to submit initial notices followed by supplemental notices followed by annual notices, all for the same CSO events.

Proposed Fix: EPA should rescind the rule.

Office of Indiana State Chemist and Seed Commissioner

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170 and 170.5)

State Impact: Without some sort of significant verification process to determine the identities of both the worker/ handler and the authorized representative involved, this activity could result in numerous fraudulent claims of representation and numerous data fishing expeditions by quasi-authorized representatives hoping to cherry pick violations. This would be counterproductive to the regulatory process

and the true purpose of the protections intended by this rule.

Proposed Fix: *Authorized representative* should be deleted. This concept would be unwieldy and problematic to SLAs.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.9a)

State Impact: Extending regulatory requirements to issues beyond the WPS is exceeding the intent and scope of this rule. This is a WPS rule, not a rule to make agricultural employers, who may or may not be certified pesticide applicators, responsible for general label compliance. The current FIFRA pesticide applicator certification program is based on label compliance by individuals who have demonstrated competency to apply pesticides. Arbitrarily extending those requirements to non-certified individuals is completely contradictory to that premise. If it is the Agency's intent to develop a shared liability provision for label compliance, that objective should be addressed through a separate and distinct rule addressing all pesticide products or through a revision of FIFRA. It should not be buried in a WPS rule intended to protect workers and handlers. Any provision not specifically targeting protection of workers and handlers should be removed from this rule.

Proposed Fix: This section should be revised to make the agricultural employer responsible for compliance with only the WPS portions of the pesticide product label, not the entire pesticide product label and labeling.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.9g)

State Impact: While notifying a mechanic that equipment to be repaired has been used for pesticides is a reasonable practice, the risk assessment for this individual is undoubtedly significantly different than that for a true agricultural employee. If similar protections are not going to be provided for mechanics of equipment used for non-agricultural applications, this requirement should be removed. It is reasonable to suspect that lawn care equipment or structural pest management equipment may require as much or more repair as agricultural equipment. Keep the focus on those individuals most at risk.

Proposed Fix: This section should be modified to make the requirements for training and notification of equipment mechanics applicable only for those agricultural employees who are otherwise workers or handlers at the establishment, not for the local machine shop mechanic.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.11b)

State Impact: Under FIFRA, labeling means "all labels and other written, printed, or graphic matter accompanying the pesticide at any time or to which reference is made on the label or on in literature accompanying the pesticide." Based on this definition, the universe of labeling materials for any pesticide can be huge and very poorly or imprecisely defined. It can include advertising, brochures, pamphlets, web site information, etc. There is no real practical need to provide all of this ill-defined detail to a worker or handler or to keep all of this ill-defined detail as part of a record somewhere. This is another example of unnecessary detail in rule that will inevitably make technical violators out of most otherwise responsible agricultural employers.

The label and the EPA registration number of the product are sufficient to provide appropriate information for emergencies, etc.

Proposed Fix: This section and numerous other sections throughout this rule should be revised to reference pesticide product "labels" not "labeling".

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.13)

State Impact: While notifying a mechanic that equipment to be repaired has been used for pesticides is a reasonable practice, the risk assessment for this individual is undoubtedly significantly different than that for a true agricultural employee. If similar protections are not going to be provided for mechanics of equipment used for non-agricultural applications, this requirement should be removed. It is reasonable to suspect that lawn care equipment or structural pest management equipment may require as much or more repair as agricultural equipment. Keep the focus on those individuals most at risk.

Proposed Fix: Commercial pesticide handler employer duties (k)(2)(i) and (ii) sections should be deleted from the emergency information assistance requirements.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.13.I)

State Impact: While notifying a mechanic that equipment to be repaired has been used for pesticides is a reasonable practice, the risk assessment for this individual is undoubtedly significantly different than that for a true agricultural employee. If similar protections are not going to be provided for mechanics of equipment used for non-agricultural applications, this requirement should be removed. It is reasonable to suspect that lawn care equipment or structural pest management equipment may require as much or more repair as agricultural equipment. Keep the focus on those individuals most at risk.

Proposed Fix: This section addressing equipment mechanics should be modified and make the requirements for training and notification of equipment mechanics applicable only for those agricultural employees who are otherwise workers or handlers at the establishment, not for the local machine shop mechanic.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.101.c4ii)

State Impact: As proposed, this adds an unnecessary level of complication and confusion to a rule that is already too complicated and confusing. It is logically inconsistent to believe that the basic skill set of a trainer of workers is significantly different from that of a trainer of handlers. Neither EPA nor SLAs are qualified or in a position to be able to evaluate the proficiency of one type of trainer versus another. Those distinctions are very subjective and beyond the capabilities of those responsible for compliance with this rule. In addition, the logic is further turned upside down when one considers that a certified pesticide applicator is legally capable of training and supervising a non-certified applicator to apply restricted use pesticides around people and into the environment, but is not capable of training a worker about how to protect himself from pesticide exposure.

Proposed Fix: This section should be revised to reflect that there is no distinction or difference between a trainer eligible to train workers or handlers.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.101.d)

State Impact: This appears to be nothing more than a shifting of current regulatory responsibility from the Agency and SLAs who have historically implemented this provision to agricultural employers. In addition, the cost and confusion of implementing and maintaining a new record keeping requirement seems considerable for an unproven benefit or improvement, especially if the recordkeeping requirements are susceptible to fraud and forgery. This seems like a make-work provision for both agricultural employers who must comply and SLAs who must determine compliance.

Proposed Fix: This recordkeeping section should be deleted. If the Agency's intent is to improve upon or add reasonable options to the current training verification provisions, OISC would recommend that consideration be given to the creation of a national database designed to identify trained workers and handlers. Such a precedent has already been established for 'trained soil fumigators'.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.105)

State Impact: While limiting pesticide exposure to all persons is certainly a good thing that should be supported and promoted whenever possible, extending protections of this rule to individuals who are not agricultural workers or handlers, if necessary, should be accomplished by means other than the WPS rule. Again, creating protections for 'other persons' in a WPS rule appears to be exceeding the scope and intent of the rule, even if it seems like a good idea. In addition, if such provisions are warranted based on the risk assessments performed for 'other persons', it seems that non-agricultural products should receive the same consideration as is being proposed for agricultural WPS products. The concept of a regulatory requirement to keep individuals out of varying widths of areas surrounding treated areas seems quite difficult for an agricultural employer to implement and next to impossible for an SLA trying to ensure compliance. The logic behind such a safety measure is understandable and supportable, but making this a regulatory requirement with an expectation of compliance monitoring and enforcement is not.

Proposed Fix: All references in this section, corresponding tables in this section, and other sections of this rule to 'other persons' should be deleted.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.405.a-b)

State Impact: The concept of an AEZ was not introduced for comment as part of the proposed rule, therefore, the requirements for effective communication or implementation of such a regulatory provision were not well thought out. This portion of the rule is so confusing that EPA has needed several pages of interpretive guidance from the EPA program office as well as input from the Office of General Counsel just to communicate the intent of the requirement with state regulatory partners. The AEZ does not provide any additional protections. Pesticide labels all currently read, "Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application."

Proposed Fix: Delete drift mitigation language because regulatory protection of workers and other persons is already provided under other provisions of FIFRA, this amounts to nothing more than regulatory over reach in an overly complex and lengthy rule designed for worker protection.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.109.b.1.ii)

State Impact: There are a variety of provisions within the existing rule that can be considered somewhat subjective.

Proposed Fix: This section should be revised to add to the end of the posting timing requirement, "unless weather or circumstances beyond the control of the applicator or agricultural employer delays the application." Adding a provision that recognizes the realities of weather and planning seems reasonable to avoid additional unnecessary technical violations.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.109.b.1.iv)

State Impact: If protection of workers and handlers is truly the intent of this rule, the violation of the posting provision should be allowing a worker or handler to enter a posted field, regardless of the application date or the REI. Creating the possibility of a technical violation for failure to remove a posting sign by a specified date adds an unnecessary level of complication without adding any real additional protections for the workers or handlers. The impetus to remove the posting signs to allow re-entry and return to unimpeded agricultural operations will be with the agricultural employer. A similar state regulatory requirement in Indiana for removal of lawn posting signs was rescinded after ten years of rule implementation because of the realization that it was impossible to monitor and provided no additional protections.

Proposed Fix: The three day after application or REI posting sign removal requirement in this section should be deleted.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.201.c.1)

State Impact: If training is being facilitated by an approved video or some other media that does not require continuous attention by the trainer, it is of little value that the rule create another opportunity for a technical violation that adds unproven additional protections to workers or handlers. The important point would seem to be that the trainer be available immediately following the presentation for questions and comments. Even face-to-face trainers will often request that trainees hold questions until the end of the session so as to not disrupt the flow and distract other trainees.

Proposed Fix: This section should be revised to require only that the trainer be available during the training session rather than continuously present throughout the entire training.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.201.c.2.iv.vii.ix)

State Impact: Although OISC strongly supports training pesticide users about all of these elements, this type of training requirement is already covered in applicator certification training and in non-certified applicator supervision requirements. That

is where training requirements for pesticide applicators should be addressed, not inserted through some back door requirement of a WPS rule that addresses only agricultural pesticides

Proposed Fix: These items should be deleted from required training elements for handlers.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.201.d)

State Impact: This extensive recordkeeping requirement for proof of training creates an unnecessary burden and expense for the agricultural producer. The current requirements in the existing rule are adequate. From a compliance standpoint, if an SLA is investigating a for-cause complaint for determination of compliance with the training requirement, examining training records alone will probably not satisfy the burden of proof for a significant enforcement action. This is especially true if any training records are found not to be 100% accurate and complete for all trainees. Again, adding this recordkeeping requirement creates the opportunity for technical violations without a demonstrated improvement in actual protections for workers and handlers. It should also be noted that since the inception of the original WPS rule OISC has not investigated a single complaint focusing solely on failure to provide training. If training was not being provided, it was a case of the agricultural employer not complying with any of the WPS rule provisions.

Proposed Fix: This section should be deleted.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.201.c.2)

State Impact: Requirements like these belong in a certification standards and supervision rule, not a WPS rule targeting solely agricultural workers, handlers, and pesticide products.

Proposed Fix: This section should be deleted.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.207.b.s.iii)

State Impact: If such disposal regulations actually exist, adding this provision in a WPS rule adds no value or regulatory authority. It just begs the question of what those regulations may be and adds another technical violation to the WPS rule that really needs to be applicable to all pesticides.

Proposed Fix: The requirement for contaminated glove liners to be disposed of in accordance with federal, state, or local regulations should be deleted. Eliminate the additional confusion. States and localities can address disposal requirements through state or locality specific regulations as they see fit. Again, this is a worker/handler protection rule, not a disposal compliance rule.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.207.d.2)

State Impact: If such disposal regulations actually exist, adding this provision in a WPS rule adds no value or regulatory authority. It just begs the question of what those regulations may be and adds another technical violation to the WPS rule that really needs to be applicable to all pesticides.

Proposed Fix: The reference to PPE disposal according to federal, state, or local regulations should be deleted.

Regulation: Agricultural Worker Protection Standard Rule (40 CFR 170.301.a.2)

State Impact: While limiting pesticide exposure to all persons is certainly a good thing that should be supported and promoted whenever possible, extending protections of this rule to individuals who are not agricultural workers or handlers, if necessary, should be accomplished by means other than the WPS rule. Again, creating protections for 'other persons' in a WPS rule appears to be exceeding the scope and intent of the rule, even if it seems like a good idea. In addition, if such provisions are warranted based on the risk assessments performed for 'other persons', it seems that non-agricultural products should receive the same consideration as is being proposed for agricultural WPS products. The concept of a regulatory requirement to keep individuals out of varying widths of areas surrounding treated areas seems quite difficult for an agricultural employer to implement and next to impossible for an SLA trying to ensure compliance. The logic behind such a safety measure is understandable and supportable, but making this a regulatory requirement with an expectation of compliance monitoring and enforcement is not.

Proposed Fix: The reference to "other persons" should be deleted.

Regulation: Expand the Content of Worker and Handler Pesticide Safety Training

State Impact: While OISC strongly supports these training requirements for non-certified applicators being supervised by certified applicators, we believe that is exactly the mechanism that should be utilized to ensure that pesticides are being applied legally and with environmental safety in mind. These items do not relate directly to worker and handler safety and protection. This is a WPS rule, not an applicator certification rule. By including these training points in WPS, it appears as if the Agency is attempting to expand the regulatory liability of handlers beyond the intent and scope of the rule. It should be noted that Indiana already requires training and competency examination of most agricultural handlers (non-certified applicators being supervised by certified applicators).

Proposed Fix: Training points should not be considered in the final proposal: 1) environmental concerns, 2) information on proper application and use of pesticides, 3) requirement for handlers to follow all pesticide label directions, and 4) format and meaning of all information contained on pesticide labels and labeling, environmental concerns, such as drift, runoff, and wildlife hazards.

Regulation: Posted Notification Timing & Oral Notification

State Impact: OISC opposes any oral notification if the Agency truly expects the requirement to be inspected and enforceable. We believe that it would be impossible to effectively enforce, with or without a recordkeeping requirement. In addition, OISC is opposed to any additional recordkeeping requirement, since such records would be costly to keep and are susceptible to fraud. A record does not ensure that oral notification actually occurred, only that a record was created.

Proposed Fix: Remove oral notification requirement.

Regulation: Exam Validation (40 CFR 171.105)

State Impact: EPA first recognized and promoted good practices in licensure exam development almost 20 years ago (CTAG, 1999). This Executive Summary fails to reflect a long-running conversation with the states regarding exam validation.

Proposed Fix: Allow states flexibility to develop exams that are demonstrably job-related instead of favoring codifying standards.

Regulation: §171.101 (m) (n)

State Impact: OISC recommends deleting the split of the general fumigation and soil fumigation categories. A careful review of the proposed standards for those "separate" categories reflects that 80% of those standards will be identical. Any separate categories with such a high degree of similarity should be considered for consolidation.

Proposed Fix: EPA should delete all references to method-specific certification categories. Most states, have already established categories as needed. EPA splitting categories out differently and assigning them to a new class of category labeled "method-specific certification" makes no practical sense for a well-functioning program.

Regulation: §171.303(c)

State Impact: We see little benefit from reporting on items (i) (ii) (iii) (iv). It takes a great deal of time to generate these numbers. If EPA is using these numbers to create a funding formula for states, the cost to generate the numbers likely exceeds the dollars received. Item (vii) is a summary of enforcement activities related to the use of restricted use pesticides. This requirement is redundant with data already reported to EPA's Office of Enforcement and Compliance Assurance, and the recently revised Enforcement Performance Measures (see the *2015-2017 Cooperative Agreement Guidance, Section VII. Reporting and Enforcement Measures*). The Cooperative Agreement Guidance was revised such that all states would use a national, standardized template to establish mutually agreeable objectives and reporting criteria. In it, EPA and the Association of American Pesticide Control Officials worked for three years to revise and adopt significantly improved reporting measures which include much of the information EPA has proposed in the certification and training rule. It is redundant to ask states to report this data twice, and objectionable to states that have worked hard to eliminate the amount of narrative dialog submitted with annual reports, given EPA's own admission that those narratives are rarely reviewed by management at EPA Headquarters.

Proposed Fix: EPA's Office of Pesticide Programs consult with EPA's Office of Enforcement and Compliance Assurance to share the data states already report. If EPA currently has difficulty communicating effectively between different Agency sections or feels the need to amend cooperative agreement reporting data, those issues should be addressed in a forum outside of a federal rule.

Regulation: §171.3

State Impact: The proposed definition of *competent* entails possession of, "...practical knowledge necessary to perform functions associated with restricted use

pesticide application. The term practical knowledge is subsequently defined as, "...the possession of pertinent facts and comprehension sufficient to properly perform functions associated with application of restricted use pesticides..." The first definition is unsatisfactory because it only raises the question, "Who determines what counts as practical?" The second, supporting definition fails entirely because it neither answers the question suggested by the first, nor clarifies the qualifier 'practical. The credentialing community addresses the identification of "practical knowledge" (and its determiner) by stipulating job analysis as the primary basis for licensure test content (American Educational Research Association, American Psychological Association, & National Council on Measurement in Education, 1999, Standard 14.14, p. 161). Job analysis is understood as the collection and organization of information about a job in terms of what jobholders do and the qualities they need to possess in order to perform the job (Williams & Crafts, 1997). Job analysis data are derived from representative jobholders and yield competencies (i.e. job knowledge and skills) necessary for safe and effective practice with special emphasis on activities related to public protection.

Proposed Fix: Revisions to §171.3 – Definitions in the proposed rule: Delete the definition of competent and replace it with a definition of competencies to read, "The collective knowledge, skills, and abilities necessary to perform a job." Delete the definition of practical knowledge and replace it with a definition of job knowledge to read, "An article of information that jobholders need to know in order to perform the job." Add a definition of job skill to read, "An acquired proficiency needed to perform a job activity." Add a definition of job analysis to read, "The collection and organization of information about a job in terms of what jobholders do and the qualities they need to possess in order to perform the job-derived from actual jobholders or persons who immediately supervise the work." Add a definition of standard to read, "A recognized degree of proficiency, as determined by a passing score on a job-related examination." The term "mishap" is not appropriate in the proposed rule, and inconsistent with terminology used for pesticide incidents or events. OISC urges EPA to remove this term from the proposed rule, or revise it such that it is more consistent with what the majority of states already have in statute or regulation.

Regulation: National Pesticide Discharge Elimination System (NPDES) for Pesticide Applications

State Impact: OISC strongly agrees with the need for an effective regulatory mechanism to protect waters of the U.S. from harm by pesticides that may intentionally or inadvertently be discharged into those waters. However, we have concerns that the proposed NPDES permitting process may not be the most effective or efficient mechanism to achieve that objective. As proposed, the permit creates additional overlapping and duplicative state regulatory mechanisms at a time when federal and state resources for implementation and enforcement are scarce or non-existent. Specifically, the proposed permit does not adequately recognize extant pesticide regulatory mechanisms and safeguards that may be appropriate for consideration as "control measures" to be relied upon to meet non-numeric

technology-based effluent limitations in the permit. Compliance with the pesticide label is a cornerstone to this permitting initiative.

Proposed Fix: A more logical approach would be to add additional safeguards and prohibitions that might be needed for protection of water to existing pesticide labeling and to insure that the applicable pesticide products are being applied by competent applicators. EPA needs to clearly recognize and capture in this permit the value and benefits of formally incorporating the state lead pesticide agency expertise in the administration and enforcement of this regulatory requirement.

Regulation: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Sections 8 and 9

State Impact: Neither FIFRA or any of the CFR promulgated under FIFRA designates what an "appropriate credential" may be. EPA policy has been that an appropriate credential means a federally issued FIFRA credentials. OISC agrees that for purposes of uniformity and consistency between federal inspectors and state authorized inspectors, issuance of a federal FIFRA credential seems to be optimal. However, many states already have state authority, credentials, and staff training necessary to conduct federal product compliance inspections. Some state authorities may actually exceed federal authorities afforded state employees with federal credentials making the federal credential a nice, but not required "appropriate credential". To compound the frustration with the unnecessary duplication the process established by EPA to issue federal credentials is cumbersome, inefficient, time consuming, and unreliable. These shortcomings continue to exist in spite of repeated efforts by States and EPA to improve the process. Regardless, EPA remains committed to the requirement for State inspectors, in spite of requests for documentation of need, legal precedence, or a clear explanation of the value added component to the regulatory process.

Proposed Fix: This situation could be improved by nothing more than an operating policy change.

Questions regarding any of these recommendations for regulatory improvement may be directed to the agency impacted. Thank you for the opportunity to provide input and comment.

Kind Regards,

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