

May 15, 2017

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Director Rees:

RE: Docket EPA-HQ-OA-2017-0190

Our organizations represent a significant number of America's fresh fruit and vegetable providers. The members of our organizations are from all regions of the United States and produce a wide variety of commodities. In the course of pursuing their mission of providing America with access to a steady, abundant supply of fresh produce, our members must comply with a tremendous number of federal environmental regulations. Therefore, we commend the Environmental Protection Agency (the agency) for opening this docket to solicit public input about regulations that need to be repealed, replaced or modified and are pleased to submit the attached comments in response to the agency's request.

WOTUS

Fresh fruit and vegetable providers, such as our members, rely upon clean, readily available water in order to produce the fruits and vegetables that supply our nation and the world. As a result you will find no one more concerned about water quality than agricultural producers and as such we support the objectives of the Clean Water Act (Act). Because they have a vested interest in water quality, farmers also firmly believe that it is essential that this area of the law be clear. For far too long since the *Rapanos* decision, farmers have lived in an uncertain world in which decisions over the jurisdictional reach of the Act are made on a case-by-case basis. Farmers need clarity in this space- that is why we applaud the efforts of both the Bush and Obama Administration's in trying to move forward, but contend that those objectives must be pursued within the limits of the law and precise rules governing its implementation. Unfortunately, when the EPA finalized its definition of "Waters of the United States" (WOTUS) last year the agency did not properly do so. We believe that WOTUS as written: 1.) expands the jurisdiction of the Act beyond the limits set forth in *Rapanos v United States*; 2.) ignores elements of federalism as articulated in the Act; and 3) ignores data and input provided by the Army Corps. For all these reasons we are glad that the Administration is committed to reviewing and taking public comment to potentially rewrite the definitions under WOTUS.

Worker Protection Standard

On Nov. 2, 2015 the Environmental Protection Agency (EPA) published its [final revisions to the Worker Protection Standard \(WPS\)](#). Many fresh produce providers proposed changes to the WPS at that time. In its subsequent redraft of the proposal, EPA addressed some of those concerns. EPA states that the revisions to the WPS are intended to “enhance the protections provided to agricultural workers, pesticide handlers, and other persons under the Worker Protection Standard (WPS) by strengthening elements of the existing regulation, such as training, notification, pesticide safety and hazard communication information, use of personal protective equipment, and the providing of supplies for routine washing and emergency decontamination.” While many in the fresh fruit and vegetable industry believe many of the final provisions are worthwhile, concerns remain and we urge EPA to reconsider the section of the rule dealing with authorized representative. We also take issue with how the rule was rolled out and how little cooperation was shown with states.

To elaborate, we believe the new provision, creating an “authorized representative,” will lead to a wide range of legal and practical complications while doing nothing to enhance worker protection. It will work against a sound pesticide regulatory framework by unnecessarily inserting a third party into the relationship between employer and employee and it raises complex and confusing legal issues as well as conflicts with multiple areas of federal and state labor law. While some states have similar representatives, a representative’s actions should be limited to workplace safety with respect to pesticides—that after all is what the WPS rule is all about. As constructed the rule goes well beyond that. Indeed, this appears to be an indirect endorsement of union participation in farm employment and WPS enforcement. It is not EPA’s role to directly engage in labor law issues. Beyond that producers are entitled to a reasonable expectation of privacy in their businesses; this provision in the rule could result in disclosure of confidential business information, and also subject farmers to harassment and unfair criticism for the lawful and safe use of EPA-approved pesticides on their properties. We oppose the inclusion of this “authorized representative” in any revision to the WPS, and most certainly strongly oppose the provision as drafted.

Beyond that we urge EPA to extend the period for implementing this standard. The new standard became effective in January 2017, yet many state departments of agriculture requested a delay to provide adequate time to implement the changes. Since state lead agencies are expected to be the eyes and ears to enforce this rule, it is vital to work cooperatively with them to provide not only enforcement guidance and training materials in a timely manner, but also provide some supplemental resources necessary to effectively implement the rule. We urge that additional time and resources be given.

Use of Human Epidemiologic Studies

In recent years, EPA’s risk assessment approach as part of a FIFRA pesticide registration and registration review has deviated from the fair, transparent, and risk-balancing process that Congress intended. As an example, EPA proposed revoking all tolerances for chlorpyrifos based largely on epidemiological studies that EPA’s FIFRA Scientific Advisory Panels (SAP) questioned. EPA has failed to address the significant concerns expressed by three FIFRA SAP on these compounds, including lack of study validation and unavailability of raw data from studies used in regulatory decision making. At the root of this flawed approach appears to be a December 2016, release from EPA’s Office of Pesticide Programs

(OPP) entitled “Framework for Incorporating Human Epidemiologic & Incident Data in Risk Assessments for Pesticides” (Framework). This Framework seems to deviate from long standing practice and procedure within the EPA. While use of epidemiologic studies has always been one element that was used in creating a holistic and rigorous scientific picture when evaluating substances it appears that in recent years - and as a result of this framework – these studies have taken on an outsized and inappropriate role. As such, the Administration should either revoke the framework altogether which would return evaluations to their historical norm, or if the framework is kept it should be revised with input from relevant stakeholders, and subject to peer review, before it is used to inform any regulatory decision-making. Given these facts the Administration should delay the finalization of all recent or proposed actions that rely upon this framework until further review and refinements are completed.

We appreciate the opportunity to submit these comments for consideration, as well as the effort by EPA to improve the agency’s regulatory policies. Thank you for your time and attention and we look forward to working with EPA on issues of importance to the fresh produce industry.

United Fresh Produce Association
California Fresh Fruit Association
Georgia Fruit and Vegetable Association
National Potato Council
US Apple Association
Western Growers Association