



The National Association of State Departments of Agriculture
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President: Ed Kee – Secretary, Delaware Department of Agriculture



October 30, 2009

Mr. Steve Owens
Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW, MC- 7101M
Washington, DC 20460

Dear Mr. Owens:

The National Association of State Departments of Agriculture (NASDA) and the National Association of State Foresters (NASF) write to express our ongoing concerns with the Reregistration Eligibility Decisions (REDs) for soil fumigants, especially methyl bromide. We continue to be concerned about the ramifications the sweeping RED requirements will have on agricultural producers and forest managers, as well as the burden the REDs' unfunded mandates will place on state enforcement programs. We are particularly concerned about label changes EPA is currently developing under the soil fumigant RED.

NASDA represents the commissioners, secretaries, and directors of the state departments of agriculture in all fifty states and four U.S. territories. As co-regulators with EPA, nearly all of NASDA's members are the lead state agencies responsible for administering the laws regulating the production, labeling, sale, use and disposal of pesticides. This broad range of responsibilities gives our members a significant basis of relevant expertise on matters relating to the use of soil fumigants including methyl bromide.

NASF represents the directors of forestry agencies from the fifty states, eight U.S. territories and associated states, and the District of Columbia. With the responsibility for restoring, managing and maintaining two-thirds of the nation's forests, state foresters rely on clean, disease free tree seedlings to regenerate millions of acres of forests each year. Meeting the country's need for producing healthy seedlings is often accomplished by using soil fumigants on nurseries owned and managed by state forestry agencies. State foresters hold significant concerns regarding the impact new soil fumigant label requirements will have on growing quality seedlings which will ultimately become the next generation of the nation's forests.

We appreciate EPA's willingness to work with state regulators, state foresters and other stakeholders to address a number of the concerns raised throughout this process. However, we remain concerned with some specific issues that must be appropriately addressed to ensure agricultural producers, forest and nursery managers, and state regulators have the necessary tools available.

The label requirements EPA implements under the methyl bromide RED could dramatically impact the ability of states to combat noxious pests. We firmly believe that states should have a right to preemptively control the movement of noxious pests (e.g., invasive species, quarantined pests) within their borders. To that end, we urge EPA to develop a label that ensures states will be allowed to continue using methyl bromide under their own quarantine programs.

We are concerned that EPA has accelerated the timetable for cancelation of high value uses of methyl bromide and has called for the immediate cancelation on a number of minor, but important, uses such

as golf course/athletic field reconstruction and tobacco seedling tray sterilization. During the early development of the Critical Use Exemption process, EPA told small growers in niche markets that they would have access to “stockpiles” until such time as economic and effective alternatives became available for their uses. EPA’s actions are particularly troublesome in light of the fact that effective alternatives for methyl bromide have yet to be identified, a premise upon which the phase-out of methyl bromide was based. Without the necessary tools for producers to manage pests, producers will undoubtedly face financial hardships resulting from significantly decreased yields. State tree seedling nursery operations will experience reduced production capacity and higher production costs resulting in increased reforestation costs for landowners. The Montreal Protocol was never meant to be used by EPA to selectively determine pesticide use in the United States.

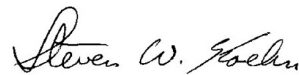
Comments previously provided to EPA by state regulatory and forestry agencies have emphasized that no cost effective alternatives to methyl bromide yet exist and that potential problems associated with methyl bromide can be mitigated if the products are used in accordance with the FIFRA label. Moreover, new data available to EPA show that some RED mitigation measures are overly conservative. We appreciate EPA’s willingness to consider, in light of this data and other input provided by stakeholders, more practical mitigation measures. However, we remain deeply concerned that the new restrictions on methyl bromide and other soil fumigants will not provide growers or state quarantine programs adequate time to identify suitable alternatives, an elusive goal to say the least. We also remain concerned that the Agency has not provided states the resources critically needed to oversee training and enforcement of these broad new requirements.

Throughout this process, it is imperative for EPA to recognize that methyl bromide serves a critical role in agricultural production and forest management and that an effective and economic alternative is still unavailable. Because of this, we urge EPA to continue working with state regulators, state foresters and industry stakeholders to find solutions that do not excessively burden state regulators, producers and forestry managers.

Sincerely,



Ed Kee
President, NASDA
Secretary, Delaware Department of Agriculture



Steven W. Koehn
President, NASF
Maryland State Forester

CC: Debbie Edwards, Director, Office of Pesticide Programs, EPA
Larry Elworth, Agricultural Counselor to the Administrator, EPA
Teung Chin, Acting Director, Office of Pest Management Policy, USDA