



Steve Owens, Assistant Administrator, OPPTS  
USEPA Headquarters  
1200 Pennsylvania Avenue, N. W.  
Washington, DC 20460

January 26, 2010

Dear Mr. Owens,

With this letter, the Association of American Pesticide Control Officials (AAPCO) formally requests that EPA delay implementation of changes to the labels of the soil fumigant products (chloropicrin, dazomet, metam sodium/potassium and methyl bromide) as detailed in the recently finalized Amended Reregistration Eligibility Decisions (REDs). While state lead pesticide agencies support adopting measures to protect human and environmental health, the scheduled 2010 mitigation measures have not allowed sufficient time for training of state lead agency personnel or education and outreach to the pesticide user community. The most desirable outcome would be to defer implementation of all changes until the 2012 growing season, however, deferral of the changes slated for implementation in 2010 until at least 2011 would allow state lead agencies critically needed time to prepare enforcement staff and train end users on the specifics associated with product label changes. With the collective experience of state lead agencies, we can say with certainty that successful implementation of the soil fumigant mitigation measures slated for 2010 cannot be achieved under the current timeline.

This request is founded on our belief that the current implementation timeline is unrealistic and will be counterproductive to our mutually shared goals of common sense regulation. AAPCO appreciates the process by which EPA has developed the REDs and the willingness of the Office of Pesticide Programs staff to seek and consider public input in doing so. While the Agency has been very industrious in developing a broad range of mitigation measures, the effort to develop a carefully coordinated implementation plan has not kept pace. Unfortunately, the high level of uncertainty and a lack of specifics or guidance associated with the new label language, together with the complete absence of a compliance strategy, has prevented states from taking the steps necessary to prepare for successful implementation prior to the 2010 growing season.

The changes dictated under the REDs are extremely diverse and complicated, and will fundamentally change the way in which soil fumigations are made. With all due respect to EPA's ambitious and worthy goals, there seems to be a disconnect between EPA's role in determining the mitigation measures necessary to ensure the safe use of fumigants and the understanding of the roles and abilities of its partners to successfully implement them. As of today, agricultural producers who must comply with the changes, university extension personnel responsible for providing training, and state lead agencies charged with enforcing the changes have not seen finalized labels for any of these products. Without final label language, states have been unable to conduct any meaningful outreach to the affected industries, to create effective training materials for applicators, or prepare enforcement personnel for the upcoming use season (in some states the 2010 use season has already begun).

In early December 2009, EPA staff provided information indicating that the agency “expects to approve the 2010 labels near the end of 2009,” with registrants submitting them to state registration programs “early in 2010.” They also indicated that the “label tables” were still undergoing revision as “additional clarification and wording changes [are made] to enhance clarity and enforceability.” This extensive review and revision process has significantly delayed the approval process for soil fumigant labels. Windows of opportunity for education and outreach for the 2010 use season have already been lost and those for 2011 are beginning to close. As a result, many state lead agencies are left with no practical choice but to delay registration of the new labels until training and compliance programs have been established. In the meantime, end users will need to use the previous labeling that was supposed to change for the current use season. If states do not do this, the result will be widespread confusion and potential non-compliance with complex new labels, a situation most states would prefer to avoid.

Our states have a great deal of experience in implementing changes to pesticide use requirements. To ensure success, we prepare implementation plans, work with our partners, give presentations at pesticide applicator recertification meetings, develop training materials and, if necessary, examinations, gather lists of affected individuals who may not yet be certified applicators, perform mailings, schedule training programs, make any necessary database changes and prepare our enforcement personnel. Without exception, states have been unable to complete any of these tasks due to EPA’s unrealistic implementation schedule. Labels are still in transition, although EPA staff have been working recently on implementation plans, responses to many questions posed by the states remain unanswered, registrants are still developing label-mandated training, and fumigation management templates continue to be revised.

States have worked diligently to gain the respect and cooperation of the regulated community. Such positive relationships help to ensure the effective regulation of pesticides and ultimately the protection of human health, the environment and our food supply. If EPA continues down the road of prematurely enacting the mitigation measures on soil fumigant labels, it will have a significant negative impact on the reputation of both EPA and state partners. In addition, the strong state-federal co-regulatory partnership we have enjoyed over the years will be needlessly tarnished at a time when it is critical that we effectively work together to succeed in the implementation of important protective measures.

Many of the states grappling with the soil fumigation mitigation measures are also faced with implementation of the NPDES permits, county endangered species bulletins resulting from the biological opinions from NMFS, and new pesticide container/containment regulations. While state resources continue to erode we are all now faced with great uncertainty in regards to our base program budgets. The one thing that does appear certain is the continuing lack of Federal funding available for implementation of these new mandates.

We strongly urge that you defer implementation of the 2010 soil fumigant mitigation measures and work with us to develop a realistic, meaningful and successful implementation plan. To do otherwise sets the stage for failure by your state partners, the regulated community, and the new soil fumigation mitigation measures themselves.

Sincerely,

Tim Creger, President of AAPCO



Cc: Stephen Bradbury, Acting Director, OPP  
John Leahy, OPP  
Ed Kee, President, NASDA  
Jack Peterson, Chair, SFRIG  
Dean Herzfeld, President, AAPSE