United States Senate

WASHINGTON, DC 20510

August 20, 2013

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy,

We write to request clarification on the Environmental Protection Agency's (EPA) interpretation of its authority under the current appropriations legislation with regard to enforcing the Spill, Prevention, Containment, and Countermeasure (SPCC) rule on farms. It has come to our attention that EPA is informing agriculture producers that it does have the authority to begin enforcing the SPCC rule retroactively beginning September 23. Congress has repeatedly raised concerns about the implementation of this rule within the agriculture sector, making these reports particularly unsettling.

In June 2011, we sent EPA a letter with 31 of our colleagues asking the Agency to do more outreach to the agriculture community on the rule and to delay its implementation. EPA agreed to extend the compliance deadline to May 10, 2013, but in the preceding months the agency did not conduct effective outreach. In addition to holding only a handful of nationwide outreach meetings, the EPA rejected the request of one growers association in New England to provide a briefing on how its members could comply with the rule.

When it became clear EPA would be unable to adequately educate farmers about the rule prior to the May 10, 2013 compliance deadline, the Senate adopted Amendment 29 to H.R. 933, the FY2013 Continuing Resolution appropriations bill, which was ultimately signed into law. This amendment prohibits EPA from enforcing the rule against farmers until September 23, 2013.

In May, the Senate adopted Amendment 801 by unanimous consent to S. 601, the Water Resources Development Act, which would permanently exempt most farmers from the SPCC rule. While the House has yet to take up S. 601, it did include a similar provision as part of H.R. 2642 that passed the House in July.

Congress has clearly established its intent to limit the impact of the SPCC rule on the agriculture sector, and to ultimately exempt the majority of it from having to comply. With this Congressional intent in mind, we ask whether the EPA would retroactively enforce this rule against the nation's agriculture producers? If the agency has no such plan, is it EPA policy that if a farmer or rancher were to have a plan in place on Sept. 23 and does not have a spill, EPA will view the operation compliant with the SPCC rule for farms? If the agency does plan to retroactively enforce the rule, will you please explain why you are doing this despite the clear,

bipartisan steps Congress has been taking over the past few months to limit this rule's impact on the agriculture community?

We appreciate your swift response to our questions.

Sincerely,

James M. Inhofe
United States Senate

Mark Pryor
United States Senator