United States Senate
WASHINGTON, DC 20510

December 20, 2013

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Secretary Perez:

We write to you regarding reports that regulators at the Occupational Safety and Health Administration (OSHA) have begun taking regulatory actions against farms that are specifically exempted by Congress from regulatory enforcement conducted by OSHA. Since 1976, Congress has included specific language in appropriations bills prohibiting OSHA from using appropriated funds to apply requirements under the Occupational Safety and Health Act of 1976 to farming operations with 10 or fewer employees.

It has come to our attention that OSHA is now interpreting this provision so narrowly that virtually every grain farm in the country would be subject to OSHA regulations. OSHA's interpretation defies the intent of Congress in exempting farming operations from the standards of the Occupational Safety and Health Act.

In viewing a farm's "grain bin operation" as somehow distinct from its farming operation, OSHA is creating an artificial distinction in an apparent effort to circumvent the Congressional prohibition on regulating farms. The use of grain bins is an integral part of farming operations. Without grain bins, farmers must sell corn and soybeans immediately after harvest, when prices are usually low. Storing grain in bins is thus a fundamental aspect of farming. Any farm that employs 10 or fewer employees and used grain bins only for storage prior to marketing should be exempt, as required by law, from OSHA regulations.

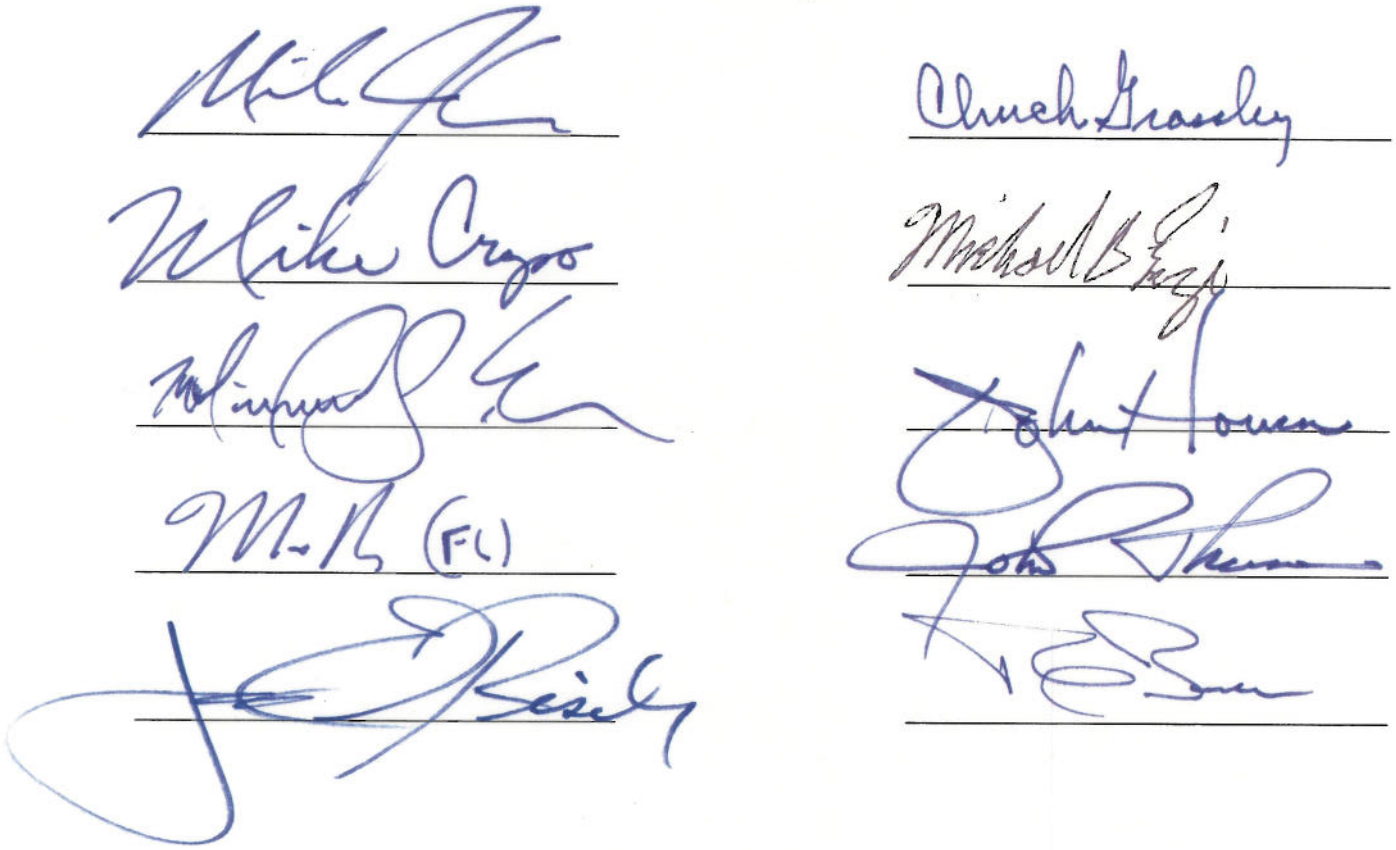
A memo issued by the Director of Enforcement Programs on June 28, 2011, stated that "many of these small farm employers mistakenly assume that the Appropriations Rider precludes OSHA from conducting enforcement activities regardless of the type of operations performed on the farm." The memo declares that all activities under SIC 072—including drying and fumigating grain—are subject to all OSHA requirements (the memo did not even mention grain storage). There are many farms that have grain dryers on-farm to address wet harvest conditions or fumigate grain to prevent pests from ruining a crop prior to marketing. These are basic, common, and responsible farming activities that OSHA has arbitrarily decided are non-exempt.

Worker safety is an important concern for all of us—including the many farmers who probably know better than OSHA regulators how to keep themselves and their employees safe on farms. If the Administration believes that OSHA should be able to enforce its regulations on farms, it should make that case to Congress rather than twisting the law in the service of bureaucratic mission creep. Until then, Congress has spoken clearly and we sincerely hope that you will support America's farmers and respect the intent of Congress by reining in OSHA.

We would ask that you direct OSHA to take the following three steps to alleviate this concern. First, OSHA should cease all actions predicated on this interpretation, which is inconsistent with Congressional intent. It is important that OSHA also issue guidance correcting this misinterpretation of the law. We suggest consulting with the U.S. Department of Agriculture and organizations representing farmers to assist with this guidance. Finally, we ask that OSHA provide a list and description of regulatory actions taken against farms with incorrectly categorized non-farming activities and 10 or fewer employees since the June 2011 memo. Given the nearly four decades of Congressional prohibition of OSHA enforcement against farms, this should be a simple request to fulfil.

We would appreciate your response by February 1, 2014, to include a copy of the corrected guidance, the data regarding enforcement actions on farms, and confirmation that OSHA will cease such enforcement.

Sincerely,



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