



Designated Representatives in the EPA's Worker Protection Standard

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Agricultural work is one of the most dangerous occupations in the US. The US Environmental Protection Agency (EPA) estimates that up to 3,000 farmworkers suffer acute pesticide poisoning every year through occupational exposures. Studies show that agricultural workers suffer serious short- and long-term health effects from pesticide exposure.

The EPA's Worker Protection Standard (WPS) provides basic workplace protections to agricultural workers to minimize the adverse health effects of pesticide exposure. The regulation applies to hired workers involved in the production of agricultural crops. In November 2015, the EPA revised the WPS for the first time in more than 20 years. The WPS requires agricultural employers to comply with minimum safety precautions when using pesticides on farms, and in nurseries, greenhouses or forests. For example, the WPS requires employers to inform workers about where and when pesticides were sprayed to avoid accidental exposures. Information about each pesticide and application must be posted in an easily accessible central location. The WPS also allows workers to designate a representative to obtain this same information on his/her behalf. 40 CFR 170.311(b)(9) This provision is critically important to the health and safety of farmworkers and their families, and farmworker, public health and labor rights advocates fought hard to include this provision in the draft regulation and to retain it in the final rule.

For non-agricultural workers exposed to toxic substances or harmful physical agents, OSHA regulations provide a right of access to relevant exposure records to workers and their designated representatives. 29 C.F.R. § 1910.1020. Similar regulations in California require an agricultural employer to provide this information within 48 hours of a request from an employee, or his/her representative or physician. 3 CCR § 6761. The designated representative is simply standing in the place of the worker at the worker's request. The worker may need the assistance of a co-worker, spouse, union representative, social worker, or attorney to obtain information necessary for medical treatment, worker's compensation, or exercise of legal rights. In the event that a worker is incapacitated or unable to access these records, he should be able to designate a representative to obtain detailed information about what he was exposed to and the circumstances of that exposure.

A recent example from North Carolina illustrates the importance of this provision for farmworkers. In 2010, an H-2A worker became ill after being exposed to pesticides on a tobacco farm and his employer immediately sent the worker home to Mexico. The injured worker lived in a rural area in Mexico and did not have a home telephone, fax machine, email address, or viable mailing address. He did not have a treating physician and needed assistance locating, coordinating with, and transportation to a medical specialist (toxicologist) in a different part of Mexico to determine an appropriate course of treatment. The NC state department of agriculture denied requests for pesticide application records to attorneys representing the injured worker,

thereby impeding appropriate medical treatment and diagnosis. Sadly, this is not an isolated incident.

Title IV, Section 437 of the FY 2017 House Appropriations Bill for the Interior, Environment, and Related Agencies would prohibit “the use of funds to implement or enforce,” the provisions of the WPS that allow access to pesticide application and hazard information by a worker’s designated representative. By denying access to such information to a designated representative, Congress would create barriers that could delay medical treatment and add more to healthcare costs. The idea that workers should not be able to designate representatives is unacceptable.