

## Worker Protection Standard Compliance Responsibilities when Farm Labor or Pesticide Application Services are Contracted

The federal Worker Protection Standard (WPS) pesticide safety regulations protect employees on farms, forests, nurseries and greenhouses from occupational exposures to agricultural pesticides. The WPS provisions became effective on January 1, 1995.

This fact sheet will help you understand who has responsibility to ensure compliance with WPS requirements when agricultural labor or services are contracted.

Agricultural employers utilize contract employees to supplement their work force. Contract employees normally work under the direction and supervision of the labor contractor or under the grower.



### WPS Definitions [from 40 Code of Federal Regulations Part 170.3]:

**Agricultural Employer** [HTC p9, 14]<sup>1</sup> means any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of agricultural plants.

**Handler Employer** [HTC p14] means any person who is self-employed as a handler or who employs any handler, for any type of compensation.

**Owner** [HTC p71] means any person who has a present possessory interest in an agricultural establishment covered by the WPS.

**Handler** [HTC p10] means any person, including a self-employed person, who: (1) mixes, loads, transfers, or applies pesticides; (2) disposes of pesticides or pesticide containers; (3) handles opened containers of pesticides; (4) cleans, adjusts, handles, or repairs pesticide mixing, loading, or application equipment that may contain pesticide residues; (see HTC p10).

**Worker** [HTC p10] means any person, including self-employed person, who is employed for any type of compensation and who is performing activities relating to the production of agricultural plants on an agricultural establishment.

<sup>1</sup> HTC = How-to-Comply Manual 2005 Edition. Page numbers provided refer to the actual page numbers in the bound EPA version

### Clarification of Farm Labor/Service Contracts

The employer is ultimately responsible for compliance with WPS.

The existence of a contract that assigns WPS compliance responsibility to another party (labor contractor, self-employed contract worker, etc.) does not negate the employer's ultimate responsibility for WPS compliance.

In the event a person fails to meet the WPS requirements, the employer will be held accountable.

Labor contracts and labor contract disputes are not reviewed or resolved by the Minnesota Department of Agriculture.

## 1. Agricultural Employer Contract with Labor Contractor to Supply Workers.

The agricultural employer and the labor contractor both have responsibility to ensure that workers are protected from exposure to agricultural chemicals and that WPS requirements are met (HTC p9). Both must determine and agree to the specific WPS requirements each will provide. It is necessary for the agricultural employer to inform the labor contractor of activities that the contracted employees will be performing and whether the labor contractor or the agricultural employer will be responsible for directing and supervising these activities.

**It is strongly advised that these shared responsibilities for WPS compliance be specified in writing (e.g. contract) so that all parties are clearly and fully aware of each other's responsibilities.**

For example, the labor contractor needs to know if the contract workers will be mixing and loading pesticides. In that case workers must be properly trained as pesticide handlers and be provided the proper personal protective equipment (PPE) and decontamination supplies as required by the WPS.

## 2. Agricultural Employer Contract with a Self-Employed or Independent Contract Worker for Farm Labor.

The WPS definition of "workers" includes self-employed persons involved in the production of agricultural plants. The WPS stipulates that only agricultural employers are responsible for WPS compliance, not workers, whether the workers are self-employed or not.

## 3. Agricultural Employer Contract with a Commercial Pesticide Applicator

A contract with a MN Licensed Commercial Pesticide Applicator to apply pesticides on an agricultural establishment does not eliminate the need for the owner or grower to provide WPS information. Both the handler employer (commercial service) and the customer share responsibilities for compliance with the WPS.

A Commercial Pesticide Applicator must comply with a number of WPS requirements (HTC p120-121, 123-124) including:

### 1. *The employer of a commercial pesticide applicator must assure that the applicator is in compliance with WPS. Compliance for the applicator includes:*

- *WPS pesticide safety training for handler.*
- *Access to pesticide labels and labeling.*
- *Having and wearing the proper PPE and clothing as stated on the pesticide labels.*
- *Decontamination supplies that are accessible during handler activities.*
- *Pesticide application equipment in proper working order.*
- *Ensure proper use of application equipment.*
- *Adequate storage for non PPE clothing.*
- *Provide emergency assistance if needed.*

### 2. *The commercial pesticide applicator or his employer must provide specific WPS application information to the customer/grower prior to the pesticide application (HTC p26). The information includes:*

- *The specific location and description of the area to be treated.*
- *Time and date the pesticide application is scheduled.*
- *Product name, EPA registration number and active ingredient.*
- *Restricted-entry interval (REI).*
- *Notification method, oral warning or both oral warning and posting, and*
- *Other specific label requirements to protect workers and others.*

The customer must provide to the commercial pesticide applicator the specific location, description, and restrictions for any field under treatment or under an REI that is within ¼ mile of where the commercial pesticide applicator will apply pesticides.

## 4. Responsibility when the crop is owned by someone other than the grower (seed corn production and canning crops).

The employer is the person who exercises primary direction and control over worker activities. The employer is therefore responsible to provide and ensure that all components of WPS are met.

## Quick Reference of WPS Responsibilities for Compliance

### General Duties for the WPS [40CFR Part 170.7]:

WPS Responsibility: The Agricultural employer or the Agricultural Handler employer shall assure that each worker and handler receives the required WPS protections (and more -see 40CFR 170.7). An Agricultural employer may not contract away liability.

Agricultural Workers <sup>1</sup>	Type of Employee	Person Responsible for Compliance
	Hired, Compensated Employee	Agricultural Employer <sup>1</sup>
	Employee of Labor Contractor	Shared dual responsibility by Labor contractor & Agricultural employer [agreed WPS responsibilities for each may be specified in writing]
	Self-Employed Contracted Employee	Agricultural employer [agricultural employer may not contract away WPS responsibilities]
	Immediate Family	Each Family Member is self-responsible (see Exemptions HTC p109)
Agricultural Handlers <sup>1</sup>	Type of Employee	Person Responsible for Compliance
	Hired, Compensated employee of Agricultural Owner	Agricultural employer. Handler has responsibility to follow pesticide label directions.
	Hired, Compensated employee by Commercial Pesticide Handling Establishment	Handler employer primarily, but Agricultural employer responsible for site-specific information and exchange about applications. Handler has responsibility to follow pesticide label directions.
	Self-Employed Contract Employee	Self-Employed primarily, but agricultural employer responsible for site-specific information exchange about applications. Handler has responsibility to follow pesticide label directions.
	Immediate Family	Each family member is self-responsible; (see Exemptions HTC p109)

**Footnote 1. As defined in the WPS (40 Code of Federal Regulations 170.3 & HTC p10, 74)**

For more information about the WPS, refer to the Worker Protection Standard, How to Comply Manual. The manual can be viewed online at <http://www.epa.gov/agriculture/htc.html>, and is available on CD toll-free at 888-663-2155

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