VNLA LUNCH & LEARN SERIES

KEY POINTS OF THE REVISED WORKER PROTECTION STANDARD (WPS)

Are you 2017 compliant?

Presented by: Micah Raub, Program Coordinator
Virginia Department of Agriculture & Consumer Services
Worker Protection Standard

- The Worker Protection Standard regulation was implemented in 1992. Since that time there have been few significant modifications.
- On November 2, 2015 the EPA published the revised Worker Protection Standard in the Federal Register.
- In the short term, the revised regulation retained the existing requirements until January 2, 2017 at which time they expired.
- Most new requirements became effective on January 2, 2017 although some are delayed until January 2, 2018 (i.e. training content).
WPS: Background

- The Label is the Law- Reference to the federal law and WPS is found on agricultural pesticide labels.

- The statement- “It is a violation of Federal Law to use this product in a manner inconsistent with its labeling”-signifies that WPS is applicable.

- VPCA § 3.2-3939 (B) states that
  “It is unlawful for any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or regulations of the Board…”
Example of WPS Reference:

“Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR, Part 170”
The WPS covers any agricultural employer who owns or is responsible for the management of a farm, forest operation, or nursery engaged in the outdoor or enclosed space production of agricultural plants, and who employs any worker or handler.

Unlike other laws and regulations affecting agricultural labor, the WPS does not exempt any employment in commercial agriculture involving hand labor in fields. Owners and immediate family members are specifically exempt from many provisions.
WPS: Who does it impact?

The Worker Protection Standard also applies if:

- An employer hires or contracts for the services of agricultural workers to do tasks related to the production of agricultural plants... (i.e. farm labor contractors)

- An employer or people they employ apply pesticides that are used in the production of agricultural plants... (i.e. commercial applicators)
Revised WPS: Terms

Two Key Terms that may further help determine if WPS applies—Employ and Agricultural Plant.

The revised WPS has added a definition for employ and revised the definition of agricultural plant which further clarify the applicability of WPS.
Revised WPS: Terms

Employ (effective 2017)

- The term “means to obtain, directly or through a labor contractor, the services of a person in exchange for a salary or wages, including piece-rate wages, without regard to who may pay or who may receive the salary or wages. It includes obtaining the services of a self-employed person, an independent contractor, or a person compensated by a third party, except that it does not include an agricultural employer obtaining the services of a handler through a commercial pesticide handler employer or a commercial pesticide handling establishment.”
Revised WPS: Terms

Agricultural Plant

- The term means “any plant, or part thereof, grown, maintained, or otherwise produced for commercial purposes, including growing, maintaining or otherwise producing plants for sale or trade, for research or experimental purposes, or for use in part or their entirety in another location...”
Revised WPS: Terms

The term agricultural establishment also refers to establishments which are not primarily agricultural if they produce agricultural plants for transplant or use (in part or their entirety) in another location instead of purchasing the agricultural plants.

Examples:
Golf courses growing their own sod.
Amusement parks growing their own ornamental plants in nurseries or greenhouses.
WPS Background: Who is covered?

Who is responsible for providing the protections?

- Agricultural employers [owners] on crop-producing establishments
- Commercial pesticide handling establishment employers

Who is protected?

- Farmworkers – work in the fields to harvest and cultivate
- Pesticide handlers – mix, load, and apply pesticides for use on crops
- Other persons during pesticide applications
WPS Background: Goals of WPS

- **Inform** workers and handlers about potential exposure to pesticides
- **Protect** workers, handlers and other people from exposure to pesticide
- **Mitigate** any pesticide exposures that workers or handlers receive
WPS: Major Changes

- Mandatory annual training with expanded content*
- Minimum age requirements for handlers (18 years old)*
- Expanded mandatory posting of no entry signs for the most hazardous pesticides
- New no-entry application exclusion zones
- Requirement to provide pesticide application information and safety data sheets upon request and at Central Location*
- Mandatory record-keeping of training, pesticide applications, respirator trainings and medical evaluations.
- Updated Anti-retaliation provisions
- New PPE requirements, including respirator fit-testing, training and medical evaluations.
- “New” specifications on amounts of water made available for routine washing, emergency eye-flushing and other decontamination.

*Owners and immediate family exempt from requirements.
WPS: Worker & Handler Training

- Beginning in 2017, training once every 12 months is required.
- No more “grace period”
- EPA must approve training materials and train-the-trainer (TTT) programs
- Trainer must be a certified applicator of RUPs, complete an EPA-approved TTT program or be designated by state/tribe
- Require recordkeeping of training for 2 years
  - Provide worker or handler a copy upon request
- Expand training content [After Jan 2, 2018]
- Workers & handlers don’t need WPS training if they are:
  - Certified as an applicator of restricted use pesticides
  - Certified as a crop advisor by a program acknowledged as appropriate by EPA/State/Tribe and has pesticide training that covers all WPS handler training content
Establishment-specific information:

- In addition to other content presented during training, the employer must provide the following establishment-specific information to workers and handlers.
  - Location of pesticide safety information;
  - Location of pesticide application and hazard info;
  - Location of decontamination supplies.
- This information is required even if a worker or handler has already been trained at another establishment.
WPS: Worker & Handler Training

Under an agreement with VDACS, Telamon, Inc. offers **FREE** WPS training in English and Spanish for agricultural employers in Virginia.

For more information contact Wilson Perez by phone at 804-381-6082 (O) or 804-298-6157 (M) or by email at: wperez@telamon.org.
WPS: Respiratory Protection

Whenever a respirator (of any type) is required by the pesticide product labeling the employer must ensure the following requirements are met prior to the handler activity requiring the respirator:

- Handler must be fit tested using the respirator specified on the pesticide product labeling;
- Handler must receive training in the use of the respirator specified on the product labeling;
- Employer must provide handler with a medical evaluation by a physician or other licensed health care professional to ensure the handler’s physical ability to safely wear the respirator.
WPS: Display of Information

3 Types of Information must be displayed for 30 days following the expiration of the REI. Reference new HTC manual, Page 21

- **Pesticide Safety Information** - New Content 2018; ”Safety Poster” (alternate formats permitted).
- **Pesticide Application and Hazard Information** - Records of Pesticide Usage & Safety Data Sheets
WPS Pesticide Safety Information

- Display with the application and safety information at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate or where it can be readily seen and read (referenced in past as Central Location); and,

- Anywhere that decontamination supplies must be provided on the ag establishment for workers, handlers or early entry workers BUT only when:
  - The decontamination supplies are located at permanent sites or
  - Being provided at locations and in quantities to meet the requirements for 11 or more workers or handlers.
Protect Yourself from Pesticides
Protejase De Los Pesticidas

Avoid getting on the skin or in the body any pesticides that may be on or in the pants, socks, gloves, water, barley, and other equipment. Wear personal protective equipment or draping when necessary.

Use of corrective measures may be necessary if corrective safety measures were not used or are not available when necessary.

Wear clean clothes. Wash or launder clothing when contaminated.

Wash clothes separately from other clothes before washing them again.

Keep work clothes separate from home clothes until they are laundered.

Follow directions about leaving out of treated areas and application exclusion zones.

Lighten or shower with soap and water, shampoo hair, and put on clean clothes after work.

Avoid swimming with contaminated clothes.

Follow directions about leaving out of treated areas and application exclusion zones.

Seek medical attention as soon as possible if you believe that you have been poisoned, injured, or made ill by pesticides.

For more information on pesticides, call the State Agricultural Extension Service at 1-800-354-7317.

The nearest emergency medical treatment facility is

[Contact information provided]

Penn State
Pennsylvania State University
Pennsylvania State University
Pesticide Safety Program

In An EMERGENCY
En Una EMERGENCIA

If pesticides are spilled or sprayed on the body, use decontamination supplies to avoid immediate or later effects of the exposed skin. Include, but not limited to:

Shower: Use water only to wash contaminated clothing.

Wash: Use water only to wash contaminated clothing.

If clothing is contaminated, it should be removed immediately and replaced by clean clothing.

If clothing is contaminated, it should be removed immediately and replaced by clean clothing.

If clothing is contaminated, it should be removed immediately and replaced by clean clothing.
WPS Application & Hazard Information

- Display pesticide application and hazard information within 24 hours after the end of the application if workers or handlers are on the ag establishment.
- Post information at central display for 30 days after REI expires and retain for 2 years.
- Access available from display period through retention to:
  - Employee (upon oral or written request)
  - Treating medical personnel and persons working under their supervision (oral or written request)
  - Designated representative (written request only)
Recordkeeping Content

The application information (Records) must include the following:

- Name of the pesticide applied (Brand and common name or trademarked name)
- Active Ingredient(s)
- EPA Reg. No.
- REI
- Crop or site treated
- Location and description of the treated area(s), and
- Date(s) and times application started and ended.
## Application Information: Sample Record

Recordkeeping Form for the Worker Protection Standard and the USDA Restricted-Use Pesticides Regulation

Maintain records of all agricultural-use (WPS) and restricted-use pesticide applications for a minimum of 2 years.

**1 / USDA (1) Field ID/Location of Treated Area**

<table>
<thead>
<tr>
<th>USDA (2)</th>
<th>USDA (3)</th>
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<th>USDA (9)</th>
<th>USDA (10)</th>
<th>USDA (11)</th>
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<tbody>
<tr>
<td><strong>Date</strong> (mo/day/yr)</td>
<td>Time Planned</td>
<td>Restricted Entry Interval (REI)</td>
<td>Crop or Commodity Treated</td>
<td>Brand Name(s)</td>
<td>EPA Registration Number(s)</td>
<td>Active Ingredient(s)</td>
<td>Size of Area Treated</td>
<td>Total Amount Applied*</td>
<td>Applicator's Name &amp; Certification Number</td>
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</tbody>
</table>

This hand/foot symbol indicates Worker Protection Standard (WPS) information (items 1-4 and 6-8). This information (except time completed) must be posted before the pesticide application and remain posted for 30 days after the end of the Restricted Entry Interval (REI). After this time, the records must be maintained for 2 years. All other information (items 9-11) must be recorded within 14 days of application. If you apply a tank mix of pesticides with different REIs, write down the longest REI. Note: WPS agricultural-use pesticides may be general-use or restricted-use.

*Multiply the rate of application you used by Size of Area Treated (item 9) to get Total Amount Applied (item 10). The Total Amount Applied is not the quantity after water or a carrier is added.

Note: For applications made to less than 1/10-acre, indicate "spot treatment" within Crop or Commodity Treated (item 5) and record the Location of Treated Area (item 1). Record the Date, Brand Name, EPA Reg. No., and Total Amount Applied (items 2, 6, 7, and 10).

Developed by Wayne G. Buhler, Ph.D., NC State University, in collaboration with the Structural Pest Control and Pesticides Division, NCDA&CS.
WPS Decontamination: Eye Flush

Emergency Eye-flushing for Handlers

- Mixing/Loading sites-
  - Water for eye-flushing must be immediately available to handler(s) at site.
  - Each mixing/loading site to have either
    - A system capable of delivering gently running water at a rate of at least 0.4 gal/min for at least 15 min, or
    - At least six gallons of water in containers suitable for providing a gently eye-flush for about 15 minutes.

- During applications, one pint of water in portable container per handler must be immediately available to each handler.
Entry restrictions formerly related to nursery production have been expanded and modified. They now include farms and forests as well as nurseries under the term **outdoor production**. A new **application exclusion zone (AEZ)** will be implemented for **outdoor production**.

- The term **outdoor production** means *production of an agricultural plant in an outside area that is not enclosed or covered in any way that would obstruct the natural air flow.*
- Greenhouses and similar structures are now covered under the term **enclosed space production**.
## WPS: Entry Restrictions

### Table 1. Entry Restrictions During Enclosed Space Production Pesticide Applications (ventilation criteria)

<table>
<thead>
<tr>
<th>A. When a pesticide is applied:</th>
<th>B. Workers and other persons, other than appropriately trained and equipped handlers, are prohibited in:</th>
<th>C. Until:</th>
<th>D. After the expiration of time specified in column C, the area subject to the restricted-entry interval is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) As a fumigant.</td>
<td>Entire enclosed space plus any adjacent structure or area that cannot be sealed off from the treated area.</td>
<td>*The ventilation criteria are met.</td>
<td>No post-application entry restrictions required after criteria in column C are met.</td>
</tr>
<tr>
<td>(2) As a smoke, mist, or fog, or as a spray using a spray quality of smaller than medium.</td>
<td>Entire enclosed space.</td>
<td>*The ventilation criteria are met.</td>
<td>Entire enclosed space.</td>
</tr>
<tr>
<td>(3) Not as in (1) or (2), and for which a respirator is required for application by the pesticide product labeling.</td>
<td>Entire enclosed space.</td>
<td>*The ventilation criteria are met.</td>
<td>Treated area.</td>
</tr>
<tr>
<td>(4) Not as in (1), (2) or (3), and:</td>
<td>Treated area plus 25 feet in all directions of the treated area, but not outside the enclosed space.</td>
<td>Application is complete.</td>
<td>Treated area.</td>
</tr>
<tr>
<td>- from a height of greater than 12 inches from the planting medium, or</td>
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<tr>
<td>- as a spray using a spray quality of medium or larger.</td>
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<tr>
<td>(5) Otherwise.</td>
<td>Treated area.</td>
<td>Application is complete.</td>
<td>Treated area.</td>
</tr>
</tbody>
</table>
Oral notification will be required for pesticides with REI’s equal to or less than 48 hours (outdoor production) or equal to or less than 4 hours (enclosed space production).

- Timing of oral notification:
  - Before the application begins if workers will be present on the establishment when it begins.
  - At the beginning of a worker’s work period if they arrive while an application is taking place or a restricted-entry interval for a pesticide application is in effect.
Posted notifications

- Posting of no-entry signs will be required for the most hazardous pesticides*.
- Signs must remain visible and legible when posted.
- Double notification may be required by some pesticide labels.

*Pesticides with REI’s greater than 48 hours (outdoor production) or 4 hours (enclosed space production).
WPS: Entry Restrictions & Notification
WPS: Entry Restrictions & New AEZ

Background: AEZ-Application Exclusion Zone

Existing Protections During Applications:

- **WPS Label statement**: “Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.”

- **Who is responsible for compliance?** The applicator (handler)

- **Who is protected?** Workers & other persons (besides protected handlers)

- **Is the protection limited to the boundaries of the ag establishment?** No, it extends beyond boundaries
WPS: Application Exclusion Zone

New Protections During Applications in Outdoor Production - Application Exclusion Zone (AEZ):

- Requirement (170.405(a)(1))
  - The WPS establishes AEZ distances in outdoor production of 25 or 100 feet around the application equipment based on application method.

![Diagram showing AEZ and Target area]
WPS: Application Exclusion Zone

AEZs in Outdoor Production (170.405(a)(1))

- 100 foot AEZ
  - Applied aerially, by air blast or with a spray quality smaller than medium
  - Applied as a fumigant, smoke, mist or fog

- 25 foot AEZ
  - Applied other than above & sprayed from a height of >12 inches from planting medium with spray quality of medium or larger

- No AEZ
  - Applied otherwise
WPS: Application Exclusion Zone

The AEZ Provides Two New Protections During Applications in Outdoor Production

1) **Ag Employer**’s AEZ responsibilities:
   - Requirement (170.405(a)(2)): During an application, the agricultural employer must keep workers and other persons out of the treated area and AEZ that is WITHIN the boundary of the establishment owner’s property
   - Who is responsible for compliance? The Ag employer
   - Who is protected? Workers & other persons (besides protected handlers)
   - Is the protection limited to the boundaries of the ag establishment? Yes
WPS: Application Exclusion Zone

2) **Handler’s** AEZ responsibilities:

- **Requirement (170.505(b))**: Handlers must immediately suspend a pesticide application if any worker or other person (other than handler) is in AEZ (170.505(b)) [After Jan 2, 2018]
- **Who is responsible for compliance**: Handler/applicator
- **Who is protected**: Workers & other persons (besides protected handlers)
- **Is the protection limited to the boundaries of the ag establishment? No**
Application Exclusion Zone in Outdoor Production

When the application is concluded, the AEZ no longer exists.

- Field
- AEZ
- Spray Area
- Treated Area (REI Area)
WPS: Application Exclusion Zone

Summary of the WPS interpretive policy to clarify AEZ requirements and the meaning of “suspend a pesticide application”:

- If the AEZ extends beyond the boundary of the property of the agricultural establishment, and a worker or other person is within the AEZ, the applicator must temporarily suspend the application, and may not proceed until the applicator can ensure that the pesticide will not contact persons in the AEZ.
AEZs on Field Borders

There are workers from the neighboring field in the AEZ, and they refuse to move!

Can you ensure these workers won't be contacted through drift?

Yes, the wind is blowing away from the workers and I can ensure that my application will not contact the workers in the other field.

When the application is finished the AEZ no longer exists.

Neighboring Field

Your Field

WIND
WPS: Application Exclusion Zone

AEZ Requirements in a Nutshell

- Ensure that everyone (other than trained equipped handlers involved in the application) is always an appropriate distance away from the area being treated during pesticide applications.

- When applying a pesticide near establishment borders where other persons may be in the proximity of the ongoing application, do the following:
  - Suspend: If people are present, pause the application.
  - Evaluate: Evaluate conditions and ensure you can continue the application safely.
  - Resume: Resume the application only if you are confident you can continue the application without it resulting in contact with any nearby workers or other persons.
WPS Requirements for Ag Establishment Owners and Immediate Family Members

- Immediate family is limited to the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. “First cousin” means the child of a parent’s sibling, i.e., the child of an aunt or uncle.

- Owners and their immediate family are not exempt from all provisions of WPS.
Owners and Immediate Family Members (cont’d)

- Key points about Owner (Majority) and Immediate Family Exemption 170.601(a):
  - There is no exemption for “family farms”
  - The “agricultural establishment” is NOT exempt
  - Exemption only covers the owner and immediate family members – must provide all applicable protections to employees who are not immediate family members
  - Owners and immediate family must still comply with some WPS provisions and all labeling requirements (even if there are not employees outside the immediate family working)
Owners and Immediate Family Members (cont’d)

Owners and Immediate Family Members Must:

- Ensure that any pesticide applied is used in a manner consistent with the product’s labeling.
- Ensure pesticide is applied so it does not contact anyone, including members of the immediate family and must temporarily suspend the application if workers or other persons are in the AEZ or enclosed space area.
- Use the PPE and other work attire listed on pesticide labeling.
- Keep everyone, including members of the immediate family, away from the treated area and the application exclusion zone during the application.
- Keep immediate family members out of the treated area until the REI expires.
- When respirators are required on the pesticide labeling, follow WPS requirements for training, medical evaluation, fit testing and recordkeeping.
Available WPS Resources

Online

- Revisions to the Worker Protection Standard (Webpage)

- How to Comply With the 2015 Revised Worker Protection Standard for Agricultural Pesticides: What Owners and Employers Need to Know

- Pesticide Educational Resources Collaborative (PERC)
  http://pesticideresources.org/index.html
Available WPS Resources

Handouts for Download (EPA Site)

- How to Comply With the 2015 Revised Worker Protection Standard for Agricultural Pesticides: What Owners and Employers Need to Know (All previous versions of “How to Comply” are obsolete).
- Comparison Chart of “Current” [Former] and “New” provisions.
- Fact Sheet: Changes to EPA’s Farm Worker Protection Standard
- Q & A Fact Sheet on the Worker Protection Standard (WPS) Application Exclusion Zone (AEZ) Requirements (April 14, 2016)
Questions and Contact Info

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