

**Assessment of the Worker Protection Standard Program in Oregon
FY2000**

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EXECUTIVE SUMMARY

In 1999 the Children's Health Protection Advisory Committee requested that the EPA review several regulations which could better protect children's health. As a result, the EPA Administrator requested that the Office of Enforcement and Compliance Assurance (OECA) conduct a national review of regional pesticide Worker Protection Standard programs. OECA asked each region to select a state WPS program to review. Region 10 recently completed its program review of Oregon OSHA's (OR-OSHA) enforcement of the WPS. EPA concluded that OR-OSHA is meeting all of the written program requirements in addition to establishing a "Local Emphasis Program" to address pesticide exposure issues for farm workers.

EPA's review also underscored an important issue: WPS does not address all potential sources of pesticide exposure to workers. These sources include pesticide drift from neighboring fields or workers living in housing near or within treated fields. In addition, some worker exposures are not addressed by WPS (e.g., pesticide dips for livestock, pre- and post-harvest use of pesticides). WPS was purposely limited to address only certain pesticide uses, but has commonly been misinterpreted to address all types of worker exposure. This misunderstanding has presented difficulties. Farm workers and their advocates report that the WPS requirements are not being implemented, and EPA has to explain why some exposures do not fall under WPS.

The criteria for EPA's review are based on existing standard operating procedures established by EPA and the state. Specifically, EPA reviewed OR-OSHA's enforcement procedures and processes; conducted oversight inspections; and thoroughly reviewed a percentage of WPS enforcement cases from the year 2000. The selected cases were reviewed for completeness, violations cited, and appropriateness of enforcement action.

EPA determined that OR-OSHA's enforcement response policy was more defined and in certain cases more punitive than EPA's own enforcement response policy for FIFRA. For example, OR-OSHA can assess a monetary penalty for first time offenders whereas EPA can only issue a "Notice of Warning" for a first time offense under FIFRA. EPA's oversight inspections revealed the large presence that OR-OSHA has in the field and the effectiveness with which it conducts interviews. OR-OSHA always interviewed employees and usually interviewed them away from management. EPA's case review revealed that the inspection reports contained all required information. Moreover the violations cited were appropriate and followed OR-OSHA's policies, taking into account the toxicity of the pesticide, the type of activity, and probability of injury. Over half of the WPS violations found during the year 2000 were paperwork violations related to the posting requirements of information and considered "Other Than Serious". Although there were some violations considered serious, none of them resulted in any harm and therefore the corresponding penalties were not very high.

EPA also carefully looked at concerns raised by advocacy groups which included the allegations that OR-OSHA conducted only a limited number of WPS inspections; the state agency failed to contact workers during inspections; central posting area and requirements were

ignored; inspections were not conducted during non-business hours; and minimal, if any fines were assessed for violations. Upon investigation of OR-OSHA's program, EPA found that OR-OSHA committed to a baseline of approximately 60 unannounced comprehensive WPS inspections per year. EPA found that it is OR-OSHA's policy to interview workers privately and in their own language. During EPA's oversight inspections, the agency concluded that OR-OSHA fully enforces the regulatory requirements of central posting; however, what is accessible and central is a matter of interpretation and has to be determined on a case by case basis. Also OR-OSHA will make non-business hour site visits to respond to complaints and to interview workers. And finally, EPA determined that OR-OSHA is precise in following the penalty structure in its enforcement response policy. However, it is the state legislature which sets the penalty structure and the public has to convince its state legislature that a change in the law is needed in order to gain higher penalties for WPS violations.

Farm worker advocates strongly recommend the increased use of unannounced random inspections as a means of discovering serious violations. Although random inspections can serve as a deterrent, provide field presence, and reveal some violations, they are a very resource intensive and indirect way to discover serious violations, requiring three times the resources of inspections based on worker complaints. It is very difficult to make the connection between people who have been exposed and random inspections. At the same time, since the agency is trying to protect a population that distrusts government, unannounced random inspections are currently the agency's only option.

In summary, farm worker pesticide exposure issues are broader than the WPS. Even if all the provisions of the WPS were followed, pesticide exposure is unlikely to be eliminated. Rather, there are numerous scenarios where workers can be exposed to pesticides despite the WPS, including drift, residuals on plants, and washing work clothes at home. Drift from neighboring fields is a major contributor to pesticide exposure in Region 10, yet it is not a WPS issue. Another exposure route that is not addressed by the WPS is through living in farm labor housing. During EPA site visits, it was noted that both farm labor and employer housing may be located in the middle of fields and are susceptible to drift.

OR-OSHA is committed to working with the farmworker community to identify the variety of ways in which pesticide exposure occurs so the agency can implement recommendations appropriately. Current next steps for EPA and OR-OSHA include working directly with the farm worker community and building an effective outreach program which includes health care providers. The state has committed to maintaining a strong enforcement presence in Oregon and to work with EPA to use all of the tools in the compliance tool box to address pesticide exposure issues. EPA has committed to addressing pesticide drift issues and a pesticide drift task force has been established.

ABBREVIATIONS

CFR	Code of Federal Regulations
CO	Compliance Officer
DCBS	Oregon Department of Consumer and Business Services
EPA	Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, Rodenticide Act
IMD	Information Management Division
OAR	Oregon Administrative Rules
ODA	Oregon Department of Agriculture
OR-OSHA	Oregon Occupational Safety and Health Division
OSU-ES	Oregon State University - Extension Services
OTS	Other Than Serious
PARC	Pesticide Analytical Response Center
PPE	Personal Protective Equipment
REI	Restricted Entry Interval
SIC	Standard Industrial Classification
WPS	Worker Protection Standard

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INTRODUCTION

The Environmental Protection Agency (EPA) revised its Worker Protection Standard (WPS) for agricultural use pesticides on August 21, 1992. The revised WPS regulation found in 40 CFR Part 170 is designed to reduce risk of illness or injury to workers or pesticide handlers from exposure to pesticides used in the production of agricultural plants on farms, nurseries, greenhouses, and forests. The FIFRA WPS became fully effective in 1995. Shortly thereafter, EPA established WPS enforcement at agricultural establishments as a priority. Emphasis was placed on high risk, high exposure situations to ensure the health and safety of agricultural workers and as part of its goal to reduce the risk of exposure to workers.

In recent years, EPA has received numerous reports and letters from farm worker advocacy groups requesting that the Agency take adequate measures to ensure that the WPS is enforced. Farm worker advocacy groups identified several key areas for the Agency to consider in developing an enforcement strategy effective from their point of view. The key considerations are listed below:

- Inspections should be comprehensive and include farm worker interviews
- Inspectors need to speak Spanish (non-Spanish speaking inspectors tend not to conduct comprehensive inspections that include interviews with farm workers)
- State agencies need to issue and increase fines
- A greater field presence on farms by regulatory agencies is needed
- Agencies need to target inspections, sometimes during the off-hours, and focus on sites and activities with increased risk of pesticide exposure
- EPA and the states need to clarify ambiguities in WPS regulations and intents

In FY2000, EPA Region 10 worked with the Oregon Occupational Safety and Health Division (OR-OSHA) to address the specific issues identified by farm worker advocacy groups and to meet the following objectives:

- Conduct comprehensive WPS inspections in the state of Oregon
- Increase field presence on farms
- Improve monitoring/oversight of WPS implementation
- Agreement on what constitutes a serious vs. non-serious violation and the appropriate penalties
- Support OR-OSHA's Pesticide Emphasis Program
- Fully assess the WPS program
- Identify possible criminal WPS activity

A number of the objectives were accomplished while some are still ongoing. Numerous meetings were held throughout the year and an unfunded cooperative agreement was signed between EPA Region 10 and OR-OSHA. Four EPA representatives went on a total of 15 oversight WPS inspections with five OR-OSHA compliance officers (CO). Eleven WPS

inspection reports were selected for an in-depth review. This report is a result of our work with OR-OSHA in the past fiscal year and describes some positive findings and provides feedback in areas where we believe OR-OSHA can improve their WPS enforcement program.

WPS HISTORY IN OREGON

According to the Oregon Agricultural Statistics Service (March 2000), Oregon has 40,500 farms on 17,200,000 acres of land with an average farm size of 425 acres in 1999. There are approximately 128,564 migrant farm workers working in Oregon according to the 1989 Migrant Farmworker Survey. Oregon is one of the greatest producers of peppermint, seed crops, berries, hazelnuts, prunes and plums, and Christmas trees in the nation.

The Oregon Occupational Safety and Health Division (OR-OSHA) found within the Department of Consumer and Business Services (DCBS) is the state lead agency responsible for implementing and enforcing the WPS in Oregon. In July 2000, EPA Region 10 and OR-OSHA signed an unfunded cooperative agreement to clearly delineate the roles and responsibilities relating to WPS enforcement activities (see Appendix A). OR-OSHA receives no funding from EPA. In FY2000, OR-OSHA allocated a total of \$210,000 of its own budget towards WPS enforcement and compliance assistance (WPS enforcement, 3 FTE, \$150,000; WPS compliance assistance, 1.2 FTE, \$60,000). Oregon Department of Agriculture (ODA), on the other hand, has the primary enforcement responsibility for pesticide use violations not involving employer-employee situations. ODA enforces worker protection labeling requirements, conducts WPS inspections on referral from OR-OSHA, reviews OR-OSHA WPS inspection reports, and coordinates with OR-OSHA on enforcement activities for WPS. EPA provided \$32,475 for WPS enforcement and compliance assistance activities to ODA for FY2000. ODA and OR-OSHA signed a memorandum of agreement in August 1991, updated in September 2000, to clarify the roles and responsibilities of each state agency on the WPS (see Appendix B).

OR-OSHA conducts investigations and takes enforcement actions associated with the WPS (specifically, 40 CFR 170, excluding 40 CFR 156 Subpart K, labeling requirements for agricultural pesticide products) and works closely with ODA. Having OR-OSHA as the state lead agency for WPS enforcement seemed a logical action since many of the already existing OR-OSHA standards overlapped with the WPS (e.g. field sanitation); in addition, OR-OSHA adopted the WPS, 40 CFR 170, by reference into its administrative rules (OAR 437-81-3010) in December 1993.

WPS outreach and communication in Oregon is achieved in a number of ways. In FY2000, Oregon Department of Agriculture received \$26,250 for WPS program activities. Much of this money was spent on outreach/education/training activities conducted by Oregon State University - Extension Services (OSU-ES). In past years, pesticide applicators and employers were the target audience of outreach activities. However, from FY92-98, OSU-ES developed a long-term program to deliver WPS education and training to workers. Over 13,200

agricultural laborers received WPS safety training in Spanish. During FY2000, OSU-ES continued to provide WPS training to pesticide applicators through its pesticide applicator training program. OR-OSHA and ODA contribute to this effort by offering hazard communication, personal protective equipment, pesticide laws and regulations, and WPS safety trainings often in conjunction with OSU-ES's pesticide training program. Private-sector trainers and community college educational services programs also offer other WPS training opportunities. Other means of outreach and communication are through OR-OSHA's publications, mailings, news releases, quarterly newsletter *The Resource*, hazard alert letters, and ODA's Pesticide Quarterly. Both agencies also have active websites (www.cbs.state.or.us/external/osha/ and www.oda.state.or.us/pesticide/info.html) that the public can access for the most recent WPS-related information and activities. Americorps volunteers within Oregon also help to provide pesticide safety training to workers free of charge. Finally, the Pesticide Analytical Response Center (PARC) was created as a mechanism for coordinating state agencies' responses to alleged incidents of pesticide exposure harmful to human health or a threat to the environment. PARC membership includes representatives from the Department of Agriculture, Oregon Health Division, the Department of Environmental Quality, the Department of Forestry, the Department of Fish and Wildlife, Occupational Safety and Health Division, Oregon Poison Center, State Fire Marshal's Office, and one citizen from the state-at-large appointed by the Governor.

OR-OSHA's INSPECTION PROCESS

According to policy, all OR-OSHA inspections are unannounced (see Table 1). There are two types of inspections conducted by OR-OSHA: unprogrammed and programmed inspections. Unprogrammed inspections are conducted in response to complaints or referrals that give specific evidence of hazardous conditions at a work site. Programmed inspections are scheduled based on a targeting scheme where employers are classified by Standard Industrial Classification (SIC) categories and may be ranked using neutral criteria. Neutral criteria may consist of the number and seriousness of workers' compensation claims and past inspection history. Five types of programmed agricultural inspections are conducted by OR-OSHA: (1) agricultural labor housing; (2) field sanitation; (3) agricultural health inspections; (4) agricultural safety inspections; and (5) pesticide emphasis program inspections. Agricultural labor housing inspections contain no WPS elements and are therefore not addressed in this report. Field sanitation and agricultural safety inspections incorporate some aspects of the WPS (especially as it pertains to the provision of soap and water to field workers for sanitation) while agricultural health and pesticide emphasis program inspections incorporate all aspects of the WPS and include interviews with handlers and/or workers. OR-OSHA's definition of a "comprehensive" WPS inspection means that all major aspects of the WPS are covered and that *both* a handler and a worker are interviewed. OR-OSHA's partial WPS inspection covers some aspects of the WPS and includes worker interview(s). In the following pages, "comprehensive" will be used according to EPA's definition, an inspection that covers *all* major aspects of the WPS, includes at least one interview with a handler and/or worker, and is conducted within the 30 day time

period after the end of the REI (see Fiscal Year 2002-2003 Joint EPA OPP/OECA State/Tribal Cooperative Agreement Guidance). “Partial” will be used to define an inspection that covers *some* aspects of the WPS, includes at least one interview with a handler and/or worker, but does not necessarily fall within the 30 day time period after the end of the REI.

Table 1. OR-OSHA’s Basic Inspection Requirements

- Neutral scheme targeting
- Unannounced
- Required interviews with at least one worker
- Complaints regarding imminent human health or environment hazards are immediately investigated

Health Compliance Officers conduct pesticide emphasis program and agricultural health inspections (both cover all major WPS elements) while Safety Compliance Officers conduct field sanitation (some WPS elements), agricultural labor housing (no WPS elements), and agricultural safety (some WPS elements and referrals to health compliance officers) inspections (see Table 2). Health Compliance Officers and Safety Compliance Officers fall under different management; inspections and referrals are coordinated between the two. Neither ODA nor OR-OSHA has a formal WPS questionnaire although some OR-OSHA compliance officers have developed their own informal WPS questionnaire in English and Spanish and use them on all WPS-related inspections (see Appendix C). Until recently there was only one compliance officer (CO) who conducted comprehensive WPS inspections. In Spring 2000, however, 8 health and 12 safety compliance officers received four hours of agricultural health training, four hours of WPS training, and eight hours of training on pesticides. In total, approximately 2 to 3 FTEs are now devoted to WPS work (1 person is fully devoted to the WPS while 8 to 10 COs dedicate 10 to 15 percent of their time to WPS). During the spray season, COs may choose to dedicate a larger percentage of their time to WPS depending on the need.

Table 2. Types of Agricultural Inspections Conducted by OR-OSHA Compliance Officers

	Ag. Labor Housing	Field Sanitation	Agricultural Safety	Agricultural Health	Pesticide Emphasis
Health CO				x	x
Safety CO	x	x	x		
WPS Aspects	None	Partial	Partial	Comprehensive	Comprehensive

Note: Partial is defined as some, but not all, major aspects of the WPS were reviewed and at least one employee was interviewed. Comprehensive is defined as all major aspects of the WPS were reviewed and at least one employee was interviewed.

If an inspection is neither complaint nor referral related, OR-OSHA COs must strictly adhere to their assigned programmed lists. COs attempt to follow the list in descending order but may conduct inspections in any order to utilize their time efficiently. A lot of time can be spent

locating addresses on the programmed list as street numbering is not necessarily logical, road maps may be confusing or non-existent, addresses may be incorrect or misspelled, etc. Sometimes a whole day can be lost locating an address. Locating an address also does not guarantee that someone will be there. Compliance officers will make several attempts to locate an employer on the programmed list before declaring the inspection a “triple zero”. A triple zero is the classification for an attempted inspection that could not be conducted because the process was not active, the employer was out of business or moved, employees were no longer employed at the location, or other similar situations. Inspections are not called off without a field manager’s approval. Updates regarding the employer’s business status or location is re-entered into the State’s database but not necessarily returned as a targeted employer for the following year. COs may not make any prior contact of a programmed inspection, even if it is to ask for directions to the facility. Programmed lists are unavailable to the public in order for OR-OSHA to keep its inspections confidential and unannounced. The database from which programmed lists are obtained is maintained by a separate division within the DCBS, the Information Management Division (IMD), and addresses are collected from data sources available to the division, mainly worker’s compensation coverage. Thus, without requiring growers to have a license to hire workers, obtaining an accurate address may be difficult.

Unlike Washington or Idaho State Departments of Agriculture’s agricultural-use inspections, OR-OSHA does not drive around farm areas looking for pesticide plumes for the purpose of conducting an on-the-spot, agricultural-use inspection. Rather, it is a matter of chance if a pesticide application is actually occurring during a programmed inspection. COs are advised to keep themselves free from hazardous situations by evaluating site-specific conditions, especially when important information about ongoing activities (such as a pesticide application) is unknown to the CO.

Table 3. OR-OSHA’s Procedure for Conducting Comprehensive WPS Inspections

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- Opening conference and interview with manager (interviews include questions on training, notification, early entry, emergency assistance)
 - Site inspection of pesticide storage area (type and toxicity of pesticides, PPE requirements, REIs)
 - Site inspection of central notification board and application records
 - Site inspection of decontamination area and PPE (soap, water, single use towels)
 - Worker interviews (handler and/or worker) (interviews include questions on training, notification, early entry, emergency assistance)
 - Pesticide mixing/loading observations, if possible
 - Closing conference
-

During a worker protection-related inspection (see Table 3), an opening conference is conducted with the grower followed by a walk-through of all major aspects of the WPS, including central posting area, training, notification, personal protective equipment, decontamination, emergency provisions, etc. After the opening conference with the grower, the

CO will typically ask to see the central posting and pesticide storage areas to review the most recent pesticide applications and types of pesticides used on the facility. Inspection of these areas helps to identify pesticide hazards. After interviewing the grower, one or more handlers and workers are privately interviewed. The interviewees are usually chosen based on who is present at the time of inspection. If handlers/workers are unavailable for interviews that day, COs try to make an appointment for a later interview. Interviews typically test a worker's pesticide safety and health knowledge and emergency procedures and confirms a grower's/manager's own statements; they are conducted in Spanish or another language if that is the language the worker is most comfortable with. If the CO is not bilingual, an interpreter is hired. If violations are found, the CO discusses possible solutions to the problems with the grower. Once the field work has been completed, closing conferences are held with the grower describing their rights in appealing alleged violations and provides the grower an opportunity to ask their own questions. Citations are issued following completion of paperwork.

On complaint inspections, a manager receives the complaint and makes the determination if an immediate investigation is warranted. If a complaint involves an imminent hazard, a CO is sent immediately. However, complaints are prioritized and may take more than 24 hours to respond to, depending on circumstances. The process for handling complaints is outlined in OR-OSHA's Field Inspection Reference Manual. Pesticide-related complaints are addressed through a program directive related to the pesticide emphasis program. Typically, 30 percent of inspections are complaint-related, 25 to 30 percent are referrals, and the remainder are programmed. OR-OSHA expects to conduct approximately 60 WPS inspections (partial and comprehensive) every year. Few, if any complaints come directly from farm workers. Less than 10 WPS-related complaints are received by OR-OSHA every year.

There are six bilingual Spanish-speaking OR-OSHA translators. In cases where the CO can not speak Spanish, an interpreter is hired at the cost of \$35 or more per hour.

EPA OVERSIGHT INSPECTIONS

In FY2000, OR-OSHA initiated a Pesticide Emphasis Program (see Appendices D for Program Directive and E for PEP Annual Report) that focused on pesticides and the WPS. A Pesticide Coordinator was designated to oversee activities. Throughout the year, four EPA Pesticides Unit staff accompanied five OR-OSHA Health Compliance Officers on a total of 15 WPS inspections throughout Oregon (Salem, Medford, Hood River). Review of the oversight inspections revealed the comprehensive nature of the inspections conducted and the extreme professionalism and thoroughness of the OR-OSHA staff. As previously mentioned, all inspections were unannounced, growers and employees were interviewed, and all major aspects of the WPS were covered (if it were a safety, health or pesticide emphasis inspection). In total, OR-OSHA conducted 47 comprehensive WPS inspections (39 included interviews with *both* handlers and workers, 8 included interviews with a worker) in selected Standard Industrial

Classifications¹ (SICs) and 10 comprehensive WPS inspections and 9 partial WPS inspections in non-selected SICs² for a total of 66 inspections with WPS components (57 comprehensive and 9 partial).

Our oversight inspections revealed the large presence that OR-OSHA has in the field. A number of growers complained that OR-OSHA had inspected them too many times and were wondering if they were being specifically targeted. Different COs had been out to the same site in one year, but for different types of inspections. Despite the complexity of the WPS regulations and the numerous exceptions, the COs new to the WPS showed a quick comprehension and confidence with the regulation. COs followed their protocol, conducted opening conferences, did a walk-through, interviewed the employer, handler and worker, if present, reviewed areas of concern with the manager, and conducted a closing conference. COs also made appointments with growers so that they could observe mixing/loading operations. Observing these operations gives the CO the opportunity to watch pesticide handlers at a time when pesticide exposure risk is at its highest. They can observe if the appropriate PPE is being worn, how the pesticides are handled, and give advice on how handlers can improve their standard practices, if necessary. Interviews with employees were held away from management and often included a detailed questionnaire. WPS materials, including the pesticide safety poster, how-to-comply manual, etc. were distributed if the grower needed or requested the information.

ENFORCEMENT RESPONSE POLICY

Region 10 considers OR-OSHA's enforcement response policy to be more defined and, in certain cases, more punitive than EPA's own enforcement response policy for the FIFRA WPS. OR-OSHA categorizes violations into two major areas: "other than serious" and "serious". The amount of the penalty is determined by the probability of an event occurring and whether the event would cause serious physical harm or death (see Table 4). "Other than serious" (OTS) violations are ones which may require first aid or produce symptoms or outcomes that will not result in lost work time. These may include headaches, nausea, and eye irritation, but not cancer, blindness, and hospitalization. Spot spraying annual rye with Round-up and not wearing safety glasses is an example of an OTS violation. "Serious" violations are classified based on whether physical harm resulting from injury or illness, either temporarily or permanently, could impair a worker. Such injury or illness may or may not lead to lost work day(s). These may involve "warning" or "danger" level pesticides, lack of or improper PPE, lack of emergency eyewash, etc. For example, using a pesticide which causes irreversible eye damage when there is no

¹The selected SICs were: 0139 - Includes hops, hay, grass seed, alfalfa farms, mint, potatoes, timothy and yams; 0171 - Includes berry farms, blackberry, blueberry, cranberry, loganberry, raspberry, and strawberry farms; 0172 - Includes grape farms and vineyards; and 0175 - includes apples, apricots, cherry peaches, pear, plum and prunes. These SICs were chosen due to the amounts and toxicity of pesticides used and the number of workers involved.

²The non-selected SICs were: 0181 - Nurseries; 0182 - Crops grown under cover (mushrooms); 0191 - General Farming; 0723 - Crop prep services for market.

eyewash in the mixing/loading area would be considered a serious violation.

Table 4. OR-OSHA Penalty Matrix

Probability	Severity	Probability	Severity	
Other Than Serious		Serious		
			Serious Physical Harm	Death
Low	0	Low	\$300	\$1,500
High	\$300	Medium	\$500	\$2,500
		High	\$1,250	\$5,000

If a facility is visited a second time and found to have repeat violations, then the minimum fine is \$200 up to a maximum of \$70,000 (see Table 5). Repeats are counted within a 3 year period from the date of original citation. If willful or egregious violations are found, a penalty of not less than \$5,000 nor more than \$70,000 may be assessed by the Administrator after considering the facts of the violation. For example, if a facility is found to lack the proper pesticide safety poster for the central posting, the initial fine would be \$0 because the probability of an accident occurring is low and “Other Than Serious”. However, upon a repeat visit within a three year time period, if the facility is found to still lack the proper pesticide safety poster, the owner will be fined \$200. As a second example, if a handler is found to be using a skull and crossbones pesticides without PPE, the initial fine (depending on the conditions) might be \$1250. If the same violation is found a second time in a three year period, the owner will be fined twice that amount or \$2500. A second repeat violator would entail a fine 5 times the initial or \$6250.

Table 5. OR-OSHA’s Penalties for Repeat Violations

1 st repeat	x 2
2 nd repeat	x 5
3 rd repeat	x 10
4 th repeat	Discretion of Administrator

It is possible for employers to receive penalty reductions based on three criteria. A 35 percent penalty reduction is given for each violation if an employer’s lost workday cases incidence rate for the previous calendar year is below the current published statewide average rate for that employer’s SIC. A 30 percent penalty reduction is given for each violation if the employer corrects the violation before the end of the inspection. Finally, a 10 percent reduction is given if the employer employed no more than 50 employees at any time in the previous 12 months. Thus, it is possible to obtain a total 75 percent reduction from the original penalty. If

the employer is a repeat violator then no penalty reductions are allowed.

OR-OSHA can issue a red warning notice with prior management approval when the facts merit immediate cessation of activities to preclude any further exposure to worker(s) until the condition is rectified or eliminated. Documentation of violations requires the identification of a hazard, employee exposure, and employer knowledge. Also, unlike other state pesticide programs, OR-OSHA inspectors conduct inspections and then review their own cases before a manager conducts a secondary review and submits it for an enforcement action.

EPA’s own WPS Enforcement Review Policy is quite different from OR-OSHA’s. It describes specific violations and gives each a gravity level ranging from 1 (serious) to 3 (minor). While OR-OSHA can assess a monetary penalty for first time offenders, FIFRA section 14(a)(2) states that a private applicator or other person that is not a registrant, commercial applicator, wholesaler or other distributor (e.g. a grower) shall receive a Notice of Warning for a first time offense. Repeat offenders (within a five year period) can be fined a maximum of \$1,100 for each violation based on the gravity level and size of business (based on gross income). Penalty reductions or increases are based on the pesticide toxicity, human harm, environmental harm, compliance history, and culpability. Thus, a penalty can be reduced by as much as 50 percent or increased by a maximum of 30 percent (but not beyond \$1,100).

Table 6. Comparison between EPA and OR-OSHA’s Enforcement Response Policies

EPA	OR-OSHA
1. First time offenders receive a Notice of Warning	7. First time offenders can receive a monetary penalty
2. Maximum \$1,100 penalty for each repeat violation	8. Maximum \$7,000 penalty for each repeat violation
3. Specific violations described to determine the penalty	9. Violation is rated “Other Than Serious” or “Serious”
4. Penalty reductions up to 50 percent or increases up to 30 percent	10. Penalty reductions up to 75 percent
5. Repeat violators counted within a 5 year period	11. Repeat violators counted within a 3 year period
6. Repeat violators may receive a Warning letter	12. Repeat violators receive a minimum \$200 fine

Because of the two agencies’ different enforcement response policies (see Table 6), different enforcement actions between the two may develop for the same violation. For example, if OR-OSHA found a handler working with a pesticide that could cause irreversible eye damage and no water was available for emergency eyeflush, OR-OSHA may fine the facility \$300 because there was the possibility of serious physical harm (irreversible eye damage) but with a low probability of it occurring. However, if EPA were enforcing this, the facility would receive a

warning letter for a first offense. A repeat offense would require OR-OSHA to double the fine to \$600, while EPA would fine the grower \$1,100 because failure to provide decontamination supplies for workers is given a gravity level of 1. It was suggested that OR-OSHA might be able to refer a second repeat offender it finds to EPA for a greater fine. However, because EPA had not taken the first enforcement action, the most EPA could do is write a Notice of Warning.

CASE FILE REVIEW

For this report, EPA reviewed WPS files that were selected among a complete list provided by OR-OSHA. The selection process ensured that the files included ones where EPA representatives participated in oversight, various OR-OSHA investigators, and complaints or referrals. The files included 11 WPS inspections (which included 2 complaints and 2 referrals). The reports were reviewed for completeness, violations cited, and enforcement action.

All the reports, with the exception of one, were very comprehensive. Each report contained (when appropriate): (1) citation and notification of penalty letter; (2) inspection supplement; (3) worksheet (to determine penalties); (4) notice letter (recommendations to the grower); (5) index of violations, severity, and probability ratings; (6) inspector's narrative; (7) opening and closing conference notes; (8) inspector notes; (9) worker questionnaire; and (10) evidence. The one report in question appeared incomplete with a comment that "WPS was discussed" with little discussion on WPS. OR-OSHA explained that in this case, the officer was not experienced in WPS and should have referred this case to a health compliance officer. OR-OSHA continues to work on improving its referral process between COs.

The violations cited were appropriate and included non-WPS related areas, e.g. hazard communication, housekeeping, respirator protection issues such as medical evaluation and fit testing requirements, etc. The enforcement actions were also appropriate and followed OR-OSHA's policy, taking into account the toxicity of the pesticide, the type of activity, and probability of injury. Review of the WPS files revealed the thorough nature of comprehensive WPS inspections. OR-OSHA is maintaining a strong field presence and takes the appropriate enforcement actions.

SUMMARY OF WPS VIOLATIONS

Out of 66 WPS inspections, a total of 81 WPS violations were found on 39 inspections. The most common WPS violations found in the selected and non-selected SICs were: (1) Central Posting area-related (41 out of 81 citations); (2) decontamination-related (18 out of 81); and (3) training-related (12 out of 81) (see Table 7). Over half of the WPS violations found were paperwork violations related to the central posting requirements and considered "Other Than Serious". Out of a total of 81 WPS violations cited, \$1710 in penalties were levied. Fourteen (17 percent) of WPS violations were considered "Serious". However, none of the serious

violations resulted in any harm, all were based on potential harm. Some of the more “Serious” violations included decontamination supplies not at mixing/loading site (40CFR170.250(c)(1): Original penalty \$300, complied with/corrected at the time of the inspection - received 30 percent reduction, paid \$210); decontamination supplies were not maintained outside an area under a Restricted Entry Interval (40CFR.150(c)(4): Original penalty \$300, complied with/corrected at the time of the inspection - received 30 percent reduction, paid \$210); clothing and PPE required by label not used (40CFR170.240(a): Original penalty \$300, lost workday case incident rate below industry average - received 35 percent reduction, paid \$195).

Table 7. Most Common WPS Violations Found in Oregon

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- Central posting requirements not met (51 percent of violations)
 - Decontamination supplies insufficient or not provided (22 percent)
 - Lack of or inappropriate pesticide training to workers and handlers (15 percent)
-

CONCERNS RAISED ABOUT OR-OSHA’s WPS ENFORCEMENT

In the past two years EPA has heard a number of concerns and complaints raised by a local farm worker advocacy group and others regarding OR-OSHA’s enforcement of the WPS. Mainly:

- Limited number of WPS inspections conducted
- Failure to contact workers during inspections
- Central posting area and posting requirements ignored
- Inspections not conducted during non-business hours
- Minimal, if any, fines for violations

One of the concerns raised was that OR-OSHA was not enforcing the standard partly because of the limited number of WPS inspections it conducted throughout the year. In the past three fiscal years, ODA reported to EPA that OR-OSHA had conducted, on average, 287 WPS inspections per year. However, further review of the data revealed that all inspections coded a certain way were reported as WPS inspections. This coding system included with WPS inspections those related to agricultural labor housing, field sanitation, agricultural safety and agricultural health inspections. The reporting of WPS inspections to EPA has been a source of confusion nationwide with the lack of a consistent definition for what constitutes a WPS inspection. EPA headquarters is currently working on the issue and OR-OSHA has since clarified its own numbers by assigning a separate tracking designation solely for WPS inspections. In FY2000, OR-OSHA conducted what is now considered 57 comprehensive WPS inspections and plans to maintain those numbers in the coming years.

OR-OSHA estimates that there are 5,800 potentially affected, farming-related establishments in the state’s SIC database. OR-OSHA fully supports its own WPS inspection

program (approximately \$210,000 from its own budget for FY2000) and receives no funding from EPA. Like most inspection programs, resources are limited to conduct the number of inspections required to properly cover a whole state. EPA provided \$32,475 for WPS enforcement and compliance assistance activities in Oregon for FY2000. Because OR-OSHA did not accept these funds, it was given to ODA for WPS use inspections at agricultural establishments and label reviews at pesticide dealerships. According to ODA's FY2001 figures, the average cost of an agricultural use investigation is approximately \$1900, not including the cost of sample analysis which adds \$500. If the funds were allocated to OR-OSHA, only 17 comprehensive WPS inspections could be supported.

Concern:	Limited number of inspections conducted.
Finding:	OR-OSHA will conduct approximately 60 comprehensive WPS inspections per year. OR-OSHA receives no funding from EPA for WPS enforcement.

In another concern directed to EPA, it was asserted that OR-OSHA fails to contact workers during inspections. It is OR-OSHA's policy that at least one or more workers be interviewed privately during inspections. When needed, translators will be hired. On all oversight inspections with OR-OSHA, EPA representatives observed interviews conducted with one or more handlers and workers. Only under unusual circumstances will an interview not be conducted. An inspection conducted in 1999 that is often cited as OR-OSHA's failure to contact employees/workers was found to be an isolated incident and not common practice. This review has shown that COs and their managers have a strong commitment to conducting worker interviews. COs can spend days conducting an inspection and experience many different and difficult situations when interviewing workers. In one case file review, the compliance officer noted that one of the managers was behaving aggressively during the inspection, insisting that he be present during worker interviews. When workers were asked if they were comfortable with this, only a couple agreed to an interview. At this point the inspection was delayed pending a discussion with management about this situation. Eventually, the CO was able to complete the inspection with worker interviews. At least three days were spent at this facility.

Concern:	Failure to contact workers during inspections.
Finding:	It is OR-OSHA's policy that at least one or more workers and handlers be interviewed in their language and privately during inspections.

Much discussion has ensued over the interpretation of where a central posting area can be located. At contention is the definition of what is "accessible" and "central" as described in 40CFR§170.122(a) and 40CFR§170.135(d). This has been interpreted as an area that is open and allows unrestricted access to workers and handlers when they are present on an establishment. Region 10 believes that appropriate places for the central posting area include, but is not limited to, break rooms, hallways, open office building areas, equipment storage sheds, free standing display boards, and the side of buildings or equipment. An advocacy group

questioned whether a central posting in a grower's office were appropriate. Some advocates believe that this, in reality, is inaccessible to the farm worker because of intimidation factors – if a worker looks at the information, the grower may take notice, think he might be a troublemaker, and then fire him. However, in certain cases, the grower's office is the one common area where farm workers congregate, whether to collect their paycheck or to eat lunch (because the lunchroom is attached). It is a matter of interpretation and often must be determined on a case-by-case basis by the inspector based on worker interviews and observations.

Concern:	Central posting area and posting requirements ignored.
Finding:	This is a matter of interpretation of what is “accessible” and “central”. It often must be determined on a case-by-case basis by the inspector based on worker interviews and observations.

Concerns were also raised regarding inspections not being conducted during non-business hours when it is said that most pesticides are applied. Farm worker advocates say that growers spray at night or in the early morning to avoid inspections. Conversely, growers say that they spray at these times to make effective use of time and to decrease the chance of worker exposure to pesticide residuals and also decrease the chance of heat stress. Spraying at night almost guarantees that no one will be out in the fields during the application, other than the applicator/handler. What OR-OSHA has tried to do is make appointments with growers during a programmed inspection so that the CO can go out and observe a mixing/loading operation or work out in the fields. If this time happens to be during non-business hours, the CO will attempt to observe this operation. In addition, if a complaint is received during off-hours and the complaint is deemed valid and an imminent hazard to humans or the environment, a CO is immediately dispatched. In one case file reviewed, a complaint was received over the Oregon Emergency Response System on a Saturday about a posted field with around 100 workers in it. An attempt was made to contact a health compliance officer to investigate. Because the CO was unavailable, an OR-OSHA manager made an attempt to locate the field that Saturday. It took him 2 ½ hours to find the field because only a street name was given. Attempts were also made to contact the complainant to get more details about the location, but this, too, failed. By the time the manager found the site, there were no workers around. A CO attempted to locate workers the following day, Sunday, but again found no one in the field. A formal inspection was started at the main office on Monday.

Concern:	Inspections not conducted during non-business hours.
Finding:	Valid complaints that are an imminent hazard to humans or the environment are investigated immediately. COs will make non-business hour visits to observe mixing/loading operations and to interview workers.

Finally, there is a general belief that there are minimal if any fines being levied against violators. While 59 percent of inspections in FY2000 found growers in violation of certain WPS

provisions, most were considered other than serious offenses. This is the crux of the conflict in the WPS. What *is* and *is not* a serious violation that entails monetary fines? For OR-OSHA, monetary fines are determined by the probability of an event occurring and whether the event would cause serious physical harm or death. As described in the previous section, the CO considers whether the situation would result in lost worktime. Thus, many paperwork violations (over half of WPS violations found in FY2000 were central posting area violations) did not result in monetary fines. However, growers were fined in cases where clothing and PPE required by the label were not used (40 CFR 170.240(a)), insufficient water provided for handler decontamination (40CFR170.250(b)(1)), emergency eyeflush not provided (40CFR170.250(d)), etc. The major difference between OR-OSHA and EPA is that OR-OSHA can penalize first-time offenders; EPA can not. OR-OSHA can fine persons up to a maximum of \$5,000 for each violation; EPA can fine up to a maximum of \$1,100. Any increase or change to either EPA's or OR-OSHA's penalty matrix requires approval from the federal or state legislature.

Concern:	Minimal, if any, fines for violations
Finding:	Few serious violations found. Over half of WPS violations found in FY2000 were central posting area violations and not considered serious. Seventeen percent of WPS violations were considered "Serious" and given monetary penalties. Any increase or change to either EPA's or OR-OSHA's penalty matrix requires approval from the federal or state legislature.

POSITIVE FINDINGS

OR-OSHA should be commended for their strong enforcement program. We found many positive aspects of OR-OSHA's program during our oversight inspections and review:

- Strong worker safety sense among OR-OSHA staff
- OR-OSHA management maintains an open dialogue with its staff, the regulated community, farm worker advocates, and the public
- WPS-trained compliance officers located in all areas of Oregon
- All WPS inspections are unannounced and include worker interviews

There is a strong sense within OR-OSHA that worker safety is their mission and this belief is well-communicated to the regulated community, workers, and compliance officers. Part of this attitude is due to the management style at OR-OSHA. We found OR-OSHA management has created an environment of open dialogue with the public and within its own division. They meet regularly with groups and citizens concerned about how OR-OSHA operates and are proactive in improving their operations. Management has also emphasized that the safety and health of their compliance officers is paramount and that COs should never enter a situation they deem unsafe. Worker safety comes first when it comes to inspecting facilities. Both management and compliance officers are able to communicate this in their dealings with the regulated community.

COs are located in all regions of Oregon. Support offices are located in Salem, Portland, Bend, Eugene, and Medford. Within each office are Compliance Officers trained in the Worker Protection Standard. The strong presence of OR-OSHA in the field was evident during our oversight inspections. Each compliance officer showed a comprehensive knowledge of their assigned areas.

The way inspections are conducted is also notable. All programmed inspections were unannounced and included interviews with both the employer and employee. If the CO can not speak Spanish, the services of a Spanish translator are sought. COs take their time to properly conduct inspections and will return to a facility if needed. COs take extensive notes during an inspection which helps in case reviews. The type of pesticides used on the facility is documented to help determine the PPE requirements and severity of a violation if one is found. WPS materials are distributed and reviewed with growers. Non-WPS issues are also addressed, e.g. hazard communication and general worker safety. Response time from the opening conference to the enforcement action is timely. Their standard operating procedure for receiving complaints ensures that imminent hazard situations are immediately investigated. In addition, the standard operating procedure to conduct opening and closing conferences ensures that growers understand the scope and reason for an inspection. COs will work during non-business hours on complaint investigations and to observe mixing/loading operations and field activities.

RECOMMENDATIONS AND RESPONSES

During the course of our review, some concerns were raised with OR-OSHA. Their responses to these concerns are listed in Table 8.

Unlike other state agencies, OR-OSHA inspectors can not conduct on-the-spot inspections because something interesting was observed from the road. For example, an inspector driving around looking for the address to a programmed inspection might spot fieldworkers working next to a posted field. This is an opportune time to conduct a WPS inspection and interview fieldworkers. However, OR-OSHA is restricted in their regulations from conducting such on-the-spot inspections. This ensures the neutrality of the inspection. If hazards are observed, an inspection can be conducted.

There was some confusion over the scope of a field sanitation inspection, the role WPS plays in it, and the lack of communication between safety and health compliance officers. While it is understood that field sanitation and WPS includes the provision of soap, water, and single use towels for workers, it was unclear whether compliance officers check the central notification board to ensure that supplies are available for 30 days after the end of the REI. In the course of a field sanitation inspection, an officer might note violations of the WPS outside their area of expertise. In such cases, the officer should then refer the case to a health compliance officer who can conduct a comprehensive WPS inspection. OR-OSHA assured EPA that they are working

with their safety and health team to properly document pesticide records and to improve referrals between officers.

Table 8. EPA’s Recommendations and OR-OSHA’s Responses

EPA concerns	OR-OSHA responses
13. Can on-the-spot inspections be conducted?	21. No. OR-OSHA must maintain a neutral inspection scheme. However, if an imminent danger hazard is observed, an inspection can be opened.
14. Are safety compliance officers referring WPS cases to health compliance officers?	22. Yes. OR-OSHA is continually improving communication between safety and health.
15. Are small employers escaping inspections because of the small employer exemption?	23. Not all. Few employers meet this exemption; inspections are still possible through referrals or complaints.
16. Can OR-OSHA use external input to supplement its targeting scheme?	24. No. This is prohibited by state statute because it would not maintain the neutrality of inspections. However, complaints are prioritized over the neutral targeting scheme
17. Does the database used for targeting include all agricultural employers?	25. Yes. All legally operating facilities in Oregon are in the database.
18. Is future compliance assured for those found in violation of the WPS?	26. Yes. Compliance is assured with a signed letter of corrective action. If a facility is found to be a repeat violator, fines are doubled (or more) and daily penalties can be accrued.
19. Can OR-OSHA survey concerned groups and complainants?	27. No. However, anyone can lodge a complaint or raise their concerns with the administrator.
20. Will OR-OSHA conduct separate inspections between labor contractors and growers to ensure information exchange?	28. Yes. OR-OSHA will open two inspections if a grower is found to use labor contractors.

The neutral inspection scheme that OR-OSHA employed in FY2000 only targeted those facilities that have a history of worker compensation claims. It then seems logical that larger operations with a greater number of employees are more likely to be targeted, rather than smaller

operations. Also, the agricultural small employer exemption (OAR437-001-0057) allows employers of 10 or fewer permanent, year-round employees, both full-time and part-time, to be exempt from programmed inspections if they meet certain consultation and training criteria³. The pesticide emphasis program is included in this exemption; however, field sanitation and farm labor housing inspections are not. This may create the sense that larger operations are unfairly targeted while smaller operations escape from the purview of OR-OSHA. It is approximated that roughly 80 to 90 percent of agricultural employers qualify for the small employer exemption, but in reality many do not meet the training or consultation criteria. For FY2001, OR-OSHA, as a result of lessons learned in FY2000, has adapted its targeting to include all businesses in selected SICs, rather than relying on a company's history of workers' compensation claims.

It was also suggested that OR-OSHA might be able to supplement their targeting list if they were more open to input from community groups and the EPA. Although this type of information could prove useful, Oregon Revised Statute Chapter 654, the Oregon Safe Employment Act, requires that scheduling employers for inspection must be based on "written neutral administrative standards". By obtaining input from external parties, whether those parties represent employer or employee groups, the information would become biased and violate the Act's intended purpose.

Questions were also raised about whether OR-OSHA's database contains the universe of agricultural establishments. Are there any establishments that might escape an inspection because of its size? The Information Management Division within DCBS develops an inspection scheduling database following criteria identified by OR-OSHA. IMD collects its information from various sources, including state agencies, to ensure that its database is complete. If a facility is not in the database, it would be illegally operating in the state.

Although most violations were "Other Than Serious," 59 percent of facilities inspected were found in non-compliance. OR-OSHA conducts followup inspections on 10 percent of facilities with "Serious" violations. OR-OSHA ensures compliance with its regulations by requiring that all facilities found in violation return a signed letter of corrective action. If, on a followup inspection, the facility is still in violation, daily penalties can be accrued. Assessments should be done to discover what areas of the WPS experience repeat violations. The consultative section of OR-OSHA should then emphasize these areas during their outreach to facilities.

Every year, OR-OSHA conducts mail surveys of facilities visited by their COs making inquiries as to how inspections were conducted. We asked if OR-OSHA could similarly survey concerned groups and complainants. OR-OSHA responded that anyone who has problems with the agency or the way inspections are conducted can lodge a complaint. The agency is mandated

³These criteria are: (1) The employer and principal supervisors of the agricultural establishment must complete, annually, at least 4 hours of instruction on agriculture safety and/or health rules and procedures; and (2) The employer must have had a comprehensive safety and/or health consultation within the last four years.

to address each complaint it receives. If the complainant is unsatisfied with the service received, the complaint can be made directly to the Administrator. If the complainant is still unsatisfied with the results, a complaint can be lodged with federal OSHA. OR-OSHA also directly responds to complainants with a letter explaining the results of the inspection and provides them with the opportunity to write if they were unhappy with the findings.

Finally, labor contractor relationships with growers is an area of increasing concern within EPA. Labor contractors are hired by growers as an easy means of finding a big pool of labor quickly. The regulations require that application information be transferred from the grower, to the labor contractor, to the farm worker. OR-OSHA has conducted inspections with farm labor contractors, but it is unclear whether efforts are made to ensure the transfer of information. We recommend that OR-OSHA contact both the labor contractor and grower during inspections of labor contractors to ensure that relevant pesticide application information is passed on to workers and handlers. OR-OSHA management said that if it is found that labor contractors are hired by growers, COs will formally open up two inspections, one with the labor contractor and one with the grower. OR-OSHA is also seeking clarification from EPA regarding the requirement for the grower to notify labor contractors “after” pesticide applications have been made. 40 CFR 170.224 requires notification “before” pesticide applications are made. The triangle situation between a grower, commercial applicator, and labor contractor is not clearly addressed in the standard.

AREAS NOT ADDRESSED BY THE WPS

In the course of this review and based on discussions with OR-OSHA, ODA, and interested parties, we have found that there seems to be a disconnect about what is heard and what is seen (see Table 9). A lot of resources and attention have gone into the WPS because of concerns that workers are being exposed to pesticides. Even if all the provisions of the WPS are followed, pesticide exposure is unlikely to be eliminated. Rather, there are numerous scenarios where workers can be exposed to pesticides despite the WPS, whether it be through drift, residuals on plants after the REI, washing work clothes, etc. Drift from neighboring fields is a major contributor to pesticide exposure, yet it is not a WPS issue, but a label violation overseen by ODA. Most pesticide exposure incidents seen by state agencies are due to drift. Unless it is an employer-employee relationship, OR-OSHA does not deal with drift issues but refers such cases to ODA. In addition, another exposure route that is not addressed by the WPS is through living in farm labor housing. In our site visits, we found that both farm labor and employer housing may be located in the middle of fields and are susceptible to drift.

Concerns have also been raised by farm worker advocacy groups that growers are knowingly and willfully ignoring the WPS, i.e. committing criminal activities. As an example, a case in Hawaii is often cited as a landmark case for WPS violations. Large fines were levied and the grower was prosecuted for criminal activities. However, in the past fiscal year, no WPS-related criminal activities were found. If criminal activities were discovered, the criminal

division would take over.

Table 9. Areas Not Addressed by the WPS

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- WPS does not eliminate pesticide exposure
 - Drift is a label violation, not WPS
 - If criminal activities are found, the criminal division takes over; however, few, if any WPS-related criminal activities have been found
 - Farm workers refuse to complain
-

Farm worker advocacy groups describe cases where workers are not being protected from pesticide exposure. However, such cases have been hard to find. The best way for OR-OSHA or EPA to find the serious WPS violators are through complaints from workers. Unfortunately, because of the population involved, mainly a migratory, uneducated, non-English speaking group, complaining about pesticide exposure and the WPS is a small concern compared to their fear of the Immigration Naturalization Service and their desire to meet their basic needs of living. Workers are unwilling to complain or may be unaware of their rights. Under WPS, both OR-OSHA and EPA would hope to solicit more complaints, but few have been received directly from workers, despite a statewide, toll-free phone number and guarantees of confidentiality. EPA Region 10 is currently working directly with several organizations in Oregon to develop a protocol on how to solicit complaints from workers. One possible means is by receiving tips from workers during interviews about previous employers. However, OR-OSHA can not actively solicit complaints from workers, but can inform the worker of their ability to file a confidential complaint with OR-OSHA.

CONCLUSION

In the past few years, farm worker advocacy groups described key areas that they believe need consideration in the development of an effective enforcement strategy. Below, the key areas are described and what OR-OSHA does to meet these expectations.

Inspections should be comprehensive and include farm worker interviews.

Finding: OR-OSHA conducts comprehensive WPS inspections that include interviews with the grower, handler, and/or farm worker. Attempts are made to observe mixing/loading operations.

Inspectors need to speak Spanish.

Finding: Some, but not all, inspectors speak Spanish. If an inspector needs a translator, one will be hired.

State agencies need to issue and increase fines.

Finding: OR-OSHA issues fines appropriate to the violation. Any change in the penalty matrix must be approved by the Oregon state legislature. Repeat violators will receive a minimum \$200

fine and/or twice or more the initial fine. Without any proof of harm (i.e. complainants with a diagnosed pesticide exposure), it is difficult to render high fines.

A greater field presence on farms by regulatory agencies is needed.

Finding: OR-OSHA's field presence is found throughout the state and inspectors' knowledge about facilities was impressive.

Agencies need to target inspections, sometimes during off-hours, and focus on sites and activities with increased risk of pesticide exposure.

Finding: OR-OSHA's targeting is based on a neutral inspection scheme. The Pesticide emphasis program targeted those crops with high pesticide usage and worker protection issues. Inspectors worked during the off-hours to interview workers.

EPA and states need to clarify ambiguities in WPS regulations and intents.

Finding: EPA's Office of Pesticide Programs and Office of Enforcement and Compliance Assurance are currently undergoing a national assessment and program element review, respectively, to improve the regulations and to gain a better nationwide picture of WPS implementation and enforcement.

OR-OSHA has proven to be a pro-active agency that prioritizes worker safety. Their process for targeting and conducting inspections is commendable. The Information Management Division within the DCBS is devoted to collecting data and information that helps determine a neutral inspection scheme schedule for OR-OSHA and other divisions and includes all legally operating businesses in Oregon. Unannounced inspections ensure that managers do not have advanced notice of an inspection. Interviews with both the employer and employees that test for knowledge ensures that the compliance officer gains a holistic view of the actual conditions on the facility. Officers are given the authority to assess hazards and allege violations and employers have the opportunity to appeal citations and may be given penalty reductions for various reasons. Enforcement of the WPS has been appropriate and follows their enforcement response policy. OR-OSHA has been open and communicative with outside agencies and concerned parties about their operations and how inspections are conducted. They meet regularly with different parties and actively engage in open dialogue. Where concerns are raised, OR-OSHA attempts to address them fully given the constraints of their budget and resources. Despite advocates' concerns that WPS criminal activities are occurring in the fields, none have been found. OR-OSHA's methods should be used as an example of a strong enforcement team. As noted earlier, pesticide exposure continues to occur and suggests that regulatory enforcement alone will not eliminate exposure. Health care workers recommend a combination of education and outreach in addition to enforcement. EPA is financially supporting a number of intervention studies to reduce exposure.

NEXT STEPS

Because WPS has become a national issue, EPA revised its FY2002/2003 guidance to the regions and states to reflect the Agency's concern regarding farm worker safety. Specific recommendations to be implemented by Region 10 and OR-OSHA as a result of this new guidance include the following:

Continue to work directly with the farm worker community:

- Work with both farm worker advocacy and grower groups to build better networks, improve state relationships, and address any worker protection issues that have been identified by these groups. EPA and OR-OSHA have agreed to work closer with community-based training providers such as AFOP/Americorps.
- OR-OSHA will continue to provide information on any significant work or meetings with farm worker advocacy or grower groups (i.e., names of particular advocacy or grower groups, issues raised/identified, and any joint cooperative projects that may be underway, etc.).

Continue to address safety training issues:

- ODA and OR-OSHA will work with training providers to assure that effective worker and handler training options and quality training materials are available.
- EPA will work with OR-OSHA and ODA to determine what information is being provided to the community on outreach/education and compliance assistance activities specific to worker protection. This will help EPA evaluate the program and to make adjustments when necessary.

Continue to build an effective outreach program and include health care providers:

- EPA and OR-OSHA will continue to provide information on the revised WPS to all affected parties in the regulated and protected community with a special emphasis on outreach to workers and handlers on how to make tips/complaints, and targeted compliance assistance to those agricultural employees that have not been traditionally inspected or where WPS issues are more likely to be significant.
- OR-OSHA in collaboration with EPA will provide information on any significant activities related to outreach to health care providers (such as meetings, workshops, training, or projects, etc.)

Commitment to maintain enforcement presence in Oregon:

- OR-OSHA has developed a field strategy for FY2002 which satisfies EPA's recommendations. EPA is recommending that all states focus on high risk, high exposure

situations to ensure health protection for agricultural workers. EPA is also recommending that states target inspections at facilities known to employ high numbers of persons covered by the WPS. Routine inspections are to address a variety of operation sizes, crop sites, and pesticides use.

- OR-OSHA plans to provide information to EPA on any enforcement cases involving documented WPS violations where workers/handlers were injured or hospitalized.
- EPA and OR-OSHA will continue to work together to identify compliance problems, pertinent enforcement trends, and any WPS rule problems being encountered. This will help stakeholders to target future outreach and compliance assistance activities, and determine if there are any program improvements and/or changes that may be necessary.
- EPA has committed the legal support of EPA's Regional Counsels and the Toxics and Pesticides Enforcement Division at EPA headquarters to assist in prosecuting WPS violations.
- EPA will provide WPS legal training to the regions and states during FY2002 and OR-OSHA will be invited to participate .

On the national front, OR-OSHA is participating in EPA's national assessment of the implementation and enforcement of the WPS, based in part on GAO's recommendations. The national WPS assessment effort is being led by EPA with participation from the U.S. Department of Agriculture, the Department of Labor, the Department of Health and Human Services, state pesticide regulators, state cooperative extension service pesticide safety educators, farm worker advocacy groups, farm worker service/training associations, agricultural employer associations, farm worker clinicians networks, and other program stakeholders.

In collaboration with Region 10, OR-OSHA also plans to undertake activities in support of the National Strategy for Outreach to Health Care Providers initiative. This includes identifying and working with local health care provider networks and assisting in the distribution of EPA's revised manual on *Recognition and Management of Pesticide Poisonings* to health care contacts, migrant clinics and other appropriate entities to help improve diagnosis and treatment of pesticide related illnesses. OR-OSHA will also be invited to participate in the 2002 Forum for Developing the National Pesticides Strategy for Outreach to Health Care Providers.

Region 10 and OR-OSHA are committed to implementing all appropriate recommendations from the national workgroups, and OR-OSHA has made a long-term commitment to maintaining an effective compliance monitoring program which does not rely on tips and complaints. And finally, EPA Region 10 and OR-OSHA will continue to work closely with advocacy groups to encourage tips and complaints and at a minimum to verify that the agency is going to farms where workers are being employed.