

CHAPTER 5

REQUIREMENTS FOR COMMERCIAL PESTICIDE HANDLER EMPLOYERS

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All WPS requirements are effective January 2, 2017 unless identified for a delayed implementation of January 2, 2018.

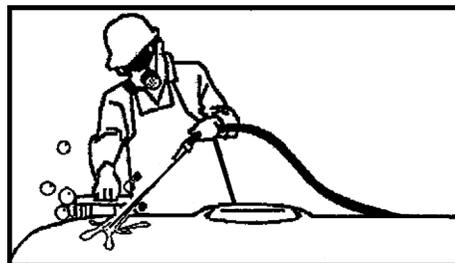
This chapter describes some of the WPS protections commercial pesticide handler employers must provide to their handlers. Commercial pesticide handling establishments and their employees are included in WPS when they apply WPS-labeled pesticide products on agricultural establishments, even if some of the pesticide handling tasks (mixing, loading, disposal, etc.) take place somewhere other than the agricultural establishment that is the treatment site. Owners and managers of commercial pesticide handling establishments have WPS responsibilities as commercial pesticide handler employers.

Additional responsibilities for all handler employers are covered in Chapter 4. Commercial pesticide handler employers must refer to both Chapters 4 and 5 for all of the WPS requirements and protections applicable to their establishments and handler employees.



GENERAL RESPONSIBILITIES FOR COMMERCIAL PESTICIDE HANDLER EMPLOYERS

To streamline presenting the WPS requirements for a commercial pesticide handler employer (CPHE), the requirements for CPHEs that are not covered in Chapter 4 have been placed in this chapter. **A CPHE must comply with the requirements presented in Chapter 4: Additional Handler Employer Requirements AND within this chapter.**



The responsibilities of complying with the WPS primarily fall on the employer (the owner of the business) of a handler (applicator/crop advisor). In addition, the pesticide handler is also responsible for complying with certain WPS provisions as well as all of the pesticide label directions.

Key WPS definitions:

A commercial pesticide handling establishment is defined as an enterprise, other than an agricultural establishment, that provides pesticide handler or crop advising services to agricultural establishments. *In other words, this is usually a custom pesticide application business that is hired by a farm, forest, nursery or enclosed space agricultural production facility to apply pesticides or to provide crop-consulting services.*

The commercial pesticide handling establishment is the business or enterprise that is hired to make pesticide applications on an agricultural establishment. The commercial pesticide handling employer is the person responsible for providing WPS protections to the handlers or crop advisors they employ.

The commercial pesticide handler employer is defined as any person, other than an agricultural employer, who employs any handler to perform handler activities on an agricultural establishment.

A crop advisor is considered a “handler” under WPS only if they are conducting handler tasks, which include entering into a treated area that is under a REI to do crop advisor tasks. **Crop advisors are NOT allowed to be early-entry workers.** See Chapter 6: Exemptions and Exceptions for crop advisors.

The CPHE must ensure that:

- All pesticides are used consistent with the pesticide product label at all times, including following the WPS requirements when applicable. 170.313(a)
- Each worker and handler receives the protections required by the WPS. 170.313(b)
- Each handler, or worker that conducts early-entry tasks, is at least 18 years of age. 170.313(c)
- Employees do not clean, repair, or adjust pesticide application equipment without completing WPS handler training. 170.313(l)
- Other persons (not employed by the agricultural establishment) do not clean, repair, or adjust pesticide application equipment until they are told:
 - That the equipment may be contaminated with pesticides.
 - About the potentially harmful effects of pesticide exposure.
 - How they are to handle the equipment to limit exposure to pesticides.
 - How to wash themselves and/or their clothes to prevent or remove pesticide residues. 170.313(l)(1)-(4)
- Handlers are given instruction in the safe operation of equipment used to mix, load, transfer, or apply pesticides. 170.313(f)
- Before any equipment is used to mix, load, transfer, or apply pesticides, it must be inspected for leaks, clogged nozzles, worn or damaged parts. Any faulty equipment must be repaired or replaced before use. 170.313(g)
- Handlers that apply pesticides on an agricultural establishment are informed about, or are aware of, the location and description of any treated areas on the agricultural establishment where a REI is in effect, and the restrictions on entering those areas. 170.313(h)
- Records or other information required by WPS are provided for inspection to an employee of EPA or any duly authorized representative of the Federal, State, or Tribal agency responsible for pesticide enforcement. 170.313(m)

RESPONSIBILITIES OF EMPLOYERS TO INSTRUCT SUPERVISORS OF HANDLERS 170.313(d) & (e)

Even if the CPHE assigns a supervising employee or labor contractor to carry out the duties required by the WPS, the CPHE is ultimately responsible for making sure those duties are performed.

If a CPHE employs anyone to supervise handlers, or hires handlers through a labor contractor, the CPHE must provide sufficient instructions to the supervisors and/or labor contractors to ensure that handlers receive all required WPS protections. The instructions must specify which tasks the labor contractor and/or supervisors are responsible for in order to comply with the WPS.

The CPHE must also require labor contractors and anyone who supervises handlers to provide sufficient information and directions to each handler to ensure that they can comply with the WPS provisions applicable to their duties and tasks as a handler.

The CPHE and their supervisors must clearly understand each of the responsibilities for complying with the WPS and ensure that they are implemented.

EMERGENCY ASSISTANCE

Employers can “make transportation available” by:

- Taking the employee to the medical care facility, or
- Calling an emergency vehicle, such as an ambulance, or
- Making sure the employee has a ride to the medical care facility with someone else.

If there is reason to believe that a handler employed by a CPHE has experienced a potential pesticide exposure during or within 72 hours after his or her employment, and needs emergency medical treatment, the CPHE must do all of the following promptly after learning of the possible poisoning or injury:



Provide emergency transportation 170.313(k)(1)

Promptly make emergency transportation available to take the handler from the commercial pesticide handling establishment, or any agricultural establishment on which the handler may be working on behalf of the CPHE, to a medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

Provide emergency information 170.313(k)(2)

The CPHE must provide all of the following information to the treating medical personnel:

- Copies of the applicable safety data sheet(s) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.
- The circumstances of application or use of the pesticide on the agricultural establishment.
- The circumstances that could have resulted in exposure to the pesticide.

The CPHE has WPS emergency assistance responsibilities for only their handlers. An agricultural employer has no WPS responsibilities for CPHE handlers other than providing information about treated areas under REIs to the CPHE (information exchange).

TRAINING PESTICIDE HANDLERS

The following section provides an overview of the key requirements for training handlers in accordance with the WPS.



- **There is no grace period for WPS handler training! Handlers must be trained before performing any handling task.**
- All handlers must be trained every 12 months. 170.501(a)
- Employees are only exempt from WPS handler training if the handler is currently:
 - Certified as an applicator of restricted-use pesticides.
 - Certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or the State or Tribal agency responsible for pesticide enforcement and that includes all the topics required. 170.501(b)
- Only qualified trainers may provide training and they must be present during the entire training program to respond to questions (see below to determine who is qualified to train handlers). 170.501(c)(1) & (4)
- Training must be given orally from written materials or audio-visually using only EPA approved training materials. 170.501(c)
- Training must be presented in a manner employees can understand using a translator if necessary.
- Records of handler training must be kept for 2 years.
- Training records must be provided to employees upon request.
- All training requirements are effective January 2, 2017 EXCEPT the expanded training content which is effective six months after EPA announces the availability of training materials **but not earlier than January 2, 2018.**
170.501(c)(3)

What topics must the handler training cover?

Handler training content effective January 2, 2018 is itemized in Appendix B: Worker Protection Standard Criteria. Until January 2, 2018, WPS safety training content remains the same as in the 1995 rule although ***all training materials used after January 2, 2017 must be approved by EPA.*** .

The expanded content of training topics is the only requirement of handler training that has a delayed implementation date of January 2, 2018 (or no more than 6 months after EPA has published the availability of the training materials but not before January 2, 2018). Handlers will have to be trained on the same 23 topics as workers, with handlers requiring an additional 13 topics (total of 36 topics). Refer to Training Criteria for Handlers in the Appendix B for information on specific training topics.

How often must handlers be trained? 170.501(a)

Once every 12 months (annually), counting from the end of the month in which the previous training was completed.

An attendance roster of the WPS training with all of the training record information meets the recordkeeping requirement.

The EPA does NOT supply or issue WPS training verification cards.

If a handler was trained at another establishment, you may get a copy of the training record and keep as your record of training. If no record is provided, you must provide WPS training and maintain the training record.

WPS training materials that are produced by EPA will bear the official EPA logo and have an EPA publication number. WPS training materials that have been developed by others and approved by EPA will bear an EPA approval number and an EPA statement of approval for use for WPS training.

Training records 170.501(d)

Training records for each handler must be kept on the establishment for 2 years from the date of training. The training record must include:

- The handler's printed name and signature,
- The date of training,
- Trainer's name,
- Evidence of the trainer's qualification to train,
- Employer's name, and
- Information to identify which EPA-approved training materials were used for the training. (i.e., the EPA document number or EPA approval number for the materials.)

A copy of the training record is not required to be provided to each handler trained. However, the CPHE must provide a copy of the training record to the trained handler if requested by the employee. Individual training record forms or other methods of maintaining the required training information may be developed and used to meet this requirement.

Who qualifies to be a WPS trainer? 170.501(c)(4)

The person who conducts handler training must:

- Currently be a certified applicator of restricted-use pesticides (in any category of certification), or
- Currently be designated as a trainer of certified pesticide applicators or handlers by a Federal, State, or Tribal agency having jurisdiction, or
- Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of handlers.

How is training to be conducted? 170.501(c)(1)

Trainers of handlers must:

- Use EPA-approved training materials,
- Present the training orally from written materials or audio visually,
- Present the information in a manner that the trainees can understand, using a translator if necessary,
- Be present at all times during training to respond to trainees' questions, and
- Ensure training quality by providing an environment conducive to training that is reasonably free of distractions.

EMPLOYER INFORMATION EXCHANGE

Whenever a commercial pesticide handler (including crop advisors) will perform pesticide handling tasks on an agricultural establishment, the CPHE must provide the agricultural employer with certain information concerning pesticide applications being conducted on the agricultural establishment.



The purpose of this exchange of information is to allow the agricultural employer the opportunity to inform workers or handlers of pesticide applications made, restricted areas, and to record and display the appropriate information.

In addition, the agricultural employer must provide certain information to the CPHE about treated areas on the agricultural establishment. The purpose of this exchange of information (and the requirement for the CHPE to pass it along to the handler) is to ensure that a commercial pesticide handler is aware of areas under REIs on an agricultural establishment close to where he/she will be working.

Information provided to the commercial pesticide handler employer (CPHE) from an agricultural employer 170.309(k) & 170.313(h)

- Before a commercial pesticide handler enters an agricultural establishment, the agricultural employer must inform the CPHE about treated areas and any restrictions on the establishment and the CPHE must provide that information to the commercial pesticide handler. While it is the agricultural employer's responsibility to inform the CPHE, the CPHE must obtain this information so it can be communicated to their handler employees.
- The agricultural employer must provide to the CPHE:
 - The specific location and description of any treated areas on the agricultural establishment under a restricted-entry interval that the commercial pesticide handler may be in (or walk within 1/4 mile of), and
 - Any restrictions on entering those areas.

The CPHE must inform their handler of the information provided by the agricultural employer. 170.313 (h)

Prior to the application, the CPHE and agricultural employer should agree upon a way to communicate any changes that may occur regarding the pesticide application to ensure receipt of the information. This information exchange can be accomplished through electronic media, telephone or other means.

Information provided to an agricultural employer from a commercial pesticide handler employer (CPHE) 170.313(i) & (j)

To allow an agricultural employer to inform workers on the establishment about a pesticide application that is, or will be performed, the CPHE (employer of the for-hire/custom applicator) must inform the agricultural employer of the following:

- The specific location and description of the area(s) on the agricultural establishment that are to be treated with a pesticide product,
- Date, start time and estimated end time of the pesticide application,
- Pesticide product name, EPA registration number, and active ingredient(s),
- REI for the pesticide product,
- Whether the pesticide product labeling requires posting, oral notification or both to be conducted by the agricultural employer, and
- Any other specific requirements on the pesticide product labeling concerning protection of workers and other persons during or after application.

What if the information changes?

The CPHE must provide the agricultural employer with updated information PRIOR to the application when there are any changes to:

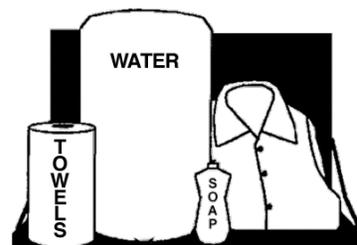
- The location to be treated,
- REI,
- Method of notification,
- Labeling requirements to protect workers/other persons, or
- The start time which will cause it to be earlier than estimated.

If the product information changes or there are other changes to the date, start and end time, the CPHE must provide the updated information to the agricultural employer within 2 hours after completing the application.

Changes to the estimated application end time of less than one hour do not need to be reported to the agricultural employer.

DECONTAMINATION SUPPLIES FOR HANDLERS

To prevent, or mitigate pesticide exposures, the commercial pesticide handler employer is required to provide supplies to each handler for routine washing to remove pesticide residues, emergency decontamination, and immediate eye-flushing in certain situations. What supplies must be provided, when, where, and for how long are covered in Chapter 4: Additional Handler Employer Requirements.



It is important for agricultural employers to make arrangements with the CPHE on how they will receive the required pesticide application information so they can take the necessary steps to protect workers and other persons on the establishment during pesticide applications, provide notification of pesticide applications to workers, and provide the application and hazard information at the central display site.

RETALIATION AGAINST EMPLOYEES IS PROHIBITED

The commercial pesticide handler employer, their supervisors or others cannot intimidate, threaten, coerce or discriminate against, prevent, discourage, or fire any handler for complying or attempting to comply with the WPS. Additionally, the commercial pesticide handler employer cannot retaliate in any manner if:

- Any handler refuses to participate in any activity that the handler reasonably believes to be in violation of the WPS,
- Any handler has, or is about to report WPS noncompliance to appropriate authorities for enforcement of WPS provisions, or
- Any handler agrees to provide information to the EPA or any duly authorized representative of a Federal, State or Tribal government about WPS compliance, or assists or participates in any manner in an investigation, proceeding, or hearing concerning WPS compliance.

Retaliation is a serious violation of federal law (170.315)

EMPLOYER RESPONSIBILITIES FOR WPS VIOLATIONS

Penalties for noncompliance 170.317

Commercial pesticide handler employers can be subject to civil and criminal penalties if they do not comply with the federal WPS including all revisions to this rule. Failure to comply is a pesticide misuse violation since the WPS is referenced on applicable pesticide product labeling. Failure to comply with distinct requirements of the WPS can result in independently assessable charges, even if the violative acts occurred during one pesticide application. See Chapter 7: Compliance with the Worker Protection Standard.

Employer responsibilities for supervisors or labor contractors assigned to carry out WPS requirements

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) includes provisions that hold commercial pesticide handler employers liable for a WPS penalty if another person employed by or **acting for** them, including supervisors, fails to comply with any WPS requirements. The term “acting for” includes both employment and contractual relationships.

