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Pesticide Policy and Farmworker Health

President's Cancer Panel - October 21, 2008

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INTRODUCTION

Although data on the carcinogenicity of agricultural pesticides are still being generated and are thus incomplete, research such as the Agricultural Health Study indicates that populations with increased, regular exposure to pesticides have high rates of a variety of cancers (National Institutes of Health & Environmental Protection Agency 2008). Policies that regulate toxins such as pesticides are envisioned by the public to be empirical and objective, but toxins are socially produced and their regulation is just as often based on political and economic factors as it is on science (Luke 2000). This does not bode well for farmworkers who are simultaneously burdened by disproportionate exposure to pesticides, low socioeconomic status, and political disenfranchisement—factors that can prohibit them from accomplishing change. The social, political, and economic barriers that farmworkers have historically faced are so deeply intertwined and embedded that the community remains unable to address the environmental injustice of adverse occupational exposure through current pesticide policy.

BACKGROUND

In 2001-2002, 75% of farmworkers in the United States were born in Mexico (US

Department of Labor 2005). In general, the nation's farmworkers suffer from poor health. Health problems commonly reported at migrant health centers include upper respiratory infections, hypertension, diabetes, dermatitis, urinary tract infections, anemia, and gastroenteritis. Other problems common among farmworkers that may not be reported to clinics include communicable diseases, eye problems, heat stress, muscular problems, and accidents. Many adverse health problems that farmworker families suffer are linked directly to their socioeconomic status. Poverty forces many farmworkers to live in substandard, unsanitary, and overcrowded housing. Inadequate housing contributes to the spread of bacterial and viral diseases. Farmworkers do not have access to adequate health care because they lack insurance, time off from work, adequate financial resources, ability to communicate in English, and health care facilities in their rural areas (Migrant Clinicians Network 2008). In addition to poor general health, farmworkers are employed in one of the most dangerous occupations in the country. In 2005 and 2006, agriculture had the highest and second highest rates of total recordable, nonfatal occupational injuries and illnesses among goods-producing private industry sectors (US Department of Labor 2008). Injuries and illnesses in agriculture result from machinery accidents, falls, excessive heat, repetitive motion, and adverse pesticide exposure.

Despite these health disparities, farmworkers continue their dangerous labor under a complex system of social, legal, and economic policies that is deceptive – the illusion of protection may do more harm than good.

Protection through the Free Market

Proponents of market theory may argue that workers who take on hazardous conditions, such as farmworkers, are adequately compensated for their endeavors. The theory of the compensating wage differential assumes that these workers receive wages that reflect their acceptance of working conditions. Those who are less risk-averse are paid correspondingly for jobs that are risky or have bad working conditions (Dorman 1996). But the idea of compensating wages implies that workers are aware of and accept the risks of their occupation. Research has shown this is not the case with regards to farmworkers and pesticides. Farmworkers have little access to the information that does exist about pesticides at their workplaces and thus are impaired in their ability to make informed personal risk assessments (Flocks et al. 2007). Furthermore, certain health effects, such as those related to synergistic and cumulative pesticide exposure, are unknown even to scientists (Goldman 1995). Even if workers were informed, risk perception is normative, both within and across industries. As such it is subject to change depending on a variety of factors, both individual and structural. For example, workers may choose risks they understand, feel they can control, or that are temporary. There may also be variations on risk acceptance according to demographics such as gender, class, or ethnicity (Rosen 1986). For farmworkers, these implications are important. Farmworkers are low-income, ethnic minorities who often feel they have little control over their workplace (Austin et al. 2001).

If the theory of compensating wage differentials were absolute, there would be no need for

protective occupational health and safety regulation. In fact, such regulation would hinder the bargaining process between employees and employers. The fact that regulation does exist, therefore, must reflect some inherent recognition that workers are not always on an even bargaining level with employers, and that some intervention is needed to put them there.

Protection through Regulation

Federal regulation should protect farmworkers from pesticide exposure in two ways: directly by regulating the conditions of exposure and indirectly by providing the resources farmworkers need to achieve some control over their working conditions. Yet for farmworkers, regulations that directly involve pesticide exposure are often inadequate, ineffective, or unenforced. In addition, farmworkers are exempt from many regulations that could afford indirect protection.

Direct regulation. In 1947, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA; 7 U.S.C. 136 et seq.) was enacted to ensure the effective registration of pesticides containing chemical ingredients that had been largely created during World War II. In 1970, the Environmental Protection Agency (EPA) was established and FIFRA administration and staff were transferred to it from the United States Department of Agriculture (USDA). At that time, FIFRA was focused mainly on issues such as pesticide labeling and registration and not on workplace safety. Later that year, the Occupational Safety and Health Act (OSH Act; 29 USC 650 et seq.) was signed into law. The OSH Act created the Occupational Safety and Health Administration (OSHA) which had the mandate of assuring safe and healthful working conditions for the nation's workers through the promulgation and enforcement of occupational safety standards. Although it seems logical that OSHA would assume regulatory authority over

agricultural workplace hazards such as pesticides, this was not the case. The OSH Act included a clause that prevented the Secretary of Labor from regulating working conditions when another federal agency had statutory authority to do so. The EPA had been moving in the direction of regulating agricultural pesticide exposure through a series of amendments to FIFRA beginning in 1972 when it promulgated an early version of the Worker Protection Standard (WPS). In the end, the authority to regulate pesticides at agricultural workplaces was ceded to the EPA. Currently, OSHA maintains only a limited role through its Field Sanitation Standard (29 C.F.R.1928.110), which requires certain agricultural employers to maintain minimum sanitation levels through provision of handwashing facilities, toilets, and drinking water.

Under the current version of FIFRA, there are essentially two avenues of pesticide regulation that directly affect farmworkers: the registration and re-registration processes and the Worker Protection Standard (WPS). Authority to implement and enforce FIFRA is devolved to the states under a system of cooperative federalism whereby the EPA maintains authority to ensure that states continue to meet the federal standards. FIFRA provides no private right of enforcement. The regulation regarding registration and re-registration of pesticides does not encourage decreased use of pesticides nor question the danger of pesticides if not supported by data. It does not impede marketing of pesticides. However, in order for a pesticide to be registered, the EPA must evaluate data related to its potential to cause harmful effects to humans, wildlife, and the environment.

There are several concerns regarding the registration provisions and data requirements. First, FIFRA regulation has always involved a cost/benefit analysis that weighs the unreasonable risk to humans or environment against the beneficial commercial use of the pesticide in question. Yet, the adverse effects of pesticides on

workers are a public health matter and as such it is questionable whether it should be subject to an economically driven calculation. Second, in addressing the proper registration, labeling, and seizure of misbranded pesticides, FIFRA depends on assurances and studies by manufacturers themselves – which creates a conflict of interest. In fact, the pressure from pesticide manufacturers and agribusiness in the past has resulted in the EPA streamlining the registration process. Third, the registration process requires an applicant to submit test data to EPA demonstrating that the pesticide will perform its intended function without unreasonable adverse effects, including reports of acute and chronic health effects. However, as discussed, these data are lacking and there is no special consideration for people who work daily with these pesticides, such as farmworkers (Cunningham-Parmeter 2004, Tool 2001).

In 1992, the EPA expanded the WPS to include not only pesticide handlers but also those performing hand labor, making it the most important federal regulation to specifically address pesticide exposure among farmworkers. Provisions of the WPS that relate to informing farmworkers about the hazards of pesticides mandate when, how, and what information about certain pesticides should be posted; the display of a safety poster in a central workplace location; and a required employee training. Employers are directed, in the event of a poisoning, to provide prompt transportation from the workplace to an emergency medical facility where the employer shall inform the treating medical personnel as to the type of pesticide involved and the circumstances of exposure (40 C.F.R. 170).

One criticism of the WPS has to do with the delegation of its administration and enforcement to the states. The anticipated benefit of devolving environmental statutes is that decision-making is moved closer to an affected public and thus will be more efficient and democratic. This again assumes, however, that the affected public has full access to

information about an issue and that the overseer federal agency follows through when needed on its ability to withdraw a state's authority. If this does not occur, the fear is that the states will engage in a race to the bottom and that a national inconsistent pattern of monitoring practices will emerge. In 2000, the General Accounting Office (GAO) reported that this indeed has been the case with the WPS (General Accounting Office 2000). When WPS requirements such as the provision of basic information about pesticides and their application are not enforced, the result can be that workers are uninformed about chemicals that can potentially affect their health.

Indirect regulation. In addition to direct regulation of occupational chemicals there are regulations that provide protection to workers by allowing them to obtain more control over their workplaces. For example, workers who can engage in dialogue and bargaining with their employers are better able to ensure there are adequate health and safety measures or that they are being proportionately compensated for occupational risks. Since the 1930s, the rights of US workers to organize, engage in collective bargaining and work stoppage methods, and receive a minimum wage and overtime pay have been protected by federal laws such as those that eventually evolved into the National Labor Relations Act and the Fair Labor Standards Act. But since the inception of these laws, farmworkers have been excluded from many of their protections under the doctrine of agricultural exceptionalism—a practice that has historical roots in explicit racial discrimination. Agricultural exceptionalism was the result of negotiations between Southern politicians seeking to protect the agricultural industry's access to cheap, predominately African-American labor and the Franklin Roosevelt administration struggling to promote New Deal reform. Although the ethnicity of farmworkers has changed since this period, the legacy of racist policy remains and the result has

been that while the nation's other workers are able to engage in collective action to increase their salaries and improve their working conditions, farmworkers often have had to fight just to be paid their existing wages (Andrade 2002, Perea 2003).

Other Factors that Complicate Protection

Even when protective regulation does exist, agricultural employers often use labor arrangements that circumvent regulation. One of these practices has been the use of labor contractors to recruit, pay, and manage workers, who then become subcontractors of their own labor. The practice has allowed employers to be insulated from workers, shift responsibility for occupational safety onto workers, and avoid liability for regulatory violations involving matters such as training, injuries, and lost wages.

Another labor arrangement is the temporary worker program. These programs have been a mainstay of the agricultural industry since the 1940s, and have recently gained popularity among employers concerned about tightening immigration controls that could limit their access to cheap labor. They benefit employers by ensuring a stream of available, documented workers, but they also allow those employers to maintain maximum control over their workforce while discouraging collective action or expression of workers rights.

The flow of primarily Mexican farmworkers into the United States remains constant, despite predictions that phenomena such as the North American Free Trade Agreement and the current popular anti-immigrant sentiment would curtail the migration. The reason for this is simple - farmworker migration from Mexico is tied to the US and Mexican economies. When there is a demand for farmworkers by US agricultural employers there will be a supply of migrants. Yet, increasingly strict policies regarding undocumented immigration, such as those contained in the USA Patriot Act has imposed penalties on those who

migrate. Although this policy has not alleviated migration levels, it does arouse anxiety and fear among migrants, forcing them to go deeper underground and remain silent and invisible, even when faced with dangerous working conditions (Boucher et al. 2005).

CONCLUSIONS

Because of unique social, political, and economic circumstances, farmworkers have limited success in addressing the problem of toxins that affect their health. In contrast to other environmental justice communities, farmworkers have less ability to participate in political decision-making, less data and access to knowledge about occupational hazards, less control over their workplaces, and less opportunity to organize and challenge the power structure. Farmworkers are not adequately compensated for assuming one of the riskiest occupations in the nation and the limited regulatory protection for farmworkers is sophistic. It appears to protect public health, but is tainted when economic interests are considered above human health. The fact that such limited regulation continues to exist is misleading if it causes the public to believe that farmworkers are protected from potentially carcinogenic substances, when they are not. Since existing pesticide policy has long had these shortcomings, solutions must be extra-regulatory. There must be pressure from the affected public and strategies for bringing this pressure must be innovative and forward-thinking. For example, farmworker and environmental justice advocates have had recent success in addressing social justice issues with community action and legal strategies such as directly pressuring specific visible industries; bringing lawsuits under legal theories that do not rely on proving causation or intent (requirements that have caused the downfall of previous environmental justice cases); and thrusting cases into a more

international framework that views environmental injustices as human rights violations. These actions have been successful because they recognize that farmworkers and other environmental justice communities do not exist in isolation but are part of changing and expanding social and economic spheres.

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