

PALM BEACH POST

April 24, 2005

From the listserve of farmworker legal advocates

Probe of ill workers cited to expose flaws Farmworker advocates say the state mishandled a case in which 20 migrants were sickened.

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When paramedics arrived at a Manatee County orange grove on April 9, 2003, they found a group of sick migrant farm workers on the side of the road. Some were vomiting. Others complained of dizziness. One grasped his chest.

"He's scared and nervous but he's having trouble breathing and . . ." the crew leader told the 911 operator. "He's having trouble maintaining perfect balance."

"OK."

"He's wriggling his fingers and his hands a lot."

"How many were sick, how many ambulances should be sent", the operator asked.

"All who are having problems go to this side," the crew leader directed the workers. "You are all sick?"

"Si."

"A little in the stomach?"

"Bastante" - a lot, the workers said.

Twenty farmworkers were taken to two emergency rooms. The county's hazardous materials team in protective jumpsuits hosed down the workers at the scene. Workers stripped again at the hospital for a second wash down.

What happened to the workers that day and in the investigation that followed is the stuff that explains the mistrust between farmworker advocates and the Florida Department of Agriculture - the agency responsible for enforcing federal worker protection standards. "I know we always complain, but there's a reason for that," said Tirso Moreno, executive director of the Farmworkers Association of Florida. "In the last 15 to 20 years, we've gotten good regulations on the books. They don't have enough trained staff. They're ineffective."

Critics claim pesticide exposure investigations are biased, sloppy and designed to protect the grower and intimidate the worker. Yet these are the most important cases, they argue.

If little is done to investigate pesticide complaints from those who pick Florida's food, what about the food itself, they ask. And as urban sprawl pushes development into agricultural areas, what about the families living near fields that are sprayed with pesticides? If the workers aren't safe, is the general population? "Should I, as a consumer, feel safe because the DACS (Department of Agriculture and Community Services) is on the job?" asked Greg Schell, managing attorney for the Migrant Farmworker Justice Project. "Nothing DACS does should reassure you. Maybe there are things that other agencies and things that the industry does to ensure our food is safe, but I wouldn't be reassured by anything DACS did."

Investigators often don't speak language

The department says it does the best it can with what it has. There are only some 40 inspectors responsible for making sure that millions of pounds of pesticides are handled safely and applied in the appropriate concentrations to more than 10 million acres of farmland every year. The inspectors also monitor chemicals used on more than 200 million square feet of nursery foliage and more than 1,200 golf courses. Then there are the feed, seed and fertilizer inspections. "We have a resource issue," admits Dale Dubberly, chief of the Department of Agriculture and Community Services Bureau of Compliance Monitoring. In the last year, DACS has added two inspectors and one educational outreach specialist, he says.

More troubling than the paltry size of the enforcement staff is that only six of the state's inspectors speak Spanish, worker advocates say. Almost all of Florida's 180,000 to 230,000 farm workers are Latinos, and that means about one Spanish-speaking inspector for each 30,000 to 40,000 workers. None of the inspectors speak Haitian Creole, although many of the sugar workers in western Palm Beach County are from Haiti. "I've recognized that's a problem," says Dubberly. "I don't know how to improve on that, to be honest." There are 11 questions investigators must ask during a routine worker protection standard inspection. How can inspectors conduct an inspection when they can't communicate with most of the workers?

Worker advocates say inspectors often use bilingual supervisors, crew leaders and office workers to translate. "Using a supervisor as an interpreter is akin to not conducting an interview at all," said Shelly Davis, co-executive director of the Farmworker Justice Fund in Washington, D.C. "A crew chief as interpreter is completely inappropriate in our view because the workers are afraid of retaliation." DACS flatly denies that crew bosses or employers are used as translators. "The interpreter can be anyone who the worker feels comfortable talking to, but should not be a person in a position of higher authority,"

Steven Dwinell, assistant director of the DACS' Division of Agriculture and Environmental Services, wrote in an e-mail explaining the department's policies. However, the department's own preprinted affidavit that must be filled out when an inspector interviews a worker does not require the inspector to document the primary language of the worker or the name and title of the translator.

Policies protect corporations, critics argue

In an angry letter to DACS in January 2004, Tania Galloni, former lawyer for Florida Legal Services Inc. who represented workers in the Manatee County case, recited a litany of investigative errors. It took the department nine days to interview workers, Galloni wrote. By that time, four of the workers had left the area. Instead of interviewing all remaining workers, investigators took statements from only four.

Although the department used a Spanish-speaking investigator to translate, all of the interviews were done at the workplace and the employer was allowed to listen. "This practice reduces the likelihood that employees will feel comfortable coming forward and speaking frankly with inspectors because they may feel retribution," Galloni wrote.

Then there is the issue of prior violations. In deciding to issue a fine, DACS considers whether there have been any prior violations. But the department considers each field, grove or farm its own entity – even if it is owned by a corporation that has had other violations at other fields, groves or farms. "For the most part, yes, we consider each location a separate entity,"

Craig Bryant, environmental manager for DACS' compliance bureau. "There is usually a different person running the show, therefore a violation at one location may not be present at another location and it would not be fair or prudent to lump them all together as one entity." That policy particularly infuriates advocates, who say it protects large corporations, which often own fields, farms and groves throughout the state.

"That's absurd," Galloni said. "The question is, is this a complaint against the employer or is this a complaint against a field?" In the case of AgMart, the conglomerate that owns the fields in Immokalee where the parents of three children born with birth defects worked, investigators found pesticide violations on four separate fields since 1999. The offenses included failing to post notices on when it was safe to reenter a field after a pesticide application, using unqualified trainers to train workers, applying a pesticide in too strong a mixture, failing to keep records and allowing a worker to apply a pesticide without proper protective clothing. The firm received warning letters -but no fines.

Finding the physical evidence to prove a pesticide caused an illness is difficult to come by. Chemicals degrade so quickly that a soil sample or a leaf collected several days after an incident often won't show the true amount of chemical applied. Wind and rain can also blow and wash away residues.

Many farmworkers lack safety training

But evidence that can be gathered often isn't, worker advocates say. In the Manatee County case, investigators failed to test the workers' clothing. Doctors in the emergency room weren't given the warning label from the suspected pesticide - Sevin. If they had been, they would have learned that "to aid in confirmation of a diagnosis, urine samples should be obtained within 24 hours of exposure and immediately frozen."

No urine samples were taken.

The crew leader who called 911 said he tried to give the label to the emergency workers at the scene, but they refused to take it. DACS investigators did not interview the EMS workers. The investigator also found that only six of the 20 workers had received pesticide safety training as required by law. And the woman responsible for training workers had no training to teach workers and no license.

The worker with the most serious symptoms, who had trouble breathing, had not received any safety training. The Manatee County Health Department, which reviews cases of pesticide exposure, concluded that 18 of the 20 workers suffered "possible" pesticide exposure. But "diagnosis could not be determined due to lack of supporting data and signs," according to Alan Becker of the Florida Department of Health's Pesticide Surveillance Program.

Leaf samples from the Manatee County grove collected two days after the workers became ill were sent to the department's Scientific Evaluation Section. "The weight of the evidence does not suggest that exposure" to Sevin "under the conditions evaluated" would be responsible for the workers' illnesses. EPA officials in Atlanta also reviewed the case and concluded the investigation was sound.

DACS sent the firm a warning letter for failing to properly train workers. No fines were issued.