

# **Pesticide Investigations and Enforcement**

## **2008 Annual Report to the Legislature**

*As required by RCW 15.58.420 and RCW 17.21.350*

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This report is available on the WSDA website at: <http://agr.wa.gov>.

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## **Legislative Mandate**

As stated in RCW 15.58.420 and RCW 17.21.350, the Washington State Department of Agriculture (WSDA) is to report annually to the appropriate committees of the House of Representatives and the Senate on the activities of the department under Chapter 15.58 RCW, the Washington Pesticide Control Act, and Chapter 17.21 RCW, the Washington Pesticide Application Act. The report is to include: (1) a review of the department's pesticide incident investigation and enforcement activities, with the number of cases investigated and the number and amount of civil penalties assessed; and (2) a summary of the pesticide residue food monitoring program, with information on the food samples tested and results of the tests, a listing of the pesticides for which testing is done, and other pertinent information.

This report presents information only on the department's pesticide incident investigation and enforcement activities. The department does not carry out a pesticide residue food monitoring program and no longer participates in the pesticide residue food monitoring program carried out by the U.S. Food and Drug Administration (FDA).

## **Pesticide Investigations and Enforcement**

The Washington State Department of Agriculture, under authorities granted by Chapter 15.58 RCW, the Washington Pesticide Control Act, and Chapter 17.21 RCW, the Washington Pesticide Application Act, protects the environment and the physical and economic health and welfare of the citizens of the state. As provided in these statutes, WSDA regulates the sale and use of all pesticides in Washington state.

Among other activities, this involves the registration of more than 11,000 pesticide products; the licensing of approximately 22,000 pesticide applicators, dealers, and consultants, and structural pest inspectors; and the investigation of complaints of alleged pesticide misuse. WSDA coordinates activities closely with other Washington state agencies and federal agencies.

## **Complaint Investigations**

In 2008, WSDA investigated 172 complaints involving pesticide use, sales, and distribution; pesticide licensing; and building inspections for wood-destroying organisms. Table 1 provides the number of complaints (cases) investigated in 2008 and the previous three years and the number of resulting violations.

WSDA is required to respond to cases of human exposure within one working day of receipt. In 2008, a total of 43 human exposure complaints were received compared to 28 human exposure complaints in 2007. All human exposure complaints were responded to within one working day.

**Table 1. Total Complaints and Violations, 2005-2008**

Year	Total Complaints	Total Complaints Resulting in Violations
2005	193	98
2006	206	122
2007	177	101
2008	172	88*

\*Based upon cases completed to date.

Complaints are classified by WSDA according to the type of activity, using the following definitions:

- **Agricultural:** Incidents occurring in an agricultural environment such as on farms, in greenhouses, or on Christmas tree plantations.
- **Commercial/Industrial:** Incidents involving applications by licensed operators to offices, restaurants, and landscapes.
- **Pest Control Operator (PCO):** Incidents involving a subset of individuals licensed to make applications to control structural pests.
- **Wood Destroying Organism (WDO):** Incidents involving inspections of structures for fungi, insects, and conditions that lead to pest infestations.
- **Residential:** Includes any application of a pesticide in a residential environment by a homeowner, resident, or neighbor.
- **Right-of-way:** Applications made on public land such as roadways, electric lines, and irrigation canal banks.

Table 2 summarizes the number of complaints that resulted in violations by type of activity for each of the last four years.

**Table 2. Type of Activity Involved in Complaint Resulting in Violations, 2005-2008**

Type of Activity	2005	2006	2007	2008
Agricultural	27	30	24	15
Commercial/Industrial	22	26	16	29
PCO/WDO	29	33	36	21
Residential	9	19	12	18
Right-of Way	11	14	13	5
<b>Total Violations</b>	<b>98</b>	<b>122</b>	<b>101</b>	<b>88*</b>

\*Based upon cases completed to date.

The top counties where complaints originated in 2008 include: Grant 17, King 17, Benton 16, Yakima 13, Spokane 12, and Snohomish 11. Table 3 provides a complete listing of complaints by county for the past three years.

**Table 3. Complaints by County, 2006-2008**

County	2006	2007	2008
Adams	2	3	4
Asotin	1	2	3
Benton	5	10	16
Chelan	6	8	5
Clallam	0	0	0
Clark	5	2	4
Columbia	1	2	2
Cowlitz	2	5	2
Douglas	11	6	4
Ferry	0	0	1
Franklin	9	4	7
Garfield	0	2	0
Grant	19	13	17
Grays Harbor	2	0	2
Island	3	1	0
Jefferson	3	1	0
King	13	13	17
Kitsap	6	7	2
Kittitas	3	3	0
Klickitat	0	1	0
Lewis	6	7	1
Lincoln	5	3	1
Mason	2	2	3
Okanogan	10	7	5
Pacific	0	0	1
Pend Oreille	3	1	1
Pierce	18	14	7
San Juan	0	0	0
Skagit	4	5	10
Skamania	0	0	0
Snohomish	5	12	11
Spokane	20	13	12
Stevens	3	1	4
Thurston	1	2	6
Wahkiakum	1	0	0
Walla Walla	6	1	8
Whatcom	8	8	2
Whitman	3	8	0
Yakima	15	10	13
Out of state	1	0	1
<b>Totals</b>	<b>206</b>	<b>177</b>	<b>172</b>

More information and analysis of complaints received by WSDA that have suspected health or environmental effects can be found in the annual report of the Pesticide Incident Reporting and Tracking (PIRT) Review Panel. WSDA is one of six agencies represented on the ten-member panel that monitors pesticide-related incidents in the state. The report is prepared by the Department of Health, as required by RCW 70.104.090, and available on its Web site.

### **Enforcement Actions**

WSDA can take a range of actions on determination of a violation. Only the Notice of Intent (NOI) is a **formal enforcement action** under the Administrative Procedures Act (RCW 34.05). The NOI is an enforcement document stating the department's intent to assess civil penalties to the alleged violator and/or to suspend, deny or revoke the alleged violator's pesticide license.

WSDA also takes **non-formal enforcement actions**. These include:

- A verbal warning, administered by a field investigator to an alleged infractor, which specifies the violative act.
- An advisory letter, which provides specific written advice to an alleged infractor on how to comply with the laws and rules related to pesticides.

- A Notice of Correction (NOC), which is a written document issued to an infractor when a minor violation of the laws and rules related to pesticides has occurred. The NOC states the specific law and/or rule that was violated, information on how to correct the violation, and a time by which the violation must be corrected.

**Penalties:** Under WSDA’s pesticide violation penalty matrix, the maximum penalty WSDA may assign is \$7,500 per violation and/or 90 days license suspension or license denial or revocation. The typical penalty for a non-serious, first-time violation is \$200 to \$500 and a license suspension of two to six days; however, a first-time violation would, in most cases, result in the administration of an NOC and not advance to the civil penalty stage unless a repeat violation was identified.

The typical penalty for a first-time human exposure violation is \$350 to \$550 and a license suspension of five to nine days; however, actual case results, which reflect multiple violations and/or aggravating circumstances, have resulted in fines averaging \$1,000. In first-time human exposure cases, WSDA may proceed directly to civil penalty without first issuing an NOC. WSDA may also refer appropriate cases to EPA for criminal prosecution or civil action. Table 4 summarizes the formal and non-formal enforcement actions completed in the last four years.

Please note: The complaints in a given year do not directly correlate with the enforcement actions in that year. Enforcement action is often completed in the year after the complaint is received, due to when the complaint is received and the complexity of the investigation. Also, some complaints result in action being taken against more than one individual. For information on enforcement action taken on a specific complaint, see the appropriate annual report of the Pesticide Incident Reporting and Tracking (PIRT) Review Panel, prepared by the Department of Health, and available on its website, <http://doh.wa.gov/ehp/Pirt>

**Table 4. Enforcement Actions Completed, 2005-2008**

Action Completed	2005	2006	2007	2008
<b><i>Formal Enforcement Action</i></b>				
Actions resulting from Notices of Intent (NOI)	21*	38	34	38
License Suspension (days)	70	155	110	106
Civil penalties assessed	\$13,240	\$37,650	\$25,175	\$34,636
<b><i>Non-Formal Enforcement Action</i></b>				
Notices of Correction (NOC) issued	129	151	101	102

\* Includes one settlement in which the violator purchased drift reduction equipment instead of paying a \$1,600 penalty.

WSDA issues considerably more NOCs than NOIs. To the extent possible, WSDA tries to work with individuals to correct violative acts by issuing an NOC. Other non-formal enforcement actions, such as a verbal warning or advisory letter, are not tracked but are part of a case investigation file.