

# **Pesticide Investigations and Enforcement**

## **2009 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 Web site 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, consultants, and structural pest inspectors, and the investigation of complaints of alleged pesticide misuse. WSDA coordinates activities closely with other Washington state agencies, federal agencies and citizens of the state.

## **Complaint Investigations**

In 2009, WSDA investigated 147 complaints involving pesticide use, sales, and distribution; pesticide licensing; and building inspections for wood-destroying organisms. Table 1 provides the number of complaint (cases) investigated in 2009 and the previous four years. More information about Notice of Correction (NOC) and Notice of Intent (NOI) can be found within the Enforcement Actions section of this report.

WSDA is required to respond to cases of human exposure within one working day of receipt. All of the human exposure complaints were responded to within one working day. In 2009, a total of 43 human exposure complaints were received compared to 42 human exposure complaints in 2008.

**Table 1. Total Complaints 2005-2009**

Year	Total Complaints
2005	193
2006	206
2007	177
2008	172
2009	147

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

- **Agricultural:** Incidents occur in an agricultural environment such as farming, greenhouses, or Christmas tree farming.
- **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 pest.
- **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 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 violation by type of activity for each of the last five years.

**Table 2. Type of Activity Involved in Complaint Resulting in Violations, 2005-2009**

Type of Activity	2005	2006	2007	2008	2009
Agricultural	27	30	24	15	13
Commercial/Industrial	22	26	16	29	8
PCO/WDO	29	33	36	21	18
Residential (non-commercial)	9	19	12	18	7
Right-of Way	11	14	13	5	13
<b>Total Violations</b>	<b>98</b>	<b>122</b>	<b>101</b>	<b>88</b>	<b>59*</b>

\*Based upon cases completed to date.

The top counties where complaints originated include: Yakima 19, Whatcom 15, King 13, Spokane 11, and Chelan 10. Table 3 provides a complete listing of complaints by county for the past four years.

**Table 3. Complaints by County, 2006-2009**

County	2006	2007	2008	2009
Adams	2	3	4	2
Asotin	1	2	3	1
Benton	5	10	16	7
Chelan	6	8	5	10
Clallam	0	0	0	0
Clark	5	2	4	6
Columbia	1	2	2	1
Cowlitz	2	5	2	2
Douglas	11	6	4	5
Ferry	0	0	1	0
Franklin	9	4	7	4
Garfield	0	2	0	0
Grant	19	13	17	5
Grays Harbor	2	0	2	0
Island	3	1	0	1
Jefferson	3	1	0	0
King	13	13	17	13
Kitsap	6	7	2	0
Kittitas	3	3	0	5
Klickitat	0	1	0	1
Lewis	6	7	1	0

County	2006	2007	2008	2009
Lincoln	5	3	1	2
Mason	2	2	3	1
Okanogan	10	7	5	1
Pacific	0	0	1	5
Pend Oreille	3	1	1	2
Pierce	18	14	7	5
San Juan	0	0	0	0
Skagit	4	5	10	3
Skamania	0	0	0	0
Snohomish	5	12	11	6
Spokane	20	13	12	11
Stevens	3	1	4	0
Thurston	1	2	6	8
Wahkiakum	1	0	0	0
Walla Walla	6	1	8	3
Whatcom	8	8	2	15
Whitman	3	8	0	3
Yakima	15	10	13	19
Out of state	1		1	0
<b>Totals</b>	<b>206</b>	<b>177</b>	<b>172</b>	<b>147</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 website at <http://www.doh.wa.gov/ehp/PIRT/default.htm>

### 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 verbally 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 a 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 a 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 five 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 as required by RCW 70.104.090, and available on its web site at <http://www.doh.wa.gov/ehp/PIRT/default.htm>

**Table 4. Enforcement Actions Completed, 2005-2009**

Action Completed	2005	2006	2007	2008	2009
<b>Formal Enforcement Action</b>					
Actions resulting from Notices of Intent (NOI)	21*	38	34	38	28
License Suspension (days)	70	155	110	106	274
Civil penalties assessed	\$13,240	\$37,650	\$25,175	\$34,636	\$36,275
<b>Non-Formal Enforcement Action</b>					
Notices of Correction (NOC) issued	129	151	101	102	61

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

To the extent possible, WSDA tries to work with individuals to correct violative acts by issuing an NOC. WSDA issues substantially more NOCs than NOIs. A NOC is not considered a formal enforcement action under RCW 43.05.100 (2). Other actions, such as a verbal warning or advisory letter, are not tracked, but are part of a case investigation file.