

# **Pesticide Investigations and Enforcement**

## **2011 Annual Report to the Legislature**

*As Required by RCW 15.58.420 and RCW 17.21.350*

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**Dan Newhouse Director**

For more information or additional copies of this report, please contact:

**Washington State Department of Agriculture**  
**Pesticide Compliance Program**  
**Cliff Weed, Manager**  
**P.O. Box 42560**  
**Olympia, WA 98504-2560**  
**(360) 902-2036**

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 or “department”) 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.

## **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 2011, WSDA investigated 138 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 2011 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 2011, a total of 32 human exposure complaints were received compared to 26 human exposure complaints in 2010.

**Table 1. Total Complaints 2007-2011**

| <b>Year</b> | <b>Total Complaints</b> |
|-------------|-------------------------|
| 2007        | 177                     |
| 2008        | 172                     |
| 2009        | 148                     |
| 2010        | 162                     |
| 2011        | 138                     |

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 six years.

**Table 2. Type of Activity Involved in Complaint Resulting in Violations, 2006-2011**

| <b>Type of Activity</b>      | <b>2006</b> | <b>2007</b> | <b>2008</b> | <b>2009</b> | <b>2010</b> | <b>2011</b> |
|------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Agricultural                 | 30          | 24          | 15          | 25          | 27          | 10          |
| Commercial/Industrial        | 26          | 16          | 29          | 15          | 47          | 21          |
| PCO/WDO                      | 33          | 36          | 21          | 22          | 19          | 15          |
| Residential (non-commercial) | 19          | 12          | 18          | 7           | 15          | 5           |
| Right-of Way                 | 14          | 13          | 5           | 13          | 16          | 9           |
| <b>Total Violations</b>      | <b>122</b>  | <b>101</b>  | <b>88</b>   | <b>84</b>   | <b>124</b>  | <b>60*</b>  |

\*Based upon cases completed to date.

The top counties where complaints originated include: Spokane 18, Pierce 13, King 13, Grant 12, and Yakima 11 and Chelan 9. Table 3 provides a complete listing of complaints by county for the past four years.

**Table 3. Complaints by County, 2008-2011**

| County       | 2008 | 2009 | 2010 | 2011 |
|--------------|------|------|------|------|
| Adams        | 4    | 2    | 1    | 4    |
| Asotin       | 3    | 1    | 0    | 0    |
| Benton       | 16   | 7    | 5    | 2    |
| Chelan       | 5    | 10   | 4    | 9    |
| Clallam      | 0    | 0    | 1    | 1    |
| Clark        | 4    | 6    | 4    | 5    |
| Columbia     | 2    | 1    | 2    | 1    |
| Cowlitz      | 2    | 2    | 2    | 1    |
| Douglas      | 4    | 5    | 5    | 4    |
| Ferry        | 1    | 0    | 0    | 1    |
| Franklin     | 7    | 4    | 6    | 3    |
| Garfield     | 0    | 0    | 0    | 0    |
| Grant        | 17   | 5    | 11   | 12   |
| Grays Harbor | 2    | 0    | 0    | 0    |
| Island       | 0    | 1    | 1    | 1    |
| Jefferson    | 0    | 0    | 1    | 2    |
| King         | 17   | 13   | 9    | 13   |
| Kitsap       | 2    | 0    | 3    | 1    |
| Kittitas     | 0    | 5    | 2    | 0    |
| Klickitat    | 0    | 1    | 1    | 0    |
| Lewis        | 1    | 0    | 1    | 1    |

| County        | 2008       | 2009       | 2010       | 2011       |
|---------------|------------|------------|------------|------------|
| Lincoln       | 1          | 2          | 1          | 1          |
| Mason         | 3          | 2          | 1          | 1          |
| Okanogan      | 5          | 1          | 2          | 4          |
| Pacific       | 1          | 5          | 3          | 2          |
| Pend Oreille  | 1          | 2          | 0          | 0          |
| Pierce        | 7          | 5          | 13         | 13         |
| San Juan      | 0          | 0          | 0          | 0          |
| Skagit        | 10         | 3          | 8          | 2          |
| Skamania      | 0          | 0          | 0          | 1          |
| Snohomish     | 11         | 6          | 11         | 6          |
| Spokane       | 12         | 11         | 23         | 18         |
| Stevens       | 4          | 0          | 2          | 3          |
| Thurston      | 6          | 8          | 11         | 5          |
| Wahkiakum     | 0          | 0          | 0          | 0          |
| Walla Walla   | 8          | 3          | 4          | 2          |
| Whatcom       | 2          | 15         | 8          | 6          |
| Whitman       | 0          | 3          | 4          | 2          |
| Yakima        | 13         | 19         | 12         | 11         |
| Out of state  | 1          | 0          | 0          | 0          |
| <b>Totals</b> | <b>172</b> | <b>148</b> | <b>162</b> | <b>138</b> |

**Table 4. Drift Data**

Historically, drift complaints have comprised a high percentage of the total complaints received. This data represents six years of drift data and suggest the total number of drift complaints is declining

| Year                                     | 2006 | 2007 | 2008 | 2009 | 2010 | **2011 |
|--|------|------|------|------|------|--------|
| Total Complaints                         | 206  | 177  | 172  | 148  | 162  | 138    |
| Total # of Cases with Drifts             | 89   | 62   | 79   | 56   | 69   | 42     |
| Total Drift Cases involving Human Health | 29   | 24   | 27   | 25   | 19   | 10     |
| (Aerial all w/ Human Health)             | 8    | 7    | 4    | 3    | 4    | 4      |
| (Ground all w/Human Health)              | 21   | 17   | 23   | 22   | 15   | 6      |
| (Aerial, All)                            | 16   | 18   | 22   | 11   | 16   | 13     |
| (Ground, All Drifts)                     | 73   | 44   | 57   | 45   | 53   | 29     |
| # of Drifts with Action                  | 61   | 48   | 58   | 41   | 37   | 21     |
| (NOC's)                                  | 43   | 36   | 45   | 34   | 25   | 19     |
| (NOI's)                                  | 18   | 12   | 13   | 7    | 12   | 2      |
| (Aerial W/Action)                        | 16   | 16   | 18   | 9    | 15   | 10     |
| (Ground W/Action)                        | 45   | 32   | 40   | 32   | 22   | 11     |

|   |    |   |    |    |   |   |
|---|----|---|----|----|---|---|
| (Aerial all w/ Human Health and Action) | 3  | 4 | 1  | 1  | 2 | 0 |
| (Ground all w/Human Health and Action)  | 12 | 8 | 12 | 12 | 9 | 3 |

## 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 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 (such as pesticide dealers, consultants, operators, etc).

**Table 5 . Enforcement Actions Completed, 2007-2011**

| Action Completed                               | 2007     | 2008     | 2009     | 2010     | 2011       |
|--|----------|----------|----------|----------|------------|
| <b>Formal Enforcement Action</b>               |          |          |          |          |            |
| Actions resulting from Notices of Intent (NOI) | 34       | 38       | 28       | 36       | 34         |
| License Suspension (days)                      | 110      | 106      | 274      | 96       | 1,920*     |
| Civil penalties assessed                       | \$25,175 | \$34,636 | \$36,275 | \$24,450 | \$71,125** |

|   |     |     |    |    |    |
|---|-----|-----|----|----|----|
| <b><i>Non-Formal Enforcement Action</i></b> |     |     |    |    |    |
| Notices of Correction (NOC) issued          | 101 | 102 | 86 | 83 | 65 |

\*The License Suspension is higher than normal due to a 5 year suspension for one person with a Structural Pest Inspector License.

\*\*The fines were higher due to one fine in the amount of \$25,000 as well as repeat offenders who are fined at a higher level due to repeat offenses.

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.