

Pesticide Investigations and Enforcement

2006 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, and 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 25,000 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

Table 1. Total Complaints and Violations, 2003-2006

Year	Total Complaints	Total Violations
2003	222	127
2004	200	107
2005	193	97
2006	206	103*

* Based upon cases completed to date.

In 2006, WSDA investigated 206 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 and resulting number of violations for the past three years. The violation numbers represent the number of cases in which either a Notice of Correction (NOC) or a Notice of Intent (NOI) was issued. More information about NOCs and NOIs can be found within the Formal and Non-Formal Enforcement section of this report.

WSDA is required to respond to cases of human exposure within one working day of receipt. All but one of the

human exposure complaints were responded to within one working day. In 2006, a total of 36 human exposure complaints were received compared to 39 human exposure complaints in 2005.

Complaints that resulted in violations involved the activities as listed and summarized in Table 2.

Table 2. Type of Activity Involved in Complaint Resulting in Violations, 2003-2006

Type of Activity	2003	2004	2005	2006
Agricultural	31	30	27	24
Commercial/Industrial	44	29	22	26
PCO/WDO	36	33	29	33
Residential (non-commercial)	8	4	8	11
Right-of Way	8	11	11	9
Total Violations	127	107	97	103*

*Based upon cases completed to date.

The top counties where complaints originated include: Grant 21, Spokane 20, Pierce 18, Yakima 14, King 13, and Douglas 9. Table 3 provides a complete listing of complaints by county for the past three years.

Table 3. Complaints by County, 2004-2006

County	2004	2005	2006
Adams	5	6	2
Asotin	0	1	1
Benton	16	8	6
Chelan	8	18	7
Clallam	3	1	0
Clark	5	6	5
Columbia	1	1	1
Cowlitz	0	3	3
Douglas	2	11	9
Ferry	0	1	0
Franklin	5	7	9
Garfield	1	0	0
Grant	19	16	21
Grays Harbor	6	2	3
Island	3	1	3
Jefferson	1	0	3
King	28	21	13
Kitsap	4	2	6
Kittitas	1	2	3
Klickitat	2	2	0

County	2004	2005	2006
Lewis	2	1	6
Lincoln	4	6	5
Mason	0	3	2
Okanogan	5	1	9
Pacific	0	0	0
Pend Oreille	0	1	3
Pierce	10	10	18
San Juan	0	2	1
Skagit	4	6	5
Skamania	0	0	0
Snohomish	10	4	5
Spokane	18	22	20
Stevens	1	0	3
Thurston	7	5	1
Wahkiakum	0	0	1
Walla Walla	11	6	7
Whatcom	1	1	8
Whitman	2	4	3
Yakima	15	12	14
Totals	200	193	206

Formal and Non-Formal 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). A NOI is a formal 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 identifies 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. 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.

Table 4. Enforcement Actions Completed, 2003-2006

Action Completed	2003	2004	2005	2006
<i>Formal Enforcement Action</i>				
Actions resulting from Notices of Intent (NOI)	33	30*	21**	38
License Suspension (days)	294	942	70	155
Civil penalties assessed	\$28,350	\$13,460	\$13,240	\$37,650
<i>Non-Formal Enforcement Action</i>				
Notices of Correction (NOC) issued	147	134	129	151

*Includes 3 NOIs to deny license.

** 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 a NOC. In the last three years, WSDA has issued two to four times 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.