

Pesticide Investigations and Enforcement

2007 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, and consultants, and structural pest inspectors; and the investigation of complaints of alleged pesticide misuse. WSDA coordinates activities closely with other state agencies, federal agencies and citizens of the state.

Complaint Investigations

In 2007, WSDA investigated 177 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 and resulting number of violations for 2007 and the previous 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 Enforcement Actions section of this report.

Table 1. Total Complaints and Violations, 2004-2007

Year	Total Complaints	Total Violations
2004	200	107
2005	193	98
2006	206	122
2007	177	76*

* Based upon cases completed to date.

WSDA is required to respond to cases of human exposure within one working day of receipt. All but one of the human exposure complaints was responded to within one working day. In 2007, a total of 37 human exposure complaints were received compared to 40 human exposure complaints in 2006.

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, forestry, greenhouses, or Christmas tree farming.
- **Commercial/industrial:** Incidents involving applications by licensed operators to offices, restaurants, homes, 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 the 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, 2004-2007

Type of Activity	2004	2005	2006	2007
Agricultural	30	27	30	14
Commercial/Industrial	29	22	26	18
Pest Control Operator (PCO)/ Wood Destroying Organism (WDO)	33	29	33	30
Residential	4	9	19	5
Right-of Way	14	11	14	9
Total Violations	107	98	122	76*

*Based upon cases completed to date.

The top counties where complaints originated include: Grant 15, Spokane 13, Pierce 14, Snohomish 12, King 12, Yakima 11. Table 3 provides a complete listing of complaints by county for the past three years.

Table 3. Complaints by County, 2005-2007

County	2005	2006	2007
Adams	6	2	3
Asotin	1	1	2
Benton	8	6	9
Chelan	18	7	6
Clallam	1	0	0
Clark	6	5	2
Columbia	1	1	2
Cowlitz	3	3	5
Douglas	11	9	6
Ferry	1	0	0
Franklin	7	9	4
Garfield	0	0	2
Grant	16	21	15
Grays Harbor	2	3	0
Island	1	3	1
Jefferson	0	3	1
King	21	13	12
Kitsap	2	6	7
Kittitas	2	3	2
Klickitat	2	0	1

County	2005	2006	2007
Lewis	1	6	6
Lincoln	6	5	3
Mason	3	2	2
Okanogan	1	9	8
Pacific	0	0	0
Pend Oreille	1	3	1
Pierce	10	18	14
San Juan	2	1	3
Skagit	6	5	3
Skamania	0	0	0
Snohomish	4	5	12
Spokane	22	20	13
Stevens	0	3	1
Thurston	5	1	3
Wahkiakum	0	1	0
Walla Walla	6	7	2
Whatcom	1	8	8
Whitman	4	3	9
Yakima	12	14	11
Totals	193	206	177

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 determining 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. 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 Web site.

Table 4. Enforcement Actions Completed, 2004-2007

Action Completed	2004	2005	2006	2007
<i>Formal Enforcement Action</i>				
Actions resulting from Notices of Intent (NOI)	30*	21**	38	34
License Suspension (days)	942	70	155	110
Civil penalties assessed	\$13,460	\$13,240	\$37,650	\$25,175
<i>Non-Formal Enforcement Action</i>				
Notices of Correction (NOC) issued	134	129	151	89

*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 an NOC. WSDA issues substantially more NOCs than NOIs. An 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.