



PROCESS

Investigating
Pesticide
Complaints



Washington
State Department of
Agriculture

PESTICIDE MANAGEMENT DIVISION
COMPLIANCE PROGRAM

BACKGROUND

DISCLAIMER

The information presented here is for general information purposes only. It provides some background and a brief review of the investigative process that occurs when the Washington State Department of Agriculture (WSDA) receives a complaint concerning pesticides. It is not meant to be comprehensive or to address all the possible details of the investigative process. Every investigation is unique and requires the knowledge, skills, and discretion of the investigator.

WSDA'S RESPONSIBILITY

Complaints of alleged pesticide misuse -- including possible human and animal exposure, pesticide drift and plant damage -- are assigned to WSDA's Pesticide Management Division. WSDA has the authority under state law to conduct pesticide inspections and investigations in Washington State. Please see appendices on page 7 for citations of applicable state laws and regulations.

INVESTIGATORS' ROLE

All WSDA investigators are highly skilled and trained in conducting investigations. They are thoroughly familiar with state pesticide laws and rules and knowledgeable about applicable federal law. They are expected to:

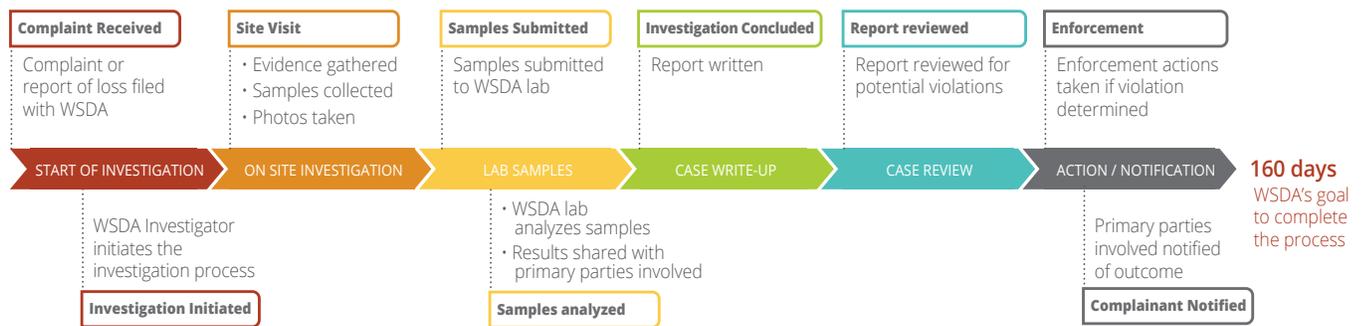
- Understand pesticide labels.
- Have good communication skills.
- Maintain federal Environmental Protection Agency (EPA) credentials.
- Be trained in hazardous materials handling.

The investigator's role is to objectively review the facts regarding allegations and document any potential violations of applicable laws or rules. The investigator will observe and document what happened by obtaining interviews, statements, application records, maps, photographs, pesticide labels, weather data and onsite assessments. The investigator may also collect physical evidence such as soil, vegetation, clothing or water samples.



A WSDA investigator collects a sample.

INVESTIGATION PROCESS



COMPLAINT RECEIVED

Anyone may file a complaint or report of loss with WSDA. Once we receive the complaint, it will be evaluated as to its merit before it is assigned for an investigation. Complaints from any outside source or agency must include enough detail for an investigation to be pursued. If insufficient information is provided, WSDA will try to obtain the information necessary to determine if an investigation should be conducted. Without sufficient information, WSDA may close the case with no further action.

Generally, a verified report of property loss or damage resulting from the use or application of pesticides must be filed within 30 days by the complainant. The investigator may require a written report of loss, depending on the circumstances.

A report of loss or any complaint can be submitted in many ways, such as by telephone, email, letter or fax (see information below). It can also be referred from another agency.

- Find contact information and office locations at agr.wa.gov/PestFert/ContactUs.aspx
- Toll-free phone: 1-877-301-4555
- Email: compliance@agr.wa.gov

RESPONSE TIME

After a complaint is received and an investigation is assigned, an investigator determines the priority status of the incident. Human exposure is the highest priority and the investigation must begin immediately. All other investigations must be initiated within 48 hours.

Under an agreement between WSDA and the EPA, all pesticide cases deemed “significant” are shared with EPA and tracked by both agencies.

Significant case criteria includes:

- **Potential criminal activity.**
- **Human effects, including:**
 - Serious injury -- any pesticide illness requiring hospitalization.
 - Any injury or illness claimed by five or more persons resulting from pesticide exposure.

START OF INVESTIGATION

- **Environmental effects, such as:**
 - Water: Contamination of any public drinking water supply, or source of water for 10 or more households.
 - Air: Contamination of air requiring official evacuation of any area.
 - Land: One half acre or more rendered not usable for the intended purposes for one year or more.
 - Birds (non-target): Ten or more game or migratory birds and 50 or more of other birds.
 - Fish (non-target): Fifty fish of any species.
 - Endangered species: One or more endangered species.
 - Other species: Domestic animals on a case-by-case basis.
 - Other non-target species: Five or more of any game animal or furbearers.
 - All known or suspected pesticide incidents involving pollinators.

NOTIFY OTHER AGENCIES

Several agencies in Washington State are responsible for regulating various aspects of the agricultural industry. When a WSDA investigation overlaps an aspect of another agency's regulatory authority, WSDA is obligated to notify the other agency. Table 1 shows examples of some of the common issues that may require notifying another agency.

TABLE 1 - Notification of other agencies

If the issue involves:	WSDA contacts:
Human exposure to pesticides	State Department of Health State Department of Labor and Industries <i>(if employer-employee relationship involved)</i>
"Significant" cases	EPA Region 10
Food safety or pesticide tolerance issues	WSDA Food Safety
A pesticide spill, ground or surface water contamination	State Department of Ecology
Fish or wildlife injury or death	State Department of Fish and Wildlife
Burning pesticide containers	Clean Air Authority for that area

FIRST STEPS - PLAN AND VISIT

Based on the initial information provided in the complaint, the investigator formulates a general plan. The plan focuses on the circumstances of the incident and any potential violations, as well as the evidence needed to determine if any pesticide violations occurred.

The investigator arranges to visit the site of the incident as soon as possible. WSDA is authorized to enter property, however it is our policy to ask permission before entering when possible.

When the investigator arrives, he or she will present state-issued identification and/or a business card. The investigator gathers as many facts as possible and available evidence and information.

COLLECT EVIDENCE AND SAMPLES

During the investigative process, the investigator may collect evidence that is relevant to the incident, including the following.

- **Photos** - If photos are taken, the investigator documents each and creates a photo log of all pictures.
- **Records, including pesticide application or distribution records** - Records collected can be original documents or the investigator will try to verify that the information was taken from the original documents or source.
- **Weather data** - Weather data may be obtained from nearby stations.
- **Statements** - The investigator may try to obtain statements verbally and in writing.
- **Samples** - The investigator may need to collect samples for evidence as part of the investigative process. Each investigation is unique so investigators will use their experience and discretion to select the proper samples.

WSDA personnel collect samples using methods and equipment aimed at preventing cross-contamination and preserving the chain of custody to ensure that evidence can be used in a formal hearing if necessary. In some circumstances, WSDA may instruct others on properly saving and storing samples until the investigator can collect them.

Selecting samples will depend on the type of incident that occurred. Table 2 shows examples of possible incidents and the type of samples that may be collected.

TABLE 2 - Incidents and types of samples

Type of incident:	Samples that might be collected:
Drift of a pesticide on to people or property.	Foliage collected in a pattern from lowest suspected concentration to highest, i.e. from the alleged site of exposure toward the suspected application site. Could also include clothing from the person(s) exposed to the pesticides.
Misuse of a pesticide resulting in animal, fish or bee kills.	Dead animals, fish, bees, honey and pollen; foliage samples and/or swab samples.
Misuse of a pesticide in a residential setting.	Various samples may include foliage and swab samples from surfaces such as windows.
Crop damages from run-off containing a pesticide.	Soil or foliage collected in a pattern from the alleged site of exposure toward the suspected application site.
Misuse of a pesticide resulting in water contamination.	Water from the contaminated water supply/source.
Crop or plant damage due to a contaminated tank mix.	Sample from the spray tank, nozzles, boom, and pump. Foliage samples.

SUBMIT AND ANALYZE SAMPLES

All pesticide samples to be analyzed for pesticide residues are submitted to the WSDA Chemical and Hop Laboratory. The WSDA lab aims to provide sample results within 30 days. However, this may vary, depending on the lab's workload. Upon receiving sample results, investigators generally share them with the primary parties involved in the investigation.

DOCUMENT INVESTIGATION

WSDA uses a secure database to document an investigation. The Kelly Registration System (KRS) is designed to capture the entire investigative process. When the investigation is complete, the investigator generates a report using KRS, based on the evidence obtained. These reports are public records.

POSSIBLE ACTIONS

If the investigator determines that no violations have occurred, the case is closed with no further action.

If violations are suspected, the case is sent to a WSDA Area Manager who reviews the report to determine if sufficient evidence exists to support violations of state and/or federal pesticide laws or rules.

If a violation is determined, WSDA may take any one of the following actions, depending on the severity of the violation:

- Give a verbal warning.
- Issue a Notice of Correction.
- Issue a Notice of Intent to suspend or revoke a license and/or issue a civil penalty up to \$7,500 per violation.
- Refer the case to another state or federal agency for additional action.

If the action involves more than issuing a verbal warning or Notice of Correction, the case is forwarded to the WSDA Case Review Officer. After reviewing the case, this officer will determine the appropriate regulatory action, if any.

APPENDIX

- **Washington Pesticide Control Act - *Chapter 15.58 RCW***
apps.leg.wa.gov/rcw/default.aspx?cite=15.58
- **Washington Pesticide Application Act - *Chapter 17.21 RCW***
apps.leg.wa.gov/rcw/default.aspx?cite=17.21
- **General Pesticide Rules - *WAC 16-228***
apps.leg.wa.gov/WAC/default.aspx?cite=16-228



Washington
State Department of
Agriculture

PO Box 42560, Olympia, WA 98504-2560
(360) 902-1800

AGR PUB 706-566 (N/11/16)

Do you need this publication in an alternate format? Contact the
WSDA Receptionist at (360) 902-1976 or TTY Relay (800) 833-6388.