Pesticide Compliance Program

Investigative Process

R. Scott Nielsen,
Compliance Program
Case Review - Area Manager
Eastern Washington
Steps when WSDA receives complaints of pesticide off-target exposure, damage or other misuse
Information gathering

• Travel to incident site
• Collect evidence
  – *Photograph location, equipment, damage*
  – *Obtain samples of clothing, foliage, swabs, soil*
• Conduct interviews
  – *Complainant(s)*
  – *Witnesses if still present*
• Record Request to complainant’s farm/location
• Contact alleged infractor
  – *Obtain interview and statement*
  – *Request records from the alleged infractor*
• Check equipment condition and settings
• Contact other agencies when applicable including:
  – Department of Health
  – Ecology
  – Labor & Industries
  – EPA
  – Local jurisdictions and other agencies as needed
• Contact other applicators possibly in area near time of incident or who may have impacted the site. Request their records.
• Submit samples for analysis, requesting pesticides of interest.
  – Before submitting samples, must determine pesticides applied.
  – Investigators must often wait until obtaining application records from parties involved.
• Research pesticide labels, weather conditions and aerial photos.
  – Case investigation will take label instructions, signal word, other hazard information into account in determining proposed violation.
• Receive lab results and analyze information.
Organize all information gathered and submit to area manager for review. Consult with Case Review, cases that involve human exposure or illness. Possible actions include:

- No Action
- Advisory Letter
- Notice of Correction

OR

Submit to Case Review for administrative action and legal review.
Possible penalties

- Notice of Correction (NOC)
- Notice of Intent (NOI):
  - License denial, suspension or revocation
  - Civil penalty $200 to $7,500 per violation (schedule)
  - Misdemeanor

WSDA can negotiate settlements and refer violations to any federal, state, or county authority with jurisdiction over the activities in question
Drift-related pesticide infractions

“It is a violation of federal law to use this product in a manner that is inconsistent with its labeling”

(statement on all EPA Registered product labels)

“It shall be unlawful...for any person to use or cause to be used any pesticide contrary to label directions”

[RCW 15.58.150 (2) (c)]
Drift-related pesticide infractions

Off-target drift

RCW 17.21.150(4) – It shall be unlawful:

“To operate in a faulty, careless or negligent manner.”
Drift-related pesticide infractions

**Off-target drift** *(label language and/or economic damages or health risk)*

WAC 16.228-1200(1) – General Pesticide Rules:

“No person shall... apply... pesticides in such a manner as to endanger humans and their environment or to endanger food, feed, or any other product...”

WAC 16.228-1220(2) – General Pesticide Rules:

“No person shall... apply... any pesticide... in such a manner as to... cause damage or injury to land, humans, desirable plants and animals or wildlife.
Herbicide drift often leaves “visual” evidence of what occurred or drifted.
Kaolinite clay products often leave visual evidence of drift.
Lime sulfur can leave visible evidence of drift.
Most fungicides, insecticides, and PGR’s leave little visual trace when drifted off target. Investigations rely heavily on sampling analysis.
A straightforward case example -
One house, one orchard adjacent.
Call comes in same day as incident.
Complex case example - Call comes in 10-14 days after incident. Several blocks treated since the incident. Multiple parties and farms involved.
Agricultural employers, handler employees, and commercial handler employees must provide:

- Training for workers and pesticide handlers
- Decontamination supplies
- Personal protective equipment
- Pesticide safety, hazard and application information
- Notification of worker entry restrictions
- Establishment-specific and label information
- Prompt transportation in emergencies
Application Exclusion Zone (AEZ)

- Size of AEZ depends on type of application method used.
- An area ranging from zero to 100 feet surrounding pesticide application equipment.
- AEZ can extend onto other properties.

- **100-foot AEZ**
  - Applied aerially, by air blast or with a spray quality smaller than medium (volume median diameter $< 294$ microns)
  - Applied as a fumigant, smoke, mist or fog

- **25-foot AEZ**
  - Applied other than from above and sprayed from a height of $>12$ inches from planting medium with spray quality of medium or larger.
Questions?
Contact Us

**PHONE**
Scott Nielsen, 509-990-6518

**EMAIL**
snielsen@agr.wa.gov

**WEB**
 agr.wa.gov

**FACEBOOK**
facebook.com/WAStateDeptAg

**TWITTER**
@WSDAgov

**YOUTUBE**
Youtube.com/user/WSDAgov

Images used in this presentation may not be reused without explicit written permission from the WSDA Communications Office