

WISHA REGIONAL DIRECTIVE

WISHA Services

Department of Labor and Industries

33.25

PESTICIDES

IN AGRICULTURE

Date Issued: December 28, 2000

I. Background

The Department of Labor and Industries (L&I) maintains jurisdiction over the health and safety of agriculture workers who may be exposed to pesticides as part of their job duties. Such workers are employees subject to the protection of the Washington Industrial Safety and Health Act (WISHA).

Although the federal Occupational Safety and Health Administration (OSHA) does not directly regulate pesticides, L&I's activities in this area are part of the State Plan and subject to OSHA oversight. The Washington State Department of Agriculture (WSDA) is the Washington designee of the federal Environmental Protection Agency (EPA) and is subject to EPA oversight. Because WSDA normally relies on L&I to enforce pesticide regulations where workers are at risk, L&I readily shares information about WISHA pesticide enforcement with WSDA and EPA. However, L&I is not formally subject to EPA oversight.

Because L&I, WSDA and the Department of Health (DOH) all have pesticide responsibilities, the Legislature directed in 1996 that the three agencies work together to define their roles, minimize duplication and eliminate any conflicting requirements. That effort resulted in WSDA and L&I adopting updated and identical versions of the "worker protection standard," based on the standard adopted and enforced by the federal EPA. The three agencies also developed and signed a Memorandum of Understanding, and provided joint training to pesticide enforcement staff.

II. Scope and Application:

This WISHA Regional Directive (WRD) provides guidance to WISHA enforcement and consultation staff regarding the enforcement of the worker protection standard in agriculture (Part I of Chapter 296-307), particularly as it relates to allegations of actual pesticide exposure. It replaces and rescinds WIM #96-11-M, and it will remain in effect indefinitely.

III. WISHA Enforcement Protocols

1. *In general, how should WISHA enforcement staff conduct investigations into complaints regarding pesticide exposure?*

As a general principle, WISHA handles complaints (or referrals) regarding pesticide exposure the same way it handles other complaints of worker health and safety violations. However, it is important to coordinate regional activities with DOH and WSDA in order to avoid duplicative enforcement activities and requests for information. WISHA enforcement staff must determine whether a violation of WISHA requirements can be substantiated through witnesses or documentation and, if so, issue citations as appropriate to the circumstances.

2. *How quickly should an inspection be conducted in response to a complaint or referral alleging pesticide exposure in violation of WISHA requirements?*

Although the WISHA Compliance Manual allows up to 30 days to respond to a serious complaint, and even longer for non-serious complaints, those maximum time limits do not reflect normal WISHA practice. In addition, for some alleged conditions, WISHA expects a more rapid response.

- A. When complaints or referrals allege serious violations resulting from ongoing pesticide application, WISHA enforcement staff are expected to make every reasonable effort to respond before the activity has been discontinued. This is especially important if the allegations suggest that the employer may be trying to avoid detection (for example, allegations of false records or allegations that spraying is scheduled for nighttime or early morning hours specifically to avoid discovery (there are other, appropriate reasons to spray at night)).
- B. In addition, WISHA staff are expected to respond to the following allegations within 48 hours *if* the allegation is received within seven calendar days of the event:
- Illness from direct pesticide spray or drift;
 - Reentry into a field before reentry intervals are expired;
 - Direct spills or splashes of pesticides onto an employee.
- C. Finally, WISHA staff are expected to respond as quickly as practical to serious allegations of specific exposure occurring within the previous 30 calendar days if it appears likely that residue sampling will be relevant.

3. *How should employee interviews be handled?*

As always, employee interviews are expected whenever such interviews are needed to ensure a thorough inspection (for example, when employee complaints and employer records are inconsistent with one another). In addition, such interviews are expected whenever no employee representative is available to participate in the inspection.

Interviews may be conducted away from the workplace and may be conducted by telephone. In addition, the following issues should be given particular consideration in pesticide exposure cases.

- A. Even if an employee representative participates on the walk-around, allegations about past activity (as opposed to current conditions) cannot be evaluated without employee interviews, including any witnesses to the alleged events. A small, basically random sampling of employees may not be enough to evaluate a specific allegation; the inspector is expected to determine who may have been present at the time of the alleged incidents and to select employees to interview accordingly.
- B. If the complainant alleges specific exposure, WISHA staff are expected to interview the complainant, if known. Exceptional caution must be exercised to avoid giving away the identity of a complainant who has requested confidentiality.
- C. If the complainant or others likely to have relevant information cannot be located or refuse to participate in an interview, this information should be documented in the inspection file.
4. *When should foliage, clothing, or other bulk samples be taken, and how should they be handled?*

WISHA staff are expected to take samples when they are – or may be -- necessary to determine whether a WISHA violation has occurred. When appropriate samples have already been collected by DOH or WSDA, WISHA staff are expected to rely on those sampling results to complete the inspection.

- A. WISHA staff are expected to consider samples in the case of allegations regarding direct spraying or drift onto employees, premature reentry into fields or orchards, spills and splashed onto employees, contact with residues on equipment, or contact with contaminated PPE. When exposure is alleged and the employer will not readily confirm the use of a particular pesticide or type of pesticide, it is especially important to take samples.
- B. Samples must be collected according to WSDA protocols and sent to the WSDA Pesticide Laboratory in Yakima, documenting the appropriate chain of custody (WISHA staff also can rely on samples collected by WSDA or DOH staff investigating the same incident).
- C. WISHA staff should collect samples of clothing or PPE directly from the worksite or employee. In such cases, a history of its use and laundering must be obtained. If others (for example, an employee representative or a family member) were involved in obtaining the sample, it can be used only if they will be available to help establish the chain of custody.

5. *When should medical records be obtained?*

Medical records, if available by the employee's consent or through records obtained from workers compensation or DOH, should be used whenever they are relevant to proving the presence of a chemical or the severity of a violation. However, it is not necessary that adverse health effects be documented in order to prove many violations, nor is it necessarily the case that all health effects caused by pesticides are the result of a WISHA violation. If allegations of cause and effect are not relevant to the WISHA inspection, such medical records are unnecessary.

6. *What unique documentation requirements arise in pesticide inspections?*

As a general rule, WISHA staff must provide documentation sufficient to support the violations that are cited, as well as sufficient explanation as to why other allegations were not cited (such documentation also helps to communicate with the complainant regarding the results of the inspection).

In the case of pesticide exposure complaints, labels should be obtained whenever possible as should spray records. Spray records can be used to verify employee allegations as well as employer statements. However, they should never be relied upon as the only documentation that an exposure did not occur. If spray records are inconsistent with other evidence indicating that exposure did occur, such as employee statements, pesticide samples or medical records, the value of the spray records should be evaluated in light of these discrepancies.

Approved: _____
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For further information about this or other WISHA Regional Directives, you may contact DOSH Policy & Technical Services at P.O. Box 44648 or by telephone at (360)902-5503. You also may review policy information on the WISHA Website (<http://www.lni.wa.gov/Safety-health/>).