

WISHA Interim Interpretive Memorandum
Washington Department of Labor and Industries
#98-2-A
NON-AGRICULTURAL USE OF PESTICIDES

Approved: Michael Wood, Senior Program Manager **Date Issued:** February 26, 1998
WISHA Policy & Technical Services

Background

WAC 296-307-107 through WAC 296-307-13055 constitute the state's version of the Worker Protection Standard (WPS). The federal WPS, which is similar to the state standard, was adopted by the Environmental Protection Agency (EPA) to protect workers from pesticide exposure. WAC 296-307-110 states that the standards are "designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests...." The scope of the WPS covers such workers when engaged in the production or maintenance of agricultural plants, whether for research or commercial purposes. WAC 296-307-12005 and WAC 296-307-130 list worker activities exempt from the WPS requirements, even when the employer in question would otherwise be covered by the scope of the standard. WAC 296-307-13005 provides further detail regarding certain exemptions for owners and crop advisers.

WAC 296-307-006 further defines the scope of the Agriculture Standard in general and references a number of Standard Industrial Classifications (SICs) to illustrate those activities covered by the standard. However, exposure to pesticides in the workplace is not limited to agriculture. For this reason, questions have been raised regarding applicable requirements and enforcement policy in other industries.

All pesticide containers have labels indicating required methods of use. These instructions include handler safety and health rules, mixing, spraying and application rules as well as rules to minimize environmental impact. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), it is illegal for anyone to use pesticides in any manner inconsistent with the labeling. State law (RCW 15.58.150(2)(c)) also declares that "It shall be unlawful for any person to use or cause to be used any pesticide contrary to label directions...."

The federal Worker Protection Standard is referenced on pesticide labels in the box titled "AGRICULTURAL USE REQUIREMENTS." Pesticide labels also have a box titled "PRECAUTIONARY STATEMENTS." This box contains requirements regarding work safety rules, personal protective equipment, engineering controls and user safety recommendations. Both federal and state pesticide law make clear that the requirements listed under "PRECAUTIONARY STATEMENTS" must be followed by every user of the product. In the workplace, the employer's obligation to provide "a place of employment free from recognized hazards" (RCW 49.17.060(1)) must also be taken into account, as must a number of general requirements that may apply in particular situations (such as the Respiratory Protection Standard, found in Chapter 296-62 WAC, Part E).

This interim memorandum, which will remain in effect until a more formal directive has been finalized, provides guidance to WISHA enforcement and consultation staff regarding the appropriate application of pesticide safety requirements to employers and activities outside the scope of the Agriculture Standard.

Policy

1. WISHA Enforcement and Consultation staff must enforce the requirements of WAC 296-307-107 through WAC 296-307-13055 in relation to those employers whose activities are covered by the scope of the Agriculture Standard (WAC 296-307-006) and the specific scope of the Worker Protection Standard (WAC 296-307-110).

- a. Employers whose primary SIC is not included on the list in WAC 296-307-006(1) but who are engaged in agricultural activities subject to the WPS are covered by the WPS and must meet its requirements.

Example: The primary SIC of a state prison or a university is not listed in the Agricultural Standard. However, such facilities engage in agricultural activities. As an illustration, Washington State University has several research farms engaged in growing plants for research purposes. These research farms would be covered under WPS. Similarly, some prisons have crop raising activities.

For further guidance in such situations, staff should consult the "Interpretive Policy Questions and Answers" document produced by the EPA on March 15, 1995 in relation to 40 CFR Parts 156 & 170. Each regional industrial hygiene supervisor has a copy.

- b. Certain activities by employers whose SIC appears in the list in WAC 296-307-006 are not subject to the WPS. WISHA staff must pay particular attention to the exceptions discussed in WAC 296-307-12005, WAC 296-307-130, and WAC 296-307-13005.

Example: If a dairy farm (SIC 0241) uses pesticides to control flies in the milking barn, this would not be covered under the WPS because WAC 296-307-12005(2) excludes coverage of the use of pesticides on livestock, or in or about animal premises.

Another example would be a fruit orchard (SIC 0175) using herbicides to control weeds along roadsides within the orchard. The use of herbicides on roads is excluded from the scope of the WPS by WAC 296-307-12005(6). In other words, when a fruit orchard uses pesticides in the production of fruit, that use falls under the WPS, but when the same orchard uses those pesticides in a manner not directly related to the production of agricultural plants, such use is not subject to the WPS.

2. WISHA staff must not apply the WPS to employers who are not covered by the standard because their activities fall outside the Agriculture Standard (or because they fall outside the specific scope of the WPS).

For example: Lawn and Garden Services, Ornamental Shrub and Tree Services, Structural Pest Control Services, and Golf Courses routinely use pesticides but are not covered by the WPS because they are not agricultural employers (based on the SIC) and they are not engaged in agricultural activities as defined by the standard. They are, however, covered by several general standards (discussed in #3 below).

3. WISHA staff must enforce the applicable requirements of any pesticide label, relying on the various applicable general standards for those employers whose activities are not covered by the Worker Protection Standard.
 - a. Non-agricultural employers (or agricultural employers engaged in non-agricultural activities) can be expected to follow all instructions contained in all the boxes on the pesticide label *except* the box titled "AGRICULTURAL USE REQUIREMENTS." Employers who fail to do so must be cited as appropriate, using the most specific applicable standard .

Guidance on the selection of the appropriate standard can be found in the WISHA Compliance Manual under Chapter IV, B.2.c.(4)(g).

In relation to pesticide exposure, WISHA staff will want to give particular attention to the general requirements for hazard assessment, selection and design, and employee training applicable to Personal Protective Equipment (PPE) found in WAC 296-24-075. Respirator violations can be cited using WAC 296-62-071, while the lack of emergency washing facilities can be addressed using WAC 296-62-130. Another standard which may apply is WAC 296-62-07005, Control of Chemical Agents. In addition, WAC 296-24-12017(5) applies when employees are allowed to consume food or beverages in an area exposed to a toxic material, and WAC 296-24-07501(a) applies when toxic materials can be absorbed through the skin.

For example: The label for Carzol SP, manufactured by AgroEvo USA Company, has the box titled "PRECAUTIONARY STATEMENTS," which requires the use of long-sleeved shirts and long pants, waterproof gloves, shoes plus socks, protective eyewear, and a respirator with either an organic vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number TC 23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix TC-14G). Every user of every pesticide must follow the requirements listed in the "PRECAUTIONARY STATEMENTS" box. If an employer fails to enforce use of the necessary protective eyewear, the appropriate PPE violation would be cited. If the employer failed to enforce use of an appropriate respirator, the appropriate violation under the RPS would be cited.

- b. If no more specific standard applies and the employer's failure to follow or to enforce the requirements of the label constitutes a "serious" violation, a violation of WAC 296-24-073(1) should be considered, referencing RCW 15.58.150(2)(c).

The proper use of the safe place standard is discussed in Chapter IV, B.2.c of the WISHA Compliance Manual. Part B.2.c.(3)(b)(1)(f) of the manual specifically discusses cases where state government agencies have codes or regulations covering hazards not specifically addressed by WISHA standards.

4. Violations (whether issued under the WPS or under other applicable standards) must be classified as "serious" or "general" with appropriate attention to the particular pesticide, hazards, and circumstances in question. The attached information regarding toxicity should be considered when making such classifications and can be used as supporting documentation to describe the hazards created by failure to adhere to the work practices and controls called for by the pesticide label.

In addition, the following guidance applies when determining which violations represent serious violations under WISHA.

- a. Most violations of handling practices or PPE that produce exposure to Category I or II pesticides should be considered "serious" in nature.

For example: If a particular category I pesticide bears both signal words "Danger" and "Poison" on the label and the employee is handling the pesticide in a manner that could produce exposure and is not using either eye protection or gloves, the violation is almost certainly "serious" in nature.

- b. Category III and IV pesticides are generally less toxic and violations that produce exposure to such pesticides *may* rate a "general" violation, *but the inspector must evaluate all the exposure facts before making this decision.* As an example, most pesticides requiring respirators will be classified category I and II, but some category III pesticides require a respirator. In such cases, a serious violation *may* be appropriate.

Attachment to WISHA Interim Memorandum #98-2-A

Examination of the pesticide label will show that extreme care has been taken to correctly describe the product, the hazards involved, methods to be used in handling the product, and what to do in case of poisoning. The following information has been taken from federal Environmental Protection Agency regulations and interpretations for use of human hazard signal words on pesticide labels:

SIGNAL WORDS ASSIGNED BY LEVELS OF TOXICITY

A. Toxicity Category I

All pesticide products meeting the criteria of Toxicity Category I shall bear on the front panel the signal word "**Danger.**" In addition, if the product was assigned to Toxicity Category I on the basis of its oral, inhalation, or dermal toxicity (as distinct from skin and eye local effects), the word "**Poison**" shall appear in red on a background of distinctly contrasting color and the skull and crossbones shall appear in immediate proximity to the word "Poison."

B. Toxicity Category II

All pesticide products meeting the criteria of Toxicity Category II shall bear on the front panel the signal word "**Warning.**"

C. Toxicity Category III

All pesticide products meeting the criteria of Toxicity Category III shall bear on the front panel the signal word "**Caution.**"

D. Toxicity Category IV

All pesticide products meeting the criteria of Toxicity Category IV shall bear on the front panel the signal word "**Caution.**"

E. Use of signal words

Use of signal word(s) associated with a higher Toxicity Category is not permitted except when the Agency determines that such labeling is necessary to prevent unreasonable adverse effects.

EPA LABELING TOXICITY CATEGORIES BY HAZARD INDICATOR.

Toxicity categories

Hazard indicators	I (DANGER- POISON)	II (WARNING)	III (CAUTION)	IV (CAUTION)
Oral LD ₅₀	Up to and including 50 mg/kg	From 50 to 500 mg/kg	From 500 to 5000 mg/kg	Greater than 5000 mg/kg
Inhalation LD ₅₀	Up to and including 0.2 mg/liter	From 0.2 to 2 mg/liter	From 2 to 20 mg/liter	Greater than 20 mg/liter
Dermal LD ₅₀	Up to and including 200 mg/kg	From 200 to 2000	From 2000 to 20,000	Greater than 20,000
Eye effects	Corrosive; corneal opacity not reversible within 7 days	Corneal opacity reversible within 7 days; irritation persisting for 7 days	No corneal opacity; irritation reversible within 7 days	No irritation
Skin effects	Corrosive	Severe irritation at 72 hours	Moderate irritation at 72 hours	Mild or slight irritation at 72 hours

Source: "EPA Pesticide Programs, Registration and Classification Procedures, Part II." Federal Register 40: 28279.