

Pesticide Investigation and Enforcement



**OREGON
DEPARTMENT OF
AGRICULTURE**

Use observation

ODA offers what is called a Use Observation (UO). A UO is when ODA is on site and watches a pesticide application. Typically, these are at the request of a grower, applicator, or property owner/lessee.

Requesting a UO from the Department could be helpful because:

- » We will review the label(s) prior to the application to ensure that the product(s), rate(s), equipment, and PPE are appropriate for the proposed application.
- » We will verify that all applicator(s) are appropriately licensed before the application takes place.
- » We will document the application with photos, videos, field notes, and wind readings.
- » If necessary, we can put out water sensitive paper to help show a spray pattern or buffers.
- » ODA can observe, or assist with, equipment calibration (limitations exist on assistance).
- » The UO will be documented in ODA's database, along with all the data and evidence collected.

You can request a copy of the observation file at any time.

To find an investigator in your area, please refer to ODA's Pesticide Investigator District Map:

<https://oda.direct/InvestigatorsMap>

TECHNICAL ASSISTANCE

ODA also offers technical assistance separately from a UO. We are willing to clarify labels, double check math, and verify license statuses before an application.

Report of Loss (ROL)

If one is claiming a loss due to a person's use of a pesticide, one must file a "Report of Alleged Loss Due to Pesticides" form with ODA (ORS 634.172). Filing a ROL protects the filer's right to pursue civil action against a pesticide user. The completed ROL form must be filed "within 60 days of the pesticide application or the discovery of a loss." If the loss deals with a growing crop, the ROL must be filed "before 50% of the affected crop is harvested." ORS 634.172 requires the claimant to also send, or personally deliver, a true copy of the completed ROL form to the operator who made the application and to the landowner (renter) for whom the application was done.

ODA may conduct an investigation in response to the information provided on the ROL form. Oregon law specifies that this investigation will not determine the source of the damage, the person who may have caused the damage, or the financial extent of the damage.

Additional information regarding Report of Loss can be found at:

<https://oda.direct/ReportOfLossForm>

REIMBURSING DAMAGES

The Oregon Pesticide Control Act does not contain any provision for compensation to be made to individuals for a loss due to pesticide use. ODA cannot require someone to pay for a loss due to pesticide use.

LEGAL ASSISTANCE

ODA cannot provide legal counsel in any form. If one has questions about their legal rights, please contact an attorney.

Resources

PESTICIDE ANALYTICAL AND RESPONSE CENTER (PARC)

Coordinates investigations of reported incidents of exposure to humans or animals, or environmental damage. Reporting can be confidential in certain situations.

For information: call **503.986.6470** or go to <https://oda.direct/PARC>

NATIONAL PESTICIDE INFORMATION CENTER (NPIC)

General information on pesticide products, including safety, health and environmental effects, cleanup and disposal.

For information: call **800.858.7378** Monday through Friday from 8 a.m. to noon PST or go to <http://npic.orst.edu>

MEDIATION

Mediation is a useful process to address difficult conflict. It employs a mediator, who brings together parties, facilitates the discussions, helps meaningful dialogue to occur, and acts as a neutral third party with no decision-making authority. If the mediation is successful, the parties negotiate a settlement agreement. Mediation can be a lower-cost and less stressful alternative to the court system.

For information, go to

<https://oda.direct/Mediation>

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<https://oda.direct/AboutPesticides>

Investigation timeline

The Oregon Department of Agriculture Pesticides Program's (ODA) goal is to respond to pesticide-use complaints within 2 business days and, if an investigation is initiated, complete the investigation within 90 days. Investigation report reviews can take an additional 90 days or more. The actual time to respond to a complaint and complete an investigation report can vary due to many factors, such as: investigator workload, sample collection, laboratory analysis, and additional fact finding.

Investigation

The pesticide investigator gathers information by conducting interviews, obtaining statements, collecting application records, reviewing pesticide labels, taking photographs, making on-site assessments, and collecting environmental samples, if necessary. The information gathered helps document whether a violation of state and/or federal pesticide law occurred.

For most investigations, ODA must speak with the person who filed the complaint, the applicator, neighbors, and other persons involved or nearby. As a general rule, the Pesticides Program cannot maintain confidentiality. Most of what the Pesticides Program does is not considered confidential and is subject to public record law.

If there are concerns regarding the investigative process, how the investigation is progressing, or new information for the investigator, please contact them. The investigator needs to know all the facts to conduct a thorough and accurate investigation.



Sampling

If needed, the investigator will collect physical samples (soil, water, vegetation, swabs, etc.) from the application site, and other areas, for potential chemical analysis of pesticide residues. Samples must be collected by ODA personnel or other approved state or federal regulatory agencies to maintain a proper chain of custody and ensure that the evidence obtained can be used, if needed, in administrative actions.

Samples are only taken and analyzed when deemed necessary to determine whether a violation of the Pesticide Control Act occurred. Samples are not collected to determine the presence of a pesticide, when no pesticide activity can be identified. ODA can provide a list of private labs that offer pesticide analysis (there may be a fee).

If samples are deemed necessary, the investigator will reach out to the property owner/lessee for permission.

Copies of records or photographs may also be taken.

After the investigation

Once the investigation is complete, Pesticides Program Case Review staff and management review the facts and findings of the investigation. They use this information to determine if a violation of pesticide law has occurred.

After the case review step is completed, then the final step in the process will be to write the case conclusions, and if applicable, enforcement actions would then also be written and issued.

Enforcement actions

Several enforcement actions are available to ODA, through statute, when a violation of state and/or federal pesticide laws is determined to have occurred. These enforcement actions include:

- » Notice of Violation;
- » Imposition of Civil Penalty;
- » Pesticide License Suspension/Revocation;
- » Referral to EPA for review and enforcement action;
- » Product Stop Sale, Use or Removal Order; Crop Embargo/Detainment.

As with most government-issued enforcement action, the parties have rights, and there is a hearings and appeals process.

Requesting records

Case file information such as complaint forms, case narratives, photos, field notes, collected records, and emails, are considered public record.

Members of the public have the right to view and obtain case files and associated documents at any time.

All requests must be in writing. A fee to cover document reproduction, labor, and mailing costs may be charged. The costs vary and are directly tied to time required to fulfill the request.

Additional information regarding public records can be found at: <https://oda.direct/PublicRecordsInfo>