



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Washington State Dept. of Agriculture

- Permanent Rule
 Emergency Rule

(1) Date of adoption: April 29, 1993

(2) Purpose: Rights of persons aggrieved by pesticide violations in chapter 16-10 WAC - to adopt into rule procedures for persons aggrieved of pesticide violations in order to work within the Administrative Procedures Act.

(3) Citation of existing rules affected by this order:

- Repealed:
Amended:
Suspended:

(4) Authority for adoption:

Statute: RCW 17.21.310
Other Authority:

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR WSR 93-06-076 on 3/03/93 (date)

Describe any changes other than editing from proposed to adopted version:
None

(5.2) EMERGENCY RULE ONLY

Pursuant to RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If yes, explain:

(6) Effective date of rule:

Permanent Rules

Emergency Rules

- 31 days after filing
 Other (specify) _____ *
 Immediately
 Later (specify) _____

* (If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

NAME (TYPE OR PRINT)

Peter J. Goldmark

SIGNATURE

TITLE

Director

DATE

4/29/93

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

APR 29 1993

TIME: 3:55
WSR 93-10-046

Chapter 16-10 WAC

RIGHTS OF PERSONS AGGRIEVED PESTICIDE VIOLATIONS

NEW SECTION

WAC 16-10-010 Definitions. The following definitions are applicable to sections of this chapter concerning rights of persons aggrieved by violations under chapter 17.21 RCW and rules adopted under chapter 17.21 RCW.

(1) A "person aggrieved" by a violation is defined as a person who has reasonable grounds to believe that he or she has been subjected to harm or an unreasonable risk by such violation.

(2) A "complainant" is defined as a person who has requested an inspection of an area in which a pesticide violation is believed to have occurred.

(3) "Person" is defined as any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

NEW SECTION

WAC 16-10-020 Rights of complainants. If an inspection is conducted by the department of an area in which a pesticide violation is believed to have occurred, a complainant shall:

(1) Be promptly provided with the department's decision, as set forth in the "notice of intent to assess civil penalty and/or deny, suspend, or revoke a license," or in any document issuing a warning or determining no action; the department will endeavor to provide notice concurrently with the department's service of such document on the alleged violator.

(2) Be entitled, upon written request to the department, to have his or her name protected from disclosure in any communication with persons outside the department and in any record published, released, or made available pursuant to chapter 17.21 RCW: *Provided*, That in any adjudicative proceeding under chapter 34.05 RCW the identity of complainant shall be disclosed to the alleged violator upon request of the alleged violator.

(3) Be otherwise entitled to those rights of persons aggrieved as set forth in WAC 16-10-030, if aggrieved, except that the complainant shall be provided, automatically without request, a copy of the final order referred to therein.

WAC 16-10-030 Rights of person aggrieved. A person aggrieved shall:

(1) Be entitled to be notified promptly of any final action taken by the department pursuant to an investigation under chapter 17.21 RCW; the department will provide notice concurrently with service of notice on the violator: *Provided*, That such person has made timely written application to the department requesting such notice. Written application to the department requesting such notice shall be received no later than the date of service of a final order.

(2) Within thirteen days of the date of mailing of a final order to a person aggrieved, the person aggrieved may request in writing that the director reconsider the matter, shall specify in writing why said person believes the penalty decision is inappropriate, and shall serve such request on the violator.

(3) Upon reconsideration, the director will reconsider the entire matter including any written statement submitted by any party, and may adjust the penalty decision set forth in the final order if the director finds that the penalty was inappropriate.

(4) If such person is aggrieved by the director's order on reconsiderations, within twenty days of service of the order he or she may request in writing an adjudicative proceeding under chapter 34.05 RCW, shall specify in writing why the person believes the penalty decision is inappropriate, and shall serve such request on the alleged violator. The subject of such proceeding shall be limited to the appropriateness of the penalty decision of the director on reconsideration based on a review of the record as supplemented by any new evidence received by the presiding officer. The alleged violator shall be given notice and an opportunity to participate in the proceeding by the department. The proceeding shall be heard by a presiding officer who has not heard the adjudicative proceeding on the merits against the alleged violator. Chapter 34.05 RCW and chapter 16-08 WAC shall govern the conduct of such proceeding and any review thereon.

(5) Upon the filing of any request for proceeding pursuant to subsection (2) of this section, any final order of the director shall be automatically stayed pending resolution of such request and expiration of any time period for pursuing additional relief. The director shall provide written notice to the alleged violator of any such resolution, thereby reinstating the rights of the alleged violator to seek further relief.