

Oregon Regulations on Pesticide Applications

Background

In the United States and its territories, various state and federal agencies regulate pesticides in order to balance the costs and benefits of pesticides to society. As part of these regulations, these agencies try to identify the potential risks to human health and the environment from pesticide use, determine how much exposure could occur in various settings and applications, and create risk mitigation measures to minimize those risks. At the federal and state levels, regulators use pesticide product labeling to communicate rules and regulations, which include requirements to protect workers, children, wildlife and the environment.¹

Federal agencies typically set the primary regulations for pesticides, and state and local agencies may add additional provisions that are more stringent than federal regulations. Federal agencies work cooperatively with state agencies to register pesticides for use, license and educate pesticide applicators, and investigate pesticide problems. At the state level, pesticide regulatory offices typically license pest control companies that operate within the state, certify individual pest control applicators, investigate complaints, and enforce pesticide laws in conjunction with the EPA and other agencies.^{1,2}

In the State of Oregon, the primary pesticide regulatory authorities are the Oregon Department of Agriculture (ODA) - Pesticide Program and the Oregon Occupational Safety & Health Administration (OR-OSHA) - Pesticide Emphasis Program. There are, however, many other state and local agencies in Oregon that cooperatively contribute resources to the regulation, monitoring and use of pesticides in domestic, industrial, agricultural and forestland environments.²

What is a Pesticide?

According to the 2011 Oregon Revised Statutes (ORS) - Chapter 634.006, a pesticide is defined as a defoliant, desiccant, fungicide, herbicide, insecticide, nematocide, plant regulator or any substance or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, humans, animals, or be present in any environment thereof. Further definition of these terms is available in the statutory chapter cited above. These definitions are consistent with those in the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) and its subsequent amendments.³

Pesticide Product Registrations⁴

Oregon law requires the registration of all pesticide products delivered, distributed, sold, offered, or exposed for sale in Oregon. Chemically, a pesticide product is defined as an active ingredient(s) plus any non-active or inert ingredients. For the purpose of registration, each pesticide product must be distinguishable from any other pesticide product by its content, EPA registration number, brand name, trade name, manufacturer, registrant, use as specified in labeling, or other distinction.^{4,7}

There are a variety of special considerations that guide product registration in the State of Oregon:

- “Minimal risk pesticides” are pesticides whose active and inert ingredients have been found to be demonstrably safe for their intended use, based on criteria outlined in FIFRA Section 25(b). Minimal risk pesticides are exempt from federal registration; however, since January 1, 2011, these products are required to be registered in the state of Oregon.^{5,6,7}

- Pesticide products that contain ingredients that are a source of plant food, induce or increase crop yields or plant growth, or produce any physical or chemical change in the soil are required to be concurrently registered as a fertilizer, agricultural mineral or amendment, or lime. These products must be registered with both ODA's Pesticide and ODA's Fertilizer Programs.⁷
- Under Section 18 of FIFRA, EPA authorizes the state of Oregon to use a pesticide product for a federally unregistered use for a limited time if EPA determines that emergency conditions exist. Emergency pesticide product uses authorized by EPA under Section 18 are commonly referred to as "Section 18s" or "emergency exemptions."⁹ ODA, as the state's lead pesticide product regulatory agency, may request EPA for a Section 18 exemption in the case of an emergency. ODA relies on local and state entities who are familiar with any emergency pest situations to compile and provide the information necessary for a formal application to EPA.⁹
- ODA is responsible for registering pesticide products to meet a Special Local Need (SLN) under FIFRA Section 24(c). An SLN is defined as, "an existing or imminent pest problem within a State for which the State lead agency, based upon satisfactory supporting information has determined that an appropriate federally registered pesticide product is not sufficiently available" (40 CFR 162.151(i)). Under FIFRA section 24(c), each State is authorized to register a new end use product for any use, or register an additional use of an existing federally registered pesticide product, if conditions for a SLN exist.⁸ In Oregon, SLN registrations are often used by growers of minor specialty crops on small acreage farms, where "traditional" pest management strategies may be less effective.⁸
- Adjuvants are chemicals added to enhance the performance and/or alter the physical properties of pesticidal agents. Adjuvants include acidifying agents, buffering agents, anti-foam agents, surfactants, drift reduction agents, spreaders, extenders, adhesive agents, wetting agents, emulsifiers and dispersing agents.¹⁰ More than 200 EPA-registered pesticide products recommend the addition of one or more adjuvants into the product mixture to improve overall efficacy. While EPA establishes tolerance levels for adjuvants, they are not required to be registered at the federal level or in Oregon.⁷

Pesticide Product Labeling

A key part of EPA's pesticide registration process is the approval of the product's label.¹¹ The label provides information on how to handle and safely use the pesticide product and avoid harm to human health and the environment. Using a pesticide in a manner that is inconsistent with the directions on its label constitutes a FIFRA violation, and can result in corrective enforcement actions.¹² EPA bases its registration decisions on health effects, environmental fate, and ecological effects data. These data are used to develop risk assessments, which are used to determine whether or not a pesticide should be registered, and if registered, the terms and conditions for its registration. These terms and conditions include requirements for labeling and using the product under consideration.

The EPA's Labeling Review Manual (LRM) provides guidance for developing pesticide product labels during the registration and approval of a pesticide product.^{13,14} In addition to the EPA's federal labeling requirements, Oregon law specifies additional labeling requirements for highly toxic pesticides (for example, pesticide products that contain clopyralid).¹⁶ ODA's Pesticide Program is responsible for enforcing federal and state label requirements, per ORS 634.322 - Enforcement Powers of Department.¹⁶

Pesticide Certification, Licensing and Recertification

In Oregon, pesticide licensure is required for persons or entities who:

- buy or apply restricted-use pesticides;
- apply pesticides to someone else's property;
- applying pesticides as a public employee while using a fuel or electric-powered sprayer or spreader; or
- give advice on how to use a restricted-use pesticide, or advise which restricted-use pesticide will work best in a given situation. ^{18, 19}

To qualify for a license, an applicant must demonstrate an appropriate level of knowledge related to pesticide safety and pesticide application. Applicants must pass written Oregon Pesticide Exam(s) that are relevant to the applicant's license in order to be a certified pesticide applicator. Licenses fall into the following categories: ^{18, 19}

- Commercial applicator license
- Commercial operator license
- Consultant license
- Dealer license
- Private applicator license
- Public applicator license
- Pesticide apprentice and immediately supervised commercial and public pesticide trainees

Licensing may also be required for pest/home inspectors, construction contractors, or applicators working for public agencies. ¹⁹

ODA administers Oregon Pesticide Exams in the following categories: ²⁰

- Agriculture
- Aquatic
- Consultant
- Demonstration and Research
- Pesticide apprentice
- Forest
- Industrial, institutional, health and structural
- Laws and safety
- Marine fouling organism
- Ornamental and turf
- Private
- Public health
- Regulatory predator
- Regulatory weed
- Right-of-way
- Seed treatment

Once an applicant has passed the applicable exams, they must submit an application and pay licensing fees to ODA in order to obtain a license. The applicant must have a license before they can begin pesticide product related activities. ¹⁹

Pesticide certification must be maintained and renewed when a certification period ends. Recertification can entail attending training classes, or re-taking the Oregon Pesticide Exams pertinent to the applicant's license.
21, 19

Pesticide Application Permits

Effective October 31, 2011, the Oregon Department of Environmental Quality (DEQ) announced a Clean Water Act permit requirement for pesticide applications, in, over, or near state waters. This new permit (a National Pollutant Discharge Elimination System (NPDES) pesticide general permit) is required if pesticide applications are made over, in, or within three feet of state water bodies. The new law is required by a Federal Court order and implemented by DEQ under an agreement with EPA.²²

Pesticide Application Buffer Zones

For most pesticide products, applicators must comply with any buffer zone requirements indicated on the product label.²³

A 2004 court order from the Washington Toxics Coalition vs. U.S. Environmental Protection Agency lawsuit established interim buffer zones adjacent to salmon supporting waters for 55 pesticides; these buffer zones would remain in effect until these pesticides were reviewed for their impact to Pacific salmon and steelhead. The court-ordered buffer zones (60 feet for ground applications and 300 feet for aerial applications) are currently still in effect for eight pesticides:*

- 1,3-D (Telone)
- Bromoxynil (Bronate)
- Diflufenzuron (Dimilin)
- Fenbutatin-oxide (Vendex/Promite)
- Lindane (No longer registered in Oregon)
- Prometryn (Caparol/Vegetable Pro)
- Propargite (Comite/Omite)
- Racemic metholachlor (Me-Too-Lachlor, Parallel, Stalwart)

*Note: Pesticide users should contact U.S. EPA on status of court order buffer requirements.

State Pesticide Regulatory Authority

ODA's Pesticide Program administers rules relating to pesticide sales, use and distribution. This includes pesticide operator and applicator licensing, private applicator licensing, as well as proper application of pesticides, pesticide labeling and registration. Those rules apply to pesticide applications on forest or agricultural land as well as pesticide use by industry and the general public. Concerns that arise as result of pesticide use regarding impact to human health or property may be reported to the ODA Pesticide Program.

ODF administers the Forest Practice Chemical Rules. Those rules, which are part of the Forest Practices Act (FPA), protect water quality and other natural resources on forestland. Damage to natural resources on forestland from pesticide application is reportable to ODF.

Chemical Application on Forestlands: Notification

As defined by the FPA in ORS Chapter 527 - Insect and Disease Control, the application of chemicals (including pesticide products) on forestland is classified as an "operation". Other forestland operations include:²⁴

- timber harvesting
- road construction and maintenance
- slash treatment
- reforestation
- fertilizer use

As a FPA-defined operation, the State Forester must be notified at least 15 days before the start of a chemical application to forestlands. That 15-day period may be waived unless the operation requires a written plan to be submitted to the State Forester, or the operation involves the aerial application of a chemical.

Notifications for the application of chemicals on forestlands should include;^{24a}

- the common name of the chemicals to be used
- the brand name, if known at the time of notification
- the application method
- for fertilizers, the intended application rate per acre

The notification must also include a start and end date.^{24b} The start date must be at least 15 days after the notification is submitted. The end date can extend to the end of the calendar year, and may continue into the following calendar year without further notification, provided:

- There are no changes to the information required on the notification;
- The operator gives written notice to the State Forester of their intent to continue the operation within the first two months of the following calendar year; and
- The operation actively continues within the first six months of the following calendar year.

Additional information on chemical applications is collected and recorded by the operators at the time of the applications, and made available to the State Forester upon request, pursuant to OAR 629-620-0600.^{24b}

After notification is made to the State Forester, copies of the notification are provided to the unit's operator, timber owner or landowner (if they were not the entity that submitted the notification). The State Forester also provides copies of notifications to persons within 10 miles of the chemical application who hold downstream surface water rights pursuant to ORS Chapter 537, if such a person has requested these notifications in writing.²⁵

Chemical Application on Forestlands: Records

“Forestland” (as defined in ORS 321.257 – Definitions) is land in western Oregon that is held or used for the predominant purpose of growing and harvesting trees of a marketable species.^{26a}

As per OAR 629-620-0600 - Daily Records of Chemical Applications, the Oregon Department of Forestry (ODF) requires that the person conducting the application of pesticides and other chemicals to forestland keep daily records of applications aerially applied or applied using a pressurized, ground-based, broadcast application system. Chemical applications using other methods are also required to have a daily record. These daily application records must be maintained by the operator for three years from the date of application, and must be made available at the request of the State Forester. Daily application records must be kept for applications on private, commercial or public lands.^{26b}

Pesticide Application on Farm Use Lands: Records

“Farm use lands (as defined in ORS 215.203) means land used primarily for obtaining a profit by raising, harvesting, and selling crops; feeding, breeding, managing and selling livestock, poultry, fur-bearing animals,

and honeybees; dairying; or any other agricultural or horticultural use. Farm use also includes the preparation, storage, and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. The definition includes: land lying fallow for one year; land planted in orchards or other perennials prior to maturity; any land constituting a woodlot of less than 20 acres contiguous to and owned by the owner of land classified for farm use; and land used for processing crops from the farm into biofuels to be used on the farm or neighboring farms. Farm use also includes the stabling or training of equines (horses, mules, etc.) along with riding lessons and training clinics, and the propagation, cultivation, maintenance and harvesting of aquatic, bird or animal species as allowed by the state Fish and Wildlife Commission. Farm use does not include land subject to timber assessment under ORS Chapter 321, except for Christmas trees and poplar farms. ^{27a}

ODA requires that commercial pesticide operators and public pesticide applicators maintain records of each pesticide application they make. Those records must be maintained for at least three years from the date of application. ^{27b, 28}

United States Department of Agriculture (USDA) regulations require that private pesticide applicators keep records of their restricted-use pesticide applications. All private applicators are required by law to keep records of their federally restricted use pesticide (RUP) applications for a period of 2 years. ²⁹

Pesticide compliance monitoring/Pesticide use investigations

“ODA’s goal is to respond to pesticide-use complaints within 48 hours and if an investigation is initiated, completes the investigation within 60 days. Investigation report reviews can take an additional 60 days or more.” ³⁰ In a pesticide use investigation, the investigator gathers information by conducting interviews, obtaining statements, reviewing application records and pesticide labels, taking photographs, making on-site assessments and collecting environmental sampling if necessary. The information gathered will help ODA determine whether a violation of state and/or federal pesticide laws has occurred. ³⁰ In some cases, ODA may conduct an investigation when a Report of Loss Report (related to pesticide use) is filed. “The investigators will seek to determine the extent and nature of an alleged loss. Investigations will not determine the source of the damage, the person who may have caused the damage, or the extent of the financial damage.” ^{30a}

As part of its compliance monitoring and complaint investigation processes, the ODA Pesticide Program investigates if applicators observed appropriate ground and aerial pesticide application buffer zones. This practice supports the goals of the Natural Resources Program Area, Agricultural Water Quality Management Program (AgWQMP) and Soil and Water Conservation District (SWCD) program. ³¹

Enforcement

Several enforcement actions are available to ODA when a violation of state and/or federal pesticide laws is determined to have occurred. These enforcement actions include: ³⁰

- 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
- Letters of Advisement

The Pesticide Analytic Response Center (PARC)

PARC is a multi-agency program created by executive order in 1978, and reauthorized in 1991. PARC is administered by ODA, and includes the following member agencies:

- The Oregon Department of Agriculture - Natural Resources Program Area - Pesticide Division
- The Oregon Health Authority - Center for Health Protection - Research & Education Services Section
- The Oregon Department of Forestry
- The Oregon Poison Control Center
- The Department of Environmental Quality - Environmental Assessment Division
- The Oregon Occupational Safety and Health Administration
- The Oregon Department of Fish & Wildlife
- The Office of the State Fire Marshal

PARC's mandate is to conduct the following activities related to pesticide exposures in Oregon that have suspected health or environmental effects:

- Collect incident information
- Mobilize expertise for investigations
- Identify trends and patterns of problems
- Report results of investigations
- Prepare activity reports for each legislative session

Investigation coordination also includes collecting reports produced by member agencies and consulting with toxicologists from Oregon State University and Oregon Health and Sciences University. Other governmental bodies may also participate in the reporting, investigation or analysis of an incident. PARC does not have regulatory authority. Any necessary enforcement action is taken by the member agency with relevant jurisdiction.

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