

Presiding Officer's Report to Agency

Date: May 9, 2019
To: Alexis Taylor, Director, Oregon Department of Agriculture (ODA)
From: Judith Callens
Subject: Presiding Officer's Report on Rulemaking

Hearing Date: February 15, 2019
Hearing Location: Deschutes County Road Department
61150 SE 27th St.
Bend, OR 97702

Hearing Date: February 22, 2019
Hearing Location: Oregon Department of Agriculture
635 Capitol St. NE
Salem, OR 97301
Basement Hearings Room

Title of Proposed Rule: **Limitations on Pesticide Products Containing Aminocyclopyrachlor.**

As part of the Oregon Department of Agriculture's proposed rulemaking to adopt limitations on pesticide products containing aminocyclopyrachlor, ODA held two public rulemaking hearings. The following report provides a summary of oral comments presented at those two hearings. ODA also received written comments as part of the rulemaking process, and those comments are summarized in a spreadsheet format separate from this report.

The February 15, 2019 rulemaking hearing on the proposed rule was convened at 6:08 PM. The February 22, 2019 rulemaking hearing on the proposed rule was convened at 10:04 AM.

Summary of February 15, 2019 Public Hearing

The following people signed the attendance sheet at the public hearing.

1. Sarah Canham, Bureau of Land Management
2. Mike Crumrine, Oregon Department of Agriculture
3. Matt Wenik, Grant Soil and Water Conservation District Weed Control
4. James Curry, Bayer Environmental Science
5. Ronda McPherson, Malheur County Road Department
6. Sid Robinson, Central Oregon Weed Control
7. Don Farrar, Gilliam County and Oregon Vegetation Management Association
8. Dan Harshbarger

9. Kev Alexanian, Crook County Weed Control
10. Dave Langland
11. Todd Shockney, Jefferson County Public Works
12. Ryan Oberhelman, Wallowa County Vegetation Department
13. Jon Valley, Deschutes County
14. Bruce Daucsavage, Ochoco Lumber Co.
15. Kevin Masterson, Oregon Department of Environmental Quality
16. Tony DeBone, Deschutes County
17. Bill Reynolds, Warm Springs Tribes
18. Hayley Dawkins
19. Pat Chalstrom

The following people gave oral comments at the public hearing, and their oral comments are summarized below.

1. Matt Wenick, Grant Soil and Water Conservation District Weed Control (also submitted written comments)

Used Perspective, one of the pesticides containing Aminocyclopyrachlor (ACP), for last 6 years, to control Leafy Spurge, which is a very difficult weed to control. Rule is necessary for protection of the trees, however limiting to a spot treatment is too far. Spot treatment will render product useless for his purposes. Would like ODA to give a buffer for treatment around trees and desirable shrubs. A lot of people are fine with the rule if we can lift the limitations on the spot spraying. Label directs not to apply within root zone of a tree. If there are no trees in a specific area don't restrict us from using the product.

2. James Curry, Bayer Environmental Science

Rule is not the answer, support for the users and decision makers is. Label already has restrictions. Label not taken in to account when deciding to make the application. No additional incidents since Bayer started stewardship and education program. ODA is singling out one product line with no apparent foundation. ACP is cost effective alternative to mechanical weed control and controls invasive species of noxious weeds in Oregon. Provides selective control of broadleaf tree and shrub species; can be used at lower rates. Ask State to reconsider the rule, and instead focus on stewardship and training for public and private decisionmakers and applicators.

3. Rod Asher, Sherman County Weed District

Has used ACP since 2014. Has not seen any negative effects from ACP. A Statewide ruling with varying climatic and growing conditions seems illogical. Strengthen label with buffers. Losing this product will increase the use of overall active ingredient within the state.

4. Don Farrar, Gilliam County Weed Control and Oregon Vegetation Management Association

Size of patch for spot spraying is the problem with the current rule. Leafy spurge throws its seeds up to 30 feet away via exploding seed pods. Need a bigger size for the patch. Use of ACP has really helped with the fight against leafy spurge.

5. Bruce Daucsavage, Ochoco Lumber Co.

Focusing comments on the use of the trees coming off of these forests. These are hazard trees; don't want spreading of problems. Issue with prohibition on using the mill wood in Section 6. Think that can be tightened up; should be able to use wood for windows or other applications. See that there needs to be a way to assure that chips and other materials are used in biomass or other similar uses. Should also include the word "bark" in addition to "by-products." Can use this valuable resource and maybe help pay for the cleanup on the project.

6. Tony Debone, Deschutes County Commissioner

6.b item should be dropped or should be able to use that wood. Core part of wood is going to be valuable, and could help pay for the cleanup process.

7. Bill Reynolds, Confederated Tribes of Warm Springs

Have used ACP since it was introduced to control trees and brush especially around guard rails and long stretches of rabbitbrush. Try to create an extra large buffer for wildfire. There are other products out there that also kill pine trees. Thinks it is an educational issue. Should be restricted so that not everybody can go out there and buy this and apply it. Have pine trees, but do not use it near them. Like it on the rangeland to help prevent wildfires and control juniper. Do not support the rule at all. If we are going to go that far should take label away completely.

8. Hayley Dawkins

Resident of Sisters, Oregon and very affected by finding out about the loss of the trees. It is a shame. Warnings need to be very clear that it should not be applied in certain circumstances. Should be allowances to use where there are not trees, in order to deal with the noxious weeds, but where the trees are, should be strongly restricted.

9. Ryan Oberhelman, County Weed Manager for Wallowa County

Drove through a lot of valleys where there are no trees to get to the hearing. In the bunch grass prairie such as Wallowa County, rangeland and cropland production is important to the economy and weeds such as leafy spurge can cause extensive economic damage if not controlled along the roadside. Frustrated about

the volume of comments coming from out of state when those commenters are not affected by the proposal like local residents and weed departments are. Irresponsible application resulted in tree death. 1A, scratch it. 2A, scratch it. Have heard that there is a reason ODA does not want to use buffers. Sympathize that the process was rushed. Put a buffer in place, 200 feet.

Summary of February 22, 2019 Public Hearing

The following people signed the attendance sheet at the public hearing.

1. Frank Wong, Bayer
2. Tara Cornelisse, Center for Biological Diversity
3. Lisa Arkin, Beyond Toxics
4. Ryan Oberhelman, Wallowa County Vegetation Department
5. Shawna Bautista, United States Department of Agriculture Forest Service
6. Brian Clapp, Union County Weed Control
7. Dennis Capper, Nutrien Solutions
8. Don Farrar, Oregon Vegetation Management Association
9. Doug Lindholm, Ferrosafe, LLC
10. Cherise Denman, DeAngelo Brothers, LLC

The following people gave oral comments at the public hearing, and their oral comments are summarized below.

1. Frank Wong, Bayer

Don't think the proposed rule solves the issue; it is focused solely on aminocyclopyrachlor and does not provide for long term pesticide stewardship. Believe label instructions were not fully taken into account; application in the root zone of roadside tree was a violation of restrictions and precautionary statements on the label; and application should not have been made. While Bayer did not have ownership/control over label language when the application was made, believes the current label language is sufficiently protective. Have not had any other incidents since 2015; successful use of the product over last 3-4 years. Multiple counties have concerns about the proposal. Suggest the state spends its resources in other areas such as overall pesticide and herbicide stewardship, education, and training. Ask for reconsideration of the permanent rule and pursuit of collaborative opportunities to provide a better solution.

2. Tara Cornelisse, Center for Biological Diversity

Support the rule; encourage ODA to eliminate the use of ACP in sensitive areas. Rationale is public safety, pollinator habitat. Happy to see restrictions related to wildlife habitat in the proposed rule; willows are very important for pollinators in E Oregon and would love to see riparian areas added to restrictions. Rather than exemptions for invasive plant control, would rather see stronger protections for sensitive areas. Would like to see "desirable" better defined or clarified.

3. Lisa Arkin, Beyond Toxics

Appreciate ODA responding to Beyond Toxics request to investigate the cause of death of ponderosa pines on public land. Temporary ban helped eliminate problems

and gave the agency time to research the damage. Although applications have not occurred since 2015 the damage is ongoing and the herbicide has spread up to 150 feet from the spray zone. Research suggests the chemical is very active below ground. Disagree with allowing spot sprays. Support ban on use of ACP treated products for wood chips, compost, or mulch. Should never be allowed for use in natural habitat areas. Due to unpredictability in natural landscapes, should be banned; should not be allowed in riparian zones. Label restrictions are not sufficient to protect damage. Please ban ACP in Oregon.

4. Ryan Oberhelman, Wallowa County Vegetation Department

Think it is possible for us to come together and get something that works for everyone. All we need is a simple, elegant rule that bans use of ACP within the root zone of non-target trees but that helps maintain public infrastructure and watershed health. Section 1A - call for that to be removed; we have miles of ROW in E Oregon that are not near sensitive trees. Section 2A - strike it; trees were not killed because of size of application but rather because it was applied within root zone of susceptible species. Unable to find any literature about ACP damage to sagebrush when used for weed control in sagebrush steppe ecosystems. Wording of the rule related to sage grouse habitat will make it difficult for applicators to know when to turn on and off application equipment. Think rule threatens relationship between counties and ODA; it does not acknowledge our cooperative weed control efforts. Can look up any tree to see how large root zone is. Should beef up #3 in the rule so we have a definite buffer; think the lack of that is disrespectful to our efforts.

5. Brian Clapp, Union County Weed Control

Use ACP in Union County but avoid using it around ponderosa pine. Use it for public safety and to protect wildlife habitat from the spread of noxious weeds from roadsides. Current label says to test spray product first before widespread use and not to spray within root zone of desirable trees. Use ACP because it is less toxic than other products and has lower use rate. Don't agree with prohibition on spraying in right of way (ROW). 2A - this wasn't a case of spot treatment; this provision doesn't make sense. One application per year seems reasonable. Disagree with requirement that it can only be used for noxious weeds; sometimes use it to prevent noxious weeds. Use this in ROW in sage grouse habitat to control noxious weeds in ROW; still have to kill sagebrush and other vegetation in the ROW without ACP. Don't want sagebrush or sage grouse in ROWs. Support prohibition on wood chips, compost etc because this is a residual product.

6. Doug Lindholm, Ferrosafe, LLC

Has been in railroad vegetation control industry for 15 years. Have successfully used ACP for 16-17 years. Have used according to label specs and regulations without incident. Concerned that proposed rule is based on isolated incident. Newer chemistries such as ACP used at much lower rates than older chemistries.

Not being able to use newer products could cause reverting to older chemistries. Believe it is possible to establish buffers. Important for fire prevention and maintaining integrity of rail system. Ask for reconsideration of proposed ban in ROW setting and proposed language regarding buffer zones so we know where to operate in.