

HB 4062 and HB 2031 Implementation Workgroup, Meeting Notes

DATE	LOCATION	START TIME	END TIME
12/19/2022	Hybrid	1:00 pm	4:00 pm

FACILITATOR	CONTACT EMAIL	CONTACT PHONE
Colton Bond	Colton.Bond@oda.oregon.gov	503.986.6485

Workgroup Members

Alexis Wenker- Oregon Golf Course Superintendents Association

Dan Jensen- Lake County Hay & Forage Association

Jana McKamey- Oregon Winegrowers Association

Jenny Dresler- On behalf of Oregon Farm Bureau Federation

Jon von Behren- Oregon School Facilities Management Association

Katie Murray- Oregonians for Food & Shelter

Karen Lewotsky- Oregon Environmental Council

Ryan Pessah- Western Wood Preservers Institute

ODA Staff Present

Andrea Sonnen – Oregon Department of Agriculture, Lead Pesticide Investigator

Colton Bond – Oregon Department of Agriculture, Licensing Specialist

Gilbert Uribe – Oregon Department of Agriculture, Pesticides Program Manager **Heidi**

Dozier- Oregon Department of Agriculture, Office Manager

Isaak Stapleton- Oregon Department of Agriculture, NRPA Program Manager/Director

Makenzie Oakes– Oregon Department of Agriculture, Pesticide Licensing

Others Present

Josh Loy - Oregon Golf Course Superintendents Association

- Meeting is called to order by Colton Bond.
- Introductions of ODA staff, workgroup members, and guest.

Introduction

Purpose, Rulemaking Process/ Timeline, Role of Stakeholder Group

- **Gilbert Uribe** - The goal is to reduce complexity of licensing requirements for certain industries to better reflect what is happening in the field that the current licensing structure doesn't cover. Also, to reduce some of the burden for those who apply pesticides only to their employer's property, where the business must currently obtain and pay for a commercial pesticide operator license and obtain liability insurance. Additionally, working on coming into compliance with new federal regulations outlined by the EPA that are a part of the Certification and Training (C&T) update.
- **Colton Bond** provided a summary of the two new bills that were passed by Oregon Legislature in 2022 (HB

4062) and 2021 (HB 2031), an overview of the rulemaking process and associated requirements of the Oregon Administrative Procedures Act.

Overview of Pesticide Licensing, HB 4062 (2022) and HB 2031 (2021)

- **Colton Bond** gave an informational presentation providing background on current pesticide licensing requirements and associated supervision, continuing education, and application recordkeeping requirements, as well as a detailed summary of HB 4062 (2022) and HB 2031 (2021).
 - **Katie Murray** asked for elaboration on how expanding ODA’s existing authority to issue civil penalties is different than its current authorities.
 - **Colton Bond** responded that historically the civil penalties are limited to certain topic areas in the statute (*i.e.*, pesticide application, sale, or labeling). HB 2031 (2021) changed statute to expand ODA’s authority, as required by federal regulations (40 CFR 171), to issue a civil penalty for any provision of the State Pesticide Control law (ORS 634) or rule adopted under the pesticide control law that pertains specifically to restricted use pesticides.

Overview of Enforcement Procedures

- **Andrea Sonnen** - gave an informational presentation on the current ODA Enforcement Program, outlining the types of investigations and inspections, cases, case violations statistics over the last five fiscal years, and enforcement-related authorities; explained the Civil Penalty formula to assess associated fees and the administrative process for enforcement. **Andrea Sonnen** stated that ODA has not exercised criminal authorities. ODA only holds the authority to seek criminal charges not to issue them.

Group Discussion, Information Needs, & Next Steps

- **Dan Jensen** commented that industry-wide, they’re not fumigating hay and straw as often due to the demand and strict crop testing in the export market. Dan reported a trend in hay and straw commodities moving away from what Dan described as “third-party fumigation” before the crops are exported. Dan says he has not yet been able to talk with the grain exporters. Within the grain industry, they are fairly limited to the use of herbicides in the firsthand production on farms with private licenses. Dan said that in his specific industry, they may be moving away from needing the noncommercial license.
- **Jon von Behren** asked about which categories are typically needed in a school setting, and whether more were needed in addition to the School Integrated Pest Management (IPM) license category, generally.
 - **Colton Bond** responded that School IPM broadly covers the use of pesticides on a school campus, but it does have certain limitations. For example, it doesn’t cover the use of restricted use pesticides or the use of any power-driven equipment. If there’s a situation where a school needs to use a pesticide in a way that falls out of the scope of the School IPM license category, the applicator would need to hold additional categories to support that work. Colton summarized a survey of Oregon Private Schools, which identified potential pesticide use scenarios that are not covered by the school IPM license category or license categories likely needed by other noncommercial pesticide applicators.
- **Jon von Behren** asked for clarification about continuing education requirements for the new license type and if they were set in statute.
 - **Colton Bond** described current continuing education requirements for commercial and private applicators. Colton explained that continuing education requirements for noncommercial pesticide applicators are not established in HB 4062 (2022), and ODA needs to adopt requirements in rule. Colton then elaborated that under federal regulations (40 CFR 171), noncommercial pesticide applicators and commercial pesticide applicators fall into the same group of “commercial applicators,” with identical regulatory requirements. If ODA adopted a different standard for continuing education for noncommercial pesticide applicators than for commercial pesticide applicators, ODA would need to provide a robust justification to EPA and obtain their approval.

- **Jon von Behren** asked for clarification on the definition of a credit-hour.
 - **Colton Bond** explained that a credit-hour is 50 minutes of educational content that has been accredited by ODA, and ODA accredits content that broadly relates to pesticides or pest management.
- **Jon von Behren** said that the private license certification and continuing education structure seems most appropriate for the noncommercial pesticide license.
- **Alexis Wenker** commented that within the golfing industry, applicators can sometimes be considered a private applicator and that a thorough description of when a noncommercial applicator license is required, is needed. Alexis noted that keeping the commercial and noncommercial license requirements the same would be beneficial because some applicators may need both, depending on the work they're doing.
- **Jana McKamey** expressed appreciation for the background information covered in this meeting, and indicated that she would be reaching out to those she represents who are engaged in the work captured by the new noncommercial pesticide applicator license type.
- **Karen Lewotsky** commented that it's important to also consider public opinion and to make sure that it is clear that the new license type is not reducing protections.
- **Katie Murray** commented that the suggested change to the statutory language is confusing. This is in reference to adding "noncommercial applicator" next to the already existing "pesticide applicator" text. Katie noted that this can lead to the assumption that requirement pertaining to "pesticide applicators" (*i.e.*, commercial pesticide applicators) also pertain to noncommercial applicator. Katie commented that this makes for a confusing read and that she would like to re-visit this statute at the next meeting.
 - **Colton Bond** responded that the statutory definition for "pesticide applicator" (ORS 634.006(9)) describes a commercial applicator.
- **Ryan Pessah** commented that there should be changes in statute pertaining to wood treatment to define wood treatment more clearly and recommended adding the term "crossarms."
- **Jenny Dressler** indicated that she will have prepared comments at the following meeting.
- **Colton Bond** commented on the feedback pertaining to the implementation of the new license type. Colton noted that implementation of the license mid-year could result in an effective increase in licensing fees in the first year, as well as challenging communication scenarios. ODA has discussed potentially implementing the license starting at the beginning of 2024 so applicators can use their current license until the end of 2023 and make switch during the next renewal cycle.
 - **Dan Jensen** wanted to clarify when the noncommercial license type will expire.
 - **Colton Bond** answered that HB 4062 (2022) establishes a license expiration of December 31st each calendar year (the same as commercial pesticide applicators).

Adjourn

- Next meeting is on January 10th, 2023 in the afternoon.
- Colton Bond adjourns the meeting.