

# HB 4062 and HB 2031 Implementation Workgroup, Meeting Notes

DATE	LOCATION	START TIME	END TIME
1/10/2023	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

**Crystin Kincaid**– Oregon Department of Agriculture, Pesticide Licensing

## Others Present

## Introduction

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

## Pesticide Rulemaking Webpage Update

- **Colton Bond** noted that the Pesticide Rulemaking webpage has been updated. There are links to the two new bills, HB 4062 (2022) and HB 2031 (2021), and a list of workgroup members. The agenda, presentations and handouts from the previous meeting are all available there. He also sent out a draft of the previous meeting notes and once he receives feedback and a consensus is made, the final draft will be published on the webpage. The materials from this meeting will also be added as they become available.

## Review Pre-Proposal, Draft Rule Text

- **Colton Bond** indicated there was document shared that identifies which administrative rules include the term “pesticide applicator”. This document was created in response to feedback in the previous meeting that the current terminology in rule was confusing. He proposed changing the term to “commercial pesticide applicator” and suggested adding that as an element of discussion as he moved forward in

reviewing the rule text.

- **Colton Bond** introduced section 603-057-ZZZZ which is a newly added section that would allow someone with a Commercial Pesticide Applicator license to apply restricted use pesticides on property owned or leased by themselves or their employer, but only if certain conditions are met. These conditions are points of clarification that already exist in statute. The idea behind this added section is to avoid a situation where somebody needs to get both a commercial and noncommercial license to do the work they are currently able to do under one license.
  - **Karen Lewotsky** commented that it's important to consider public opinion and to ensure it is clear that the new license type is not reducing the level of protections people will have from misuse of pesticides.
    - **Colton Bond** responded that the basic standards of knowledge that one needs to demonstrate to hold either of these license types is almost identical. But for the sake of the public this is something that could be emphasized. Colton suggested that a description could be included at the time of filing the proposed rule.
  - **Katie Murray** asked if there could be certain contexts that will cause current license holders to be required to obtain multiple licenses in order to continue doing the work they're already doing. She expressed a desire to ensure that these exceptions that are being added are broad enough that an applicator won't be required to obtain the noncommercial license in addition to one they already hold.
    - **Colton Bond** explained that this additional section provides a way to utilize the commercial license so that an applicator can do the same work on their own or their employer's own property without needing an additional license.
  - **Alexis Wenker** commented that this will work for 85-90% of their members, but there are certain cases where things could be challenging moving forward.
    - **Ryan Pessah** added that there are scenarios in the wood treatment industry that may also be challenging.
    - **Andrea Sonnen** suggested that any unique scenarios, where the license type needed is not clear, should be sent to Colton. This will ensure that all scenarios are being considered when making amendments.
    - **Colton Bond** mentioned that he created a document for unique scenarios to be considered within the golf and resort industry, but he would be willing to expand on other industries and share the document with the entire group. He suggested continuing these discussions about potential issues and determining if another meeting will be needed to address them.
- **Colton Bond** gave an overview of the definitions rule 603-057-0001 and the changes that were made to connect with statute. For changes in subsection (9), Colton reviewed the definition of "pesticide trainee" and explained that the same standards of supervision will be adopted for noncommercial applicators.
- **Colton Bond** gave an overview rule 603-057-0100 which establishes licensing fees. He noted that the only changes made were for more clarity, such as changes to license type terminology so they correspond to what is printed on the actual license. House Bill 4062 does establish the licensing fees for both noncommercial applicator license and the noncommercial trainee which will be the same as the commercial applicator licenses.
  - **Kaite Murray** noted that the text says, "pesticide applicator" and asked if the word "commercial" could be added here for more clarity. Katie expressed wanting to reduce confusion when it comes to the language used in the text.
  - **Colton Bond** responded that in the analysis document that was shared, 15 out of the 17 rules listed used the term "pesticide applicator". He noted that the word "commercial" could be added if everyone agreed that would alleviate confusion. Colton also noted that there are two additional rules that weren't on the list that have nothing to do with either House Bill. In order to include those, internal discussions would be necessary to ensure the meaning of the rules would not be changed. Colton suggested adding a definition to the definitions rule that explicitly states the

meaning behind the term “commercial pesticide applicator”. He asked the group for feedback on this specific change.

- **Karen Lewotsky** commented in support of any changes that could be made to make the language more accessible and less difficult for the constituencies to understand.
- **Dan Jansen** expressed agreement in adding more clarity in the language.
- **Jon Von Behren** added support.
- **Colton Bond** gave an overview of the changes made to the rules pertaining to the different license types. Under section 603-057-0110, the term “noncommercial applicator” was added to each of the categories that already exist for commercial applicators and public applicators with the exception of the major categories Agriculture, Forest Pest Control, and Public Health. Colton explained that the term was left out of these categories because the definition of “noncommercial” excludes work covered under the private applicator license. Because this pertains to private schools in particular, Colton requested feedback from John von Behren.
  - **John von Behren** responded that he supports adding the term to each of the major categories and giving people flexibility.
- **Colton Bond** gave an overview of section 603-057-0115 regarding subcategories. Colton requested feedback on which categories it would be appropriate in which to add “noncommercial applicator”. While reviewing the agricultural subcategories, Colton noted that this discussion mostly pertains to private schools because anyone else could utilize the private applicator license.
  - **Katie Murray** asked if there are other contexts that should be considered in addition to the use in private schools.
    - **Andrea Sonnen** commented that there are situations where golf courses are raising sod to replace patches and that could be considered agricultural. And the work they’re doing doesn’t quite fit under the commercial or the private license.
      - **Colton Bond** responded that these specific issues would need to be explored and discussed more.
  - **Ryan Pessah** commented that there are scenarios where utility poles need remedial treatment and it’s not clear which license is appropriate depending on who is making the applications.
  - **Colton Bond** added that the goal of this meeting is to gain feedback and learn about these nuances so they can be considered moving forward.
- **Colton Bond** gave an overview of the rule regarding standards of certification. “Noncommercial applicator” has been added to this section to establish that the certification period and testing requirements are identical to commercial and public applicators.
- **Colton Bond** gave an overview of the rule regarding recordkeeping requirements for pesticide applications. Noncommercial pesticide applicators are not required to work for a commercial pesticide operator and therefore would be required to keep and maintain their own records. Colton noted that federal regulations would be applied equally to commercial and noncommercial applicators. He asked if there was any concern from the group about having the same standard applied to both.
  - **Karen Lewotsky** commented in favor of making things seamless and congruent in terms of communication to the public at large. Karen expressed interest in reviewing and learning more about the federal requirements regarding recordkeeping.
    - **Colton Bond** responded that the potential benefit of having a set standard would alleviate confusion that could arise from having two different, but similar standards for both license types.
      - **Katie Murray** expressed agreement with harmonizing those standards.
- **Colton Bond** gave an overview of the rule regarding Pesticide Consultants. A person who has a consultant license with the demonstration and research category also qualifies for a commercial license which they can then add additional categories to. By adding “noncommercial applicator” it would allow the same level of flexibility as with the commercial license. Colton asked if there were any comments or feedback.
  - **Katie Murray and Alexis Wenker** expressed agreement that this change would be helpful.
- **Colton Bond** gave an overview of the rule relating to continuing education requirements for commercial

and public applicators as well as pesticide consultants. Adding “noncommercial applicator” would apply the same standards to the noncommercial license type. Colton noted that there was concern at the previous meeting regarding the number of credits required and asked if there was any more feedback on that topic.

- **John von Behren** commented that the credit requirements now make more sense. Especially since learning that the required training for School IPM coordinators is awarded six or seven credits. John noted that he wasn’t seeing the term “public applicator” in this part of the text and that could be confusing.
  - **Colton Bond** explained that this is one of those examples where adding the term “commercial” in front of “pesticide applicator” would provide more clarity.
- **Colton Bond** gave an overview of the rule relating to experimental use permits. The only change that was made was adding “noncommercial applicator” to associate the same requirements to maintain records.
- **Colton Bond** gave an overview of the rule pertaining to license equivalencies. Adding “noncommercial applicator” would allow for the same equivalencies as the commercial license.
- **Colton Bond** gave an overview of the section that relates to the rule defining what a violation is and explained that the rule is being constructed to reflect what House Bill 2031 changed in statute.
- **Colton Bond** gave an overview of the section that refers to a person having 10 business days to respond to a notice of violation. He explained that statute states 10 days total, not business days.
  - **Andrea Sonnen** commented that this change brings it more into alignment with the contested case law. She stated that it is very clear in administrative law that they have 10 days, not 10 business days to respond.
- **Colton Bond** gave an overview of additional rules related to enforcement action and the changes that were made to add clarity. He explained that “noncommercial” has been added to be consistent with statutory changes made in House Bill 4062. He noted that there are other changes that aren’t related to the new bills in regard to recordkeeping for dealers and pesticide applications. He explained that these changes were made to make the standards more clear.
- **Colton Bond** reviewed a new rule that was added to clarify that restricted use pesticides would not be a part of the exemptions that are outlined in 634.106.

### Adjourn

- Next meeting may be scheduled in February, pending availability of stakeholders during the legislative session, or in the subsequent fall after the busiest times during the growing season.
- Colton Bond adjourns the meeting.