

# Senate Bill 1007

Sponsored by COMMITTEE ON JUDICIARY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Imposes special information requirement for notice or written plan involving application of pesticides to certain forestland. Extends time for making comments regarding notice or written plan for pesticide application. Delays earliest time for proceeding with pesticide application following submission of written plan. Makes failure to timely file notice subject to civil penalty, not to exceed \$5,000. Makes failure to comply with State Forester order to file notice or to correct notice information punishable by civil penalty, not to exceed \$5,000 for each day of noncompliance.

Requires State Board of Forestry to adopt policy designed to evaluate alternatives to pesticide application, encourage use of least-toxic pesticides and minimize nontarget exposures to pesticide. Requires operators, timber owners and landowners to follow policy. Makes violation subject to civil penalty, not to exceed \$5,000.

Prohibits application to forestland of pesticide containing known or suspected carcinogens or reproductive toxins. Makes violation subject to civil penalty, not to exceed \$5,000. Becomes operative January 1, 2010.

Creates Pesticide Advisory Board.

Requires State Forestry Department to implement and maintain policy designed to evaluate alternatives to department application of herbicide to roadways, encourage use of least-toxic herbicides and minimize nontarget exposures to herbicide.

## A BILL FOR AN ACT

1  
2 Relating to pesticides; creating new provisions; and amending ORS 527.630, 527.670, 527.683, 527.700  
3 and 527.992.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) There is established within the State Forestry Department a Pesticide**  
6 **Advisory Board, consisting of seven members appointed by the Governor. Of the seven**  
7 **members:**

8 (a) **One shall be a person licensed as a pesticide applicator or pesticide dealer.**

9 (b) **One shall be a person with demonstrated expertise in fisheries, biology or fish**  
10 **toxicology who is not affiliated with a licensed pesticide applicator or pesticide dealer.**

11 (c) **One shall be a person with demonstrated expertise in wildlife biology or wildlife**  
12 **toxicology who is not affiliated with a licensed pesticide applicator or pesticide dealer.**

13 (d) **One shall be a person with demonstrated expertise in forest biology or botany who is**  
14 **not affiliated with a licensed pesticide applicator or pesticide dealer.**

15 (e) **One shall be a person with demonstrated expertise in children's health and other**  
16 **public health issues who is not affiliated with a licensed pesticide applicator or pesticide**  
17 **dealer.**

18 (f) **One shall be a person employed by, or acting as an agent for, a public water supplier.**

19 (g) **One shall be a member of the public.**

20 (2) **The term of office of each member is three years, but a member serves at the pleas-**  
21 **ure of the Governor. Before the expiration of the term of a member, the Governor shall ap-**  
22 **point a successor whose term begins on January 1 next following. A member is eligible for**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 reappointment. If there is a vacancy for any cause, the Governor shall make an appointment  
2 to become immediately effective for the unexpired term.

3 (3) The appointment of the advisory board is subject to confirmation by the Senate in the  
4 manner prescribed in ORS 171.562 and 171.565.

5 (4) Members of the advisory board are not entitled to compensation, but at the discretion  
6 of the State Board of Forestry may be reimbursed from funds available to the department  
7 for actual and necessary travel and other expenses incurred by them in the performance of  
8 their official duties, in the manner and amount provided in ORS 292.495.

9 (5) The advisory board shall select one of its members as chairperson and another as vice  
10 chairperson, for such terms and with duties and powers necessary for the performance of  
11 the functions of such offices as the State Board of Forestry determines.

12 (6) A majority of the members of the advisory board constitutes a quorum for the  
13 transaction of business.

14 (7) The advisory board shall meet at the call of the State Forestry Board or of the  
15 chairperson or a majority of the advisory board.

16 **SECTION 2.** Notwithstanding the term of office specified by section 1 of this 2007 Act,  
17 of the members first appointed to the Pesticide Advisory Board:

18 (1) Two shall serve for terms ending January 1, 2009.

19 (2) Two shall serve for terms ending January 1, 2010.

20 (3) Three shall serve for terms ending January 1, 2011.

21 **SECTION 3.** (1) As used in this section:

22 (a) "Alternative assessment" means an evaluation process that compiles data for toxic  
23 substances used in forestland operations, identifies less-toxic or nontoxic options and com-  
24 pares the hazards, effectiveness and costs of the available control methods.

25 (b) "Last-resort policy" means a policy that applies an alternative assessment process to:

26 (A) Identify pesticides that have ingredients or additives that are toxic or are known or  
27 suspected of causing adverse impacts to environmental and human health;

28 (B) Direct decision-making to use pesticides as a last resort after other methods have  
29 proven ineffective; and

30 (C) Encourage the use of the least toxic or harmful pesticide practicable in a manner  
31 that minimizes the exposure of humans and nontarget organisms.

32 (2) The Pesticide Advisory Board established under section 1 of this 2007 Act shall:

33 (a) Advise the State Board of Forestry on the development and implementation of an al-  
34 ternative assessment process for forestland.

35 (b) Advise the board on the implementation, administration and enforcement of a last-  
36 resort policy for forestland.

37 (c) Identify substances that have ingredients or additives that have ingredients or addi-  
38 tives recognized as known, likely or probable carcinogens or reproductive toxicants and make  
39 recommendations to the board for action to ban application of the substances to forestland  
40 under section 6 of this 2007 Act.

41 (3) The board shall implement, administer and enforce a last-resort policy for pesticide  
42 applications to forestland subject to ORS 527.610 to 527.770. An operator, timber owner or  
43 landowner may not make an application of pesticides to forestland that is subject to ORS  
44 527.610 to 527.770 unless the operator, timber owner or landowner complies with the last-  
45 resort policy.

1       **SECTION 4.** Sections 5, 6 and 9 of this 2007 Act are added to and made a part of ORS  
2 527.610 to 527.770.

3       **SECTION 5.** (1) As used in this section, “pesticide” has the meaning given that term in  
4 ORS 634.006.

5       (2) A notice or written plan filed for the application of a pesticide shall be on forms  
6 provided by the State Forester. In addition to any other information required by the State  
7 Forester, the notice or written plan must contain the following information:

8           (a) The names and addresses of the operator, timber owner and landowner.

9           (b) A legal description of the operating area, including the location and size of the area  
10 to which the pesticide is to be applied.

11          (c) A period that includes the application period and not more than 10 additional working  
12 days, and if known, the actual starting date, ending date and time of day for the pesticide  
13 application.

14          (d) The registration number and scientific name of the pesticide to be applied and the  
15 commercial name of the product containing the pesticide.

16          (e) The material safety data sheet provided by the pesticide manufacturer or toxicity in-  
17 formation provided by any government agency.

18          (f) The concentration and total amount of pesticide to be applied.

19          (g) The name and license number of the pesticide operator.

20          (h) Emergency contact information, including the name, address and phone number of a  
21 responsible party.

22       (3) A written plan for a pesticide application is required if:

23           (a) The pesticide application area is:

24           (A) Within 100 feet of a stream determined by the State Forester to be used by fish or  
25 for domestic use;

26           (B) Within one mile of a resource site inventoried pursuant to ORS 527.710 (3)(a);

27           (C) Within 300 feet of a public road or highway; or

28           (D) Within one mile of a school, child care facility, park or other area used by children  
29 for recreation;

30           (b) The pesticide product has an ingredient or additive recognized as a known, likely or  
31 probable carcinogen by:

32           (A) The United States Environmental Protection Agency;

33           (B) The International Agency for Research on Cancer;

34           (C) The State of California pursuant to California Health and Safety Code sections 25249.5  
35 to 25249.13; or

36           (D) The National Toxicology Program of the United States Department of Health and  
37 Human Services; or

38           (c) The pesticide product has an ingredient or additive recognized as a reproductive  
39 toxicant by the State of California pursuant to California Health and Safety Code sections  
40 25249.5 to 25249.13.

41       (4) The distances set forth in subsection (3)(a) of this section are solely for the purpose  
42 of defining an area within which a hearing may be requested under ORS 527.700 and not the  
43 area to be protected by State Board of Forestry rules adopted under ORS 527.710 (3)(c).

44       (5) For the purpose of determining the distances set forth in subsection (3)(a) of this  
45 section, “site” means the specific resource site and not any additional buffer area.

1       (6) In addition to the information described in subsection (2) of this section, a written  
2 plan shall contain a demonstration of compliance with the last-resort policy of the State  
3 Board of Forestry.

4       (7) An operator, timber owner or landowner, before commencing a pesticide application  
5 to forestland shall notify the State Forester. Promptly upon receipt of the notice, the State  
6 Forester shall send a copy of the notice to whichever of the operator, timber owner or  
7 landowner did not submit the notification, to persons within 10 miles of the chemical appli-  
8 cation who hold downstream surface water rights pursuant to ORS chapter 537 and to land-  
9 owners within one mile of the target area for the application. The board shall adopt rules  
10 specifying the information to be contained in the notice.

11       (8) The operator, timber owner or landowner that filed the original notification shall no-  
12 tify the State Forester of any subsequent change in the information contained in the notifi-  
13 cation.

14       (9) All information filed with the State Forester pertaining to pesticide applications shall  
15 be public record. The State Forester shall post the information received in a notice or writ-  
16 ten plan, including any changes in information received under subsection (8) of this section,  
17 on an Internet website within three working days after receipt.

18       (10) Within three working days of receipt of a notice or a written plan filed under this  
19 section, the State Forester shall send a copy of the notice or written plan to any person who  
20 requested of the State Forester in writing that the person be sent copies of notices and  
21 written plans and who has paid any applicable fees established by the State Forester for such  
22 service. The State Forester may establish a fee for sending copies of notices and written  
23 plans under this subsection not to exceed the actual and reasonable costs.

24       (11) The State Forester shall review a written plan and may provide comments and re-  
25 commend modification of the plan not earlier than 30 calendar days nor later than 37 calen-  
26 dar days following the date on which the written plan was filed with the State Forester. The  
27 comments and recommendations by the State Forester shall be kept in a publicly accessible  
28 file and supplied to the public upon request.

29       (12) A person may submit written comments pertaining to the written plan to the State  
30 Forester within 30 calendar days after the date on which the notice or written plan is filed  
31 with the State Forester under this section.

32       (13) If notice has been provided as required by this section, the operation may commence  
33 seven days after the State Forester provides comments or recommendations or, if no com-  
34 ments or recommendations are provided within the time period established in subsection (11)  
35 of this section, at any time after 37 calendar days following the date on which the written  
36 plan was filed. The State Forester may waive any waiting period for pesticide applications  
37 that do not require a written plan, except aerial applications.

38       (14)(a) Comments and recommendations of the State Forester, or comments of the board  
39 under ORS 527.700 (6), provided to the person who submitted the written plan are for the sole  
40 purpose of providing advice to the operator, timber owner or landowner regarding whether  
41 the operation described in the written plan is likely to comply with ORS 527.610 to 527.770  
42 and rules adopted under ORS 527.610 to 527.770. Comments and recommendations of the State  
43 Forester or comments of the board do not constitute an approval of the written plan or op-  
44 eration.

45       (b) If the State Forester or the board does not comment on a written plan, the failure

1 to comment does not mean that an operation carried out in conformance with the written  
 2 plan complies with ORS 527.610 to 527.770 or rules adopted under ORS 527.610 to 527.770, nor  
 3 does the failure to comment constitute a rejection of the written plan or operation.

4 (c) If the State Forester or board determines that an enforcement action may be appro-  
 5 priate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or  
 6 rules adopted under ORS 527.610 to 527.770, the State Forester or board shall consider, but  
 7 is not bound by, comments of the State Forester, the board or the public and the recom-  
 8 mendations of the State Forester.

9 (15) When the operation is required to have a written plan under this section and com-  
 10 ments have been timely filed pertaining to the operation requiring a written plan, the State  
 11 Forester shall:

12 (a) Send a copy of the State Forester’s review and comments, if any, to persons who  
 13 submitted timely written comments pertaining to the operation; and

14 (b) Send to the operator, timber owner and landowner a copy of all timely comments  
 15 submitted.

16 **SECTION 6.** An operator, timber owner or landowner may not apply to forestland that  
 17 is subject to ORS 527.610 to 527.770 any pesticide that has an ingredient or additive that has  
 18 an ingredient or additive recognized as a known, likely or probable carcinogen or a repro-  
 19 ductive toxicant by:

20 (1) The State of California pursuant to California Health and Safety Code sections 25249.5  
 21 to 25249.13 on or before the effective date of this 2007 Act; or

22 (2) The State Board of Forestry.

23 **SECTION 7.** Section 5 of this 2007 Act is amended to read:

24 **Sec. 5.** (1) As used in this section, “pesticide” has the meaning given that term in ORS 634.006.

25 (2) A notice or written plan filed for the application of a pesticide shall be on forms provided  
 26 by the State Forester. In addition to any other information required by the State Forester, the notice  
 27 or written plan must contain the following information:

28 (a) The names and addresses of the operator, timber owner and landowner.

29 (b) A legal description of the operating area, including the location and size of the area to which  
 30 the pesticide is to be applied.

31 (c) A period that includes the application period and not more than 10 additional working days,  
 32 and if known, the actual starting date, ending date and time of day for the pesticide application.

33 (d) The registration number and scientific name of the pesticide to be applied and the commer-  
 34 cial name of the product containing the pesticide.

35 (e) The material safety data sheet provided by the pesticide manufacturer or toxicity information  
 36 provided by any government agency.

37 (f) The concentration and total amount of pesticide to be applied.

38 (g) The name and license number of the pesticide operator.

39 (h) Emergency contact information, including the name, address and phone number of a respon-  
 40 sible party.

41 (3) A written plan for a pesticide application is required if:

42 (a) The pesticide application area is:

43 (A) Within 100 feet of a stream determined by the State Forester to be used by fish or for do-  
 44 mestic use;

45 (B) Within one mile of a resource site inventoried pursuant to ORS 527.710 (3)(a);

1 (C) Within 300 feet of a public road or highway; or

2 (D) Within one mile of a school, child care facility, park or other area used by children for re-  
3 creation; **or**

4 (b) The pesticide product has an ingredient or additive recognized as a known, likely or probable  
5 carcinogen by:

6 (A) The United States Environmental Protection Agency;

7 (B) The International Agency for Research on Cancer; **or**

8 [(C) *The State of California pursuant to California Health and Safety Code sections 25249.5 to*  
9 *25249.13; or*]

10 [(D)] (C) The National Toxicology Program of the United States Department of Health and Hu-  
11 man Services.]; *or*]

12 [(c) *The pesticide product has an ingredient or additive recognized as a reproductive toxicant by*  
13 *the State of California pursuant to California Health and Safety Code sections 25249.5 to 25249.13.*]

14 (4) The distances set forth in subsection (3)(a) of this section are solely for the purpose of de-  
15 fining an area within which a hearing may be requested under ORS 527.700 and not the area to be  
16 protected by State Board of Forestry rules adopted under ORS 527.710 (3)(c).

17 (5) For the purpose of determining the distances set forth in subsection (3)(a) of this section,  
18 “site” means the specific resource site and not any additional buffer area.

19 (6) In addition to the information described in subsection (2) of this section, a written plan shall  
20 contain a demonstration of compliance with the last-resort policy of the State Board of Forestry.

21 (7) An operator, timber owner or landowner, before commencing a pesticide application to  
22 forestland shall notify the State Forester. Promptly upon receipt of the notice, the State Forester  
23 shall send a copy of the notice to whichever of the operator, timber owner or landowner did not  
24 submit the notification, to persons within 10 miles of the chemical application who hold downstream  
25 surface water rights pursuant to ORS chapter 537 and to landowners within one mile of the target  
26 area for the application. The board shall adopt rules specifying the information to be contained in  
27 the notice.

28 (8) The operator, timber owner or landowner that filed the original notification shall notify the  
29 State Forester of any subsequent change in the information contained in the notification.

30 (9) All information filed with the State Forester pertaining to pesticide applications shall be  
31 public record. The State Forester shall post the information received in a notice or written plan,  
32 including any changes in information received under subsection (8) of this section, on an Internet  
33 website within three working days after receipt.

34 (10) Within three working days of receipt of a notice or a written plan filed under this section,  
35 the State Forester shall send a copy of the notice or written plan to any person who requested of  
36 the State Forester in writing that the person be sent copies of notices and written plans and who  
37 has paid any applicable fees established by the State Forester for such service. The State Forester  
38 may establish a fee for sending copies of notices and written plans under this subsection not to ex-  
39 ceed the actual and reasonable costs.

40 (11) The State Forester shall review a written plan and may provide comments and recommend  
41 modification of the plan not earlier than 30 calendar days nor later than 37 calendar days following  
42 the date on which the written plan was filed with the State Forester. The comments and recom-  
43 mendations by the State Forester shall be kept in a publicly accessible file and supplied to the public  
44 upon request.

45 (12) A person may submit written comments pertaining to the written plan to the State Forester

1 within 30 calendar days after the date on which the notice or written plan is filed with the State  
2 Forester under this section.

3 (13) If notice has been provided as required by this section, the operation may commence seven  
4 days after the State Forester provides comments or recommendations or, if no comments or recom-  
5 mendations are provided within the time period established in subsection (11) of this section, at any  
6 time after 37 calendar days following the date on which the written plan was filed. The State  
7 Forester may waive any waiting period for pesticide applications that do not require a written plan,  
8 except aerial applications.

9 (14)(a) Comments and recommendations of the State Forester, or comments of the board under  
10 ORS 527.700 (6), provided to the person who submitted the written plan are for the sole purpose of  
11 providing advice to the operator, timber owner or landowner regarding whether the operation de-  
12 scribed in the written plan is likely to comply with ORS 527.610 to 527.770 and rules adopted under  
13 ORS 527.610 to 527.770. Comments and recommendations of the State Forester or comments of the  
14 board do not constitute an approval of the written plan or operation.

15 (b) If the State Forester or the board does not comment on a written plan, the failure to com-  
16 ment does not mean that an operation carried out in conformance with the written plan complies  
17 with ORS 527.610 to 527.770 or rules adopted under ORS 527.610 to 527.770, nor does the failure to  
18 comment constitute a rejection of the written plan or operation.

19 (c) If the State Forester or board determines that an enforcement action may be appropriate  
20 concerning the compliance of a particular operation with ORS 527.610 to 527.770 or rules adopted  
21 under ORS 527.610 to 527.770, the State Forester or board shall consider, but is not bound by,  
22 comments of the State Forester, the board or the public and the recommendations of the State  
23 Forester.

24 (15) When the operation is required to have a written plan under this section and comments  
25 have been timely filed pertaining to the operation requiring a written plan, the State Forester shall:

26 (a) Send a copy of the State Forester's review and comments, if any, to persons who submitted  
27 timely written comments pertaining to the operation; and

28 (b) Send to the operator, timber owner and landowner a copy of all timely comments submitted.

29 **SECTION 8. Section 6 of this 2007 Act and the amendments to section 5 of this 2007 Act**  
30 **by section 7 of this 2007 Act become operative January 1, 2010.**

31 **SECTION 9. If an operator, timber owner or landowner fails to file a notice or written**  
32 **plan containing the information required by section 5 of this 2007 Act, fails to include infor-**  
33 **mation or fails to correct inaccurate information contained in the notice or written plan, the**  
34 **State Forester shall issue an order requiring the operator, timber owner or landowner to file**  
35 **a notice or written plan that meets the requirements of section 5 of this 2007 Act. The is-**  
36 **suance of an order under this section is in addition to any other action available to the State**  
37 **Forester for a violation. Each day that the operator, timber owner or landowner fails to**  
38 **comply with the order is a separate violation for purposes of ORS 527.992.**

39 **SECTION 10. ORS 527.630 is amended to read:**

40 527.630. (1) Forests make a vital contribution to Oregon by providing jobs, products, tax base  
41 and other social and economic benefits, by helping to maintain forest tree species, soil, air and water  
42 resources and by providing a habitat for wildlife and aquatic life. **Forests are ecosystems that**  
43 **function when habitat resources are maintained and protected. Forestlands are often adja-**  
44 **cent to private residences, schools, medical facilities, parks and other places people use.**  
45 **Forest practices often impact those nearby areas.** Therefore, it is declared to be the public

1 policy of the State of Oregon to encourage economically efficient forest practices that ensure the  
 2 continuous growing and harvesting of forest tree species and the maintenance of forestland for such  
 3 purposes as the leading use on privately owned land, consistent with sound management of soil, air,  
 4 water, fish and wildlife resources and scenic resources within visually sensitive corridors as pro-  
 5 vided in ORS 527.755 and **the protection of human health**. To ensure the continuous benefits of  
 6 those resources for future generations of Oregonians, **it is in the public interest for state gov-**  
 7 **ernment to encourage and provide support for forest management practices that consider**  
 8 **alternatives before using pesticides, to use pesticides and chemical fertilizers as a last resort**  
 9 **and to minimize the area where pesticides and chemical fertilizers are used.**

10 (2) It is recognized that operations on forestland are already subject to other laws and to reg-  
 11 ulations of other agencies which deal primarily with consequences of such operations rather than  
 12 the manner in which operations are conducted. It is further recognized that it is essential to avoid  
 13 uncertainty and confusion in enforcement and implementation of such laws and regulations and in  
 14 planning and carrying out operations on forestlands.

15 (3) To encourage forest practices implementing the policy of ORS 527.610 to 527.770 and 527.990  
 16 and 527.992, it is declared to be in the public interest to vest in the State Board of Forestry exclu-  
 17 sive authority to develop and enforce statewide and regional rules pursuant to ORS 527.710 **that**  
 18 **ensure sound and sustainable protection of soil, air, water, fish and wildlife resources, scenic**  
 19 **resources within visually sensitive corridors as provided in ORS 527.755 and the protection**  
 20 **of human health** and to coordinate with other state agencies and local governments which are  
 21 concerned with the forest environment.

22 (4) The board may adopt and enforce rules addressing scenic considerations only in accordance  
 23 with ORS 527.755.

24 (5) The board shall adopt and enforce forest practice rules to reduce the risk of serious bodily  
 25 injury or death from a rapidly moving landslide only in accordance with ORS 527.710 (10). As used  
 26 in this subsection, "rapidly moving landslide" has the meaning given in ORS 195.250.

27 (6) The State of Oregon should provide a stable regulatory environment to encourage investment  
 28 in private forestlands.

29 **SECTION 11.** ORS 527.670 is amended to read:

30 527.670. (1) **The application of a pesticide, as defined in ORS 634.006, on forestland requires**  
 31 **the sending of a notice to the State Forester as provided in section 5 of this 2007 Act. The**  
 32 **necessity of a written plan, information requirements and methods of processing for a pes-**  
 33 **ticide application to forestland are determined by section 5 of this 2007 Act instead of this**  
 34 **section.**

35 [(1)] (2) The State Board of Forestry shall designate the types of operations for which notice  
 36 shall be required under this section.

37 [(2)] The board shall determine by rule what types of operations require a written plan **under**  
 38 **this section.**

39 (3) The board's determination under subsection (2) of this section shall require a written plan  
 40 for operations:

41 (a) Within [one hundred] **100** feet of a stream determined by the State Forester to be used by fish  
 42 or for domestic use, unless the board, by rule, provides that a written plan is not required because  
 43 the proposed operation will be conducted according to a general vegetation retention prescription  
 44 described in administrative rule; or

45 (b) Within [three hundred] **300** feet of a resource site inventoried pursuant to ORS 527.710 (3)(a).



1 (4) The distances set forth in subsection (3)(a) and (b) of this section are solely for the purpose  
2 of defining an area within which a hearing may be requested under ORS 527.700 and not the area  
3 to be protected by the board's rules adopted pursuant to ORS 527.710 (3)(c).

4 (5) For the purpose of determining the distances set forth in subsection (3)(a) and (b) of this  
5 section "site" means the specific resource site and not any additional buffer area.

6 (6) An operator, timber owner or landowner, before commencing an operation, shall notify the  
7 State Forester. The notification shall be on forms provided by the State Forester and shall include  
8 the name and address of the operator, timber owner and landowner, the legal description of the  
9 operating area, and any other information considered by the State Forester to be necessary for the  
10 administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon re-  
11 ceipt of such notice, the State Forester shall send a copy of the notice to whichever of the operator,  
12 timber owner or landowner did not submit the notification. The State Forester shall send a copy of  
13 notices involving chemical applications **that are subject to this section** to persons within 10 miles  
14 of the chemical application who hold downstream surface water rights pursuant to ORS chapter 537,  
15 if such a person has requested that notification in writing. The board shall adopt rules specifying  
16 the information to be contained in the notice. All information filed with the State Forester pertain-  
17 ing to chemical applications shall be public record.

18 (7) An operator, timber owner or landowner, whichever filed the original notification, shall no-  
19 tify the State Forester of any subsequent change in the information contained in the notification.

20 (8) Within three working days of receipt of a notice or a written plan filed under subsection (6)  
21 or (7) of this section, the State Forester shall send a copy of the notice or written plan to any person  
22 who requested of the State Forester in writing that the person be sent copies of notice and written  
23 plan and who has paid any applicable fee established by the State Forester for such service. The  
24 State Forester may establish a fee for sending copies of notices and written plans under this sub-  
25 section not to exceed the actual and reasonable costs. In addition, the State Forester shall send a  
26 copy of the notification to the Department of Revenue and the county assessor for the county in  
27 which the operation is located, at times and in a manner determined through written cooperative  
28 agreement by the parties involved.

29 (9) Persons may submit written comments pertaining to the operation to the State Forester  
30 within 14 calendar days of the date the notice or written plan was filed with the State Forester  
31 under subsection (2), (6) or (7) of this section. Notwithstanding the provisions of this subsection, the  
32 State Forester may waive any waiting period for operations not requiring a written plan under  
33 subsection (3) of this section, except those operations involving aerial application of chemicals.

34 (10) If an operator, timber owner or landowner is required to submit a written plan of operations  
35 to the State Forester under subsection (3) of this section:

36 (a) The State Forester shall review a written plan and may provide comments to the person who  
37 submitted the written plan;

38 (b) The State Forester may not provide any comments concerning the written plan earlier than  
39 14 calendar days following the date that the written plan was filed with the State Forester nor later  
40 than 21 calendar days following the date that the written plan was filed; and

41 (c) Provided that notice has been provided as required by subsection (6) of this section, the op-  
42 eration may commence on the date that the State Forester provides comments or, if no comments  
43 are provided within the time period established in paragraph (b) of this subsection, at any time after  
44 21 calendar days following the date that the written plan was filed.

45 (11)(a) Comments provided by the State Forester, or by the board under ORS 527.700 (6), to the

1 person who submitted the written plan are for the sole purpose of providing advice to the operator,  
 2 timber owner or landowner regarding whether the operation described in the written plan is likely  
 3 to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the  
 4 State Forester or the board do not constitute an approval of the written plan or operation.

5 (b) If the State Forester or the board does not comment on a written plan, the failure to com-  
 6 ment does not mean that an operation carried out in conformance with the written plan complies  
 7 with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute  
 8 a rejection of the written plan or operation.

9 (c) In the event that the State Forester or board determines that an enforcement action may be  
 10 appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or  
 11 rules adopted thereunder, the State Forester or board shall consider, but are not bound by, com-  
 12 ments that the State Forester provided under this section or comments that the board provided un-  
 13 der ORS 527.700.

14 (12) When the operation is required to have a written plan under subsection (3) of this section  
 15 and comments have been timely filed under subsection (9) of this section pertaining to the operation  
 16 requiring a written plan, the State Forester shall:

17 (a) Send a copy of the State Forester's review and comments, if any, to persons who submitted  
 18 timely written comments under subsection (9) of this section pertaining to the operation; and

19 (b) Send to the operator, timber owner and landowner a copy of all timely comments submitted  
 20 under subsection (9) of this section.

21 **SECTION 12.** ORS 527.683 is amended to read:

22 527.683. (1) [No] A civil penalty prescribed in ORS 527.992 [shall] **may not** be imposed until the  
 23 person incurring the penalty has received notice in writing from the State Forester specifying the  
 24 violation. Such notice is in addition to the notice required in ORS 183.745.

25 (2) The citation issued pursuant to ORS 527.680 (1), **an [and the]** order issued pursuant to ORS  
 26 527.680 (2)(b) **or an order issued under section 9 of this 2007 Act** shall [each] constitute the notice  
 27 required by subsection (1) of this section.

28 **SECTION 13.** ORS 527.700 is amended to read:

29 527.700. (1) Any operator, timber owner or landowner affected by any finding or order of the  
 30 State Forester issued under ORS 527.610 to 527.770 and 527.992 may request a hearing within 30  
 31 days after issuance of the order. The hearing shall be commenced within 14 days after receipt of the  
 32 request for hearing and a final order shall be issued within 28 days of the request for the hearing  
 33 unless all parties agree to an extension of the time limit.

34 (2) The State Board of Forestry may delegate to the administrative law judge the authority to  
 35 issue final orders on matters under this section. Hearings provided under this section shall be con-  
 36 ducted as contested case hearings under ORS 183.413 to 183.470. The board may establish such rules  
 37 as it deems appropriate to carry out the provisions of this section. Appeals from final hearing orders  
 38 under this section shall be provided in ORS 183.482, except that the comments of the board or the  
 39 State Forester concerning a written plan are not reviewable orders under ORS 183.480.

40 (3) Any person adversely affected or aggrieved by an operation described in subsection (4) of  
 41 this section may file a written request to the board for a hearing if the person submitted written  
 42 comments pertaining to the operation within the time limits established under ORS 527.670 (9) **or**  
 43 **section 5 of this 2007 Act.**

44 (4) A request for hearing may be filed under subsection (3) of this section only if a written plan  
 45 was required pursuant to ORS 527.670 (3) **or section 5 of this 2007 Act.**

1 (5) A request for hearing filed under subsection (3) of this section shall be filed within 14 cal-  
2 endar days of the date the State Forester completed review of the written plan and issued any  
3 comments. Copies of the complete request shall be served, within the 14-day period, on the operator,  
4 timber owner and landowner. The request shall include:

5 (a) A copy of the written plan on which the person is requesting a hearing;

6 (b) A copy of the comments pertaining to the operation that were filed by the person requesting  
7 the hearing;

8 (c) A statement that shows the person is adversely affected or aggrieved by the operation and  
9 has an interest which is addressed by the Oregon Forest Practices Act or rules adopted thereunder;  
10 and

11 (d) A statement of facts that establishes that the operation is of the type described in ORS  
12 527.670 (3).

13 (6) If the board finds that the person making the request meets the requirement of subsection  
14 (5)(c) of this section, the board shall set the matter for hearing within 21 calendar days after receipt  
15 of the request for hearing. The operator, timber owner and landowner shall be allowable parties to  
16 the hearing. The person requesting the hearing may raise, in the hearing, only those issues that the  
17 person raised in written comments filed under ORS 527.670 (9) relating to conformity with the rules  
18 of the board. The board shall issue its own comments, which may affirm, modify or rescind comments  
19 of the State Forester, if any, on the written plan within 45 days after the request for hearing was  
20 filed, unless all parties agree to an extension of the time limit. The comments of the board or of  
21 the State Forester concerning a written plan are not reviewable orders under ORS 183.480.

22 (7) The board may award reasonable attorney fees and expenses to each of the prevailing parties  
23 against any other party who the board finds presented a position without probable cause to believe  
24 the position was well-founded, or made a request primarily for a purpose other than to secure ap-  
25 propriate action by the board.

26 (8)(a) Upon the written request of a person requesting a hearing under subsection (3) of this  
27 section, a stay of the operation subject to the hearing may be granted upon a showing that:

28 (A) Commencement or continuation of the operation will constitute a violation of the rules of  
29 the board;

30 (B) The person requesting the stay will suffer irreparable injury if the stay is not granted; and

31 (C) The requirements of subsections (3), (4) and (5) of this section are met.

32 (b) If the board grants the stay, it shall require the person requesting the stay to give an  
33 undertaking which may be in the amount of the damages potentially resulting from the stay, but in  
34 any event shall not be less than \$15,000. The board may impose other reasonable requirements per-  
35 taining to the grant of the stay. The board shall limit the effect of the stay to the specific ge-  
36 ographic area or elements of the operation for which the person requesting the stay has  
37 demonstrated a violation of the rules and irreparable injury under paragraph (a) of this subsection.

38 (c) If the board determines in its comments that the written plan pertaining to the operation for  
39 which the stay was granted is likely to result in compliance with ORS 527.610 to 527.770 or the rules  
40 of the board, the board may award reasonable attorney fees and actual damages in favor of each  
41 of the prevailing parties, to the extent incurred by each, against the person requesting the stay.

42 (9) If the board rescinds or modifies the comments on the written plan as submitted by the State  
43 Forester pertaining to any operation, the board may award reasonable attorney fees and costs  
44 against the state in favor of each of the prevailing parties.

45 (10) As used in this section, "person" means any individual, partnership, corporation, associ-

1 ation, governmental subdivision or public or private organization of any character.

2 **SECTION 14.** ORS 527.992 is amended to read:

3 527.992. (1) In addition to any other penalty provided by law, any person who fails to comply  
4 with any of the following may incur a civil penalty in the amount adopted under ORS 527.685:

5 (a) The requirements of ORS 527.670, 527.676, 527.740, 527.750 or 527.755 **or section 3 (3) or 5**  
6 **of this 2007 Act.**

7 (b) The terms or conditions of any order of the State Forester issued in accordance with ORS  
8 527.680 **or section 9 of this 2007 Act.**

9 (c) Any rule or standard of the State Board of Forestry adopted or issued pursuant to ORS  
10 527.710.

11 (d) Any term or condition of a written waiver, or prior approval granted by the State Forester  
12 pursuant to the rules adopted under ORS 527.710.

13 (2) Imposition or payment of a civil penalty under this section shall not be a bar to actions al-  
14 leging trespass under ORS 105.810, nor to actions under ORS 161.635 or 161.655 seeking to recover  
15 an amount based on the gain resulting from individual or corporate criminal violations.

16 **SECTION 15.** ORS 527.992, as amended by section 14 of this 2007 Act, is amended to read:

17 527.992. (1) In addition to any other penalty provided by law, any person who fails to comply  
18 with any of the following may incur a civil penalty in the amount adopted under ORS 527.685:

19 (a) The requirements of ORS 527.670, 527.676, 527.740, 527.750 or 527.755 or section 3 (3) or 5  
20 of this 2007 Act.

21 (b) The terms or conditions of any order of the State Forester issued in accordance with ORS  
22 527.680 or section 9 of this 2007 Act.

23 (c) Any rule or standard of the State Board of Forestry adopted or issued pursuant to ORS  
24 527.710.

25 (d) Any term or condition of a written waiver, or prior approval granted by the State Forester  
26 pursuant to the rules adopted under ORS 527.710.

27 **(e) The prohibition contained in section 6 of this 2007 Act.**

28 (2) Imposition or payment of a civil penalty under this section shall not be a bar to actions al-  
29 leging trespass under ORS 105.810, nor to actions under ORS 161.635 or 161.655 seeking to recover  
30 an amount based on the gain resulting from individual or corporate criminal violations.

31 **SECTION 16. The amendments to ORS 527.992 by section 15 of this 2007 Act become op-**  
32 **erative January 1, 2010.**

33 **SECTION 17. Sections 3 (3), 5 and 9 of this 2007 Act and the amendments to ORS 527.670,**  
34 **527.683, 527.700 and 527.992 by sections 11 to 14 of this 2007 Act apply to pesticide applications**  
35 **made on or after the 37th day following the effective date of this 2007 Act.**

36 **SECTION 18. (1) As used in this section and sections 19 to 25 of this 2007 Act:**

37 **(a) "Herbicide" has the meaning given that term in ORS 634.006.**

38 **(b) "Roadside" means within the right of way of a public road or forest road.**

39 **(2) The State Forestry Department shall, where practicable, use nonherbicidal methods**  
40 **for controlling weeds or other vegetation along roadsides. The methods may include, but**  
41 **need not be limited to:**

42 **(a) Good planting techniques, mulching, composting, irrigating and fertilizing;**

43 **(b) The use of native and pest-resistant plant species to prevent conditions that will allow**  
44 **undesirable plant species, disease and pests to create problems;**

45 **(c) Mechanical peat control techniques, such as hand pulling weeds, string trimming,**

1 **flaming, mowing, aeration, thatching, vacuum removal and thermal techniques; and**

2 **(d) Increasing vegetation tolerance thresholds.**

3 **(3) The department shall establish and maintain a program to evaluate and address ex-**  
 4 **isting roadside vegetation problems and roadside vegetation problems that may develop de-**  
 5 **spite the use of nonherbicidal prevention techniques. The program shall incorporate:**

6 **(a) The monitoring of roadside vegetation growth to determine if and when control ef-**  
 7 **forts are needed;**

8 **(b) The establishment of threshold levels of vegetation below which control efforts are**  
 9 **not needed; and**

10 **(c) To the extent practicable, the use of physical, mechanical, biological and other**  
 11 **nonherbicidal techniques to keep the amount and height of vegetation at levels that will**  
 12 **prevent intolerable damage.**

13 **SECTION 19. (1) The State Board of Forestry, in consultation with the Department of**  
 14 **Human Services, shall adopt rules to establish and periodically update a list of herbicides**  
 15 **having the least adverse environmental and human health impacts.**

16 **(2) If the use of an herbicide is deemed necessary by the State Forestry Department for**  
 17 **the purpose of controlling roadside vegetation, the department shall attempt to achieve**  
 18 **vegetation control by using an herbicide listed by the board under subsection (1) of this**  
 19 **section before attempting control through the use of other herbicides.**

20 **(3) The department may use an herbicide that is not listed by the board only if the State**  
 21 **Forester determines that listed herbicides have been tried without satisfactory results and**  
 22 **that vegetation control is practicable only by use of an unlisted herbicide. Except as provided**  
 23 **in subsection (5) of this section, before authorizing the use of the unlisted herbicide, the**  
 24 **State Forester shall:**

25 **(a) Consult with the Department of Human Services, the Department of Environmental**  
 26 **Quality and the agricultural extension service of Oregon State University to determine:**

27 **(A) The toxicity and persistence of unlisted herbicides that will control the vegetation;**  
 28 **and**

29 **(B) The toxicity and persistence of the unlisted herbicide to be used; and**

30 **(b) Issue written findings that include the following:**

31 **(A) A statement of the nature of the vegetation control problem and the reasons for**  
 32 **using an unlisted herbicide.**

33 **(B) The information received by the State Forester through consultation regarding:**

34 **(i) The least toxic and least persistent herbicide that will control the vegetation; and**

35 **(ii) The toxicity and persistence of other unlisted herbicides that would control the veg-**  
 36 **etation.**

37 **(C) A description of the specific unlisted herbicide to be used, including persistence in the**  
 38 **environment expressed as a half-life in the soil, currently designated toxicity levels and**  
 39 **known potential risks to human health and safety or to the environment.**

40 **(D) The proposed date, target species, method of application, notification and posting**  
 41 **provisions and other specific steps to be taken to minimize risks to human health and safety**  
 42 **and the environment.**

43 **(E) An evaluation of the feasibility of alternatives, including nonherbicidal control and**  
 44 **noncontrol alternatives.**

45 **(F) Any applicable legal restrictions on the herbicide application.**

1 (4) A finding by the State Forester that the use of an unlisted herbicide for vegetation  
2 control purposes is valid for an application in the specific application area identified in the  
3 findings for a period not to exceed 30 days.

4 (5) Subsection (3) of this section does not apply to herbicide application as part of an in-  
5 tegrated pest management process under ORS 527.310 to 527.370.

6 **SECTION 20.** (1) The State Board of Forestry may not place an herbicide on the list de-  
7 scribed in section 19 (1) of this 2007 Act unless, after identification of the active ingredients  
8 and the known inert ingredients and other additives, the product:

9 (a) Does not contain substances recognized on or before the effective date of this 2007  
10 Act:

11 (A) As known, likely or probable carcinogens by:

12 (i) The United States Environmental Protection Agency;

13 (ii) The International Agency for Research on Cancer;

14 (iii) The State of California pursuant to California Health and Safety Code sections 25249.5  
15 to 25249.13; or

16 (iv) The National Toxicology Program of the United States Department of Health and  
17 Human Services;

18 (B) As reproductive toxicants by the State of California pursuant to California Health and  
19 Safety Code sections 25249.5 to 25249.13; or

20 (C) As possible endocrine disruptors by the Illinois Environmental Protection Agency;

21 (b) Is not acutely toxic to humans;

22 (c) Is not labeled with the word “danger” or “poison” or with language or symbols indi-  
23 cating that the United States Environmental Protection Agency has assigned the product a  
24 Toxicity Class I or Toxicity Class II designation; and

25 (d) Does not contain any substance that is a nervous system toxicant as indicated by the  
26 product containing cholinesterase or being listed as neurotoxic on the federal Toxics Release  
27 Inventory.

28 (2) Before placing an herbicide on the list the board shall consider:

29 (a) Whether the nonmineral active ingredients in the product have a soil half-life of 30  
30 days or less;

31 (b) Whether the active ingredients in the product have extremely low or very low mo-  
32 bility in soils;

33 (c) Whether the United States Department of Environmental Quality has found that the  
34 product exceeds a level of concern for fish, aquatic insects, aquatic and semiaquatic plants  
35 or wildlife;

36 (d) Whether the active ingredients in the product have been detected in salmon inhabited  
37 waters at a level harmful to aquatic life; and

38 (e) Whether the product is labeled as being toxic to fish, birds, bees, wildlife or domestic  
39 animals.

40 **SECTION 21.** (1) The State Forestry Department may not apply an herbicide to roadside  
41 property:

42 (a) Within 100 feet of a lake, stream or wetland;

43 (b) Within 200 feet of a school bus stop or station that is marked or is known as a stop  
44 or station to the pesticide applicator, pesticide trainee, public applicator or public trainee;  
45 or

1 (c) That is identified in Department of Human Services or Department of Environmental  
2 Quality rules as presenting a risk to children or the environment.

3 (2) The State Forestry Department shall develop and maintain a program for the ongoing  
4 review of the effectiveness of nonherbicidal vegetation control methods employed by the  
5 public body and for the availability and potential for use of new control methods.

6 (3) The department shall develop and maintain a program designed to attempt an annual  
7 reduction in herbicide use along roadsides that is at least five percent lower than the average  
8 herbicide use during the preceding three years. Herbicide use reduction shall be measured  
9 by the percentage reduction in roadside miles treated with herbicide.

10 **SECTION 22.** (1) The State Department of Agriculture shall develop information and  
11 training programs regarding the use of nonherbicidal vegetation control methods. The de-  
12 partment may also recognize information and training programs offered by public bodies or  
13 private parties.

14 (2) Each State Forestry Department employee who is engaged in roadside vegetation  
15 control shall annually attend at least one information or training program offered or recog-  
16 nized by the State Department of Agriculture under this section.

17 **SECTION 23.** (1) The State Forestry Department shall comply with the following proce-  
18 dures when applying an herbicide:

19 (a) The department shall post yellow notification signs at least seven days before appli-  
20 cation of the herbicide.

21 (b) The department shall post orange notification signs at least seven days following ap-  
22 plication of the herbicide.

23 (c) The department shall post the notification signs along the treatment route at inter-  
24 vals not exceeding one-half mile.

25 (d) Wording on notification signs must begin with a heading that reads "Warning:  
26 Herbicide Application." The signs shall be approximately 18 inches by 24 inches in size and  
27 shall state:

28 (A) The product name;

29 (B) The active ingredients;

30 (C) The known inert ingredients and other additives, including chemicals mixed with the  
31 herbicide;

32 (D) On yellow signs, the proposed date of application;

33 (E) On orange signs, the actual date of application;

34 (F) A telephone number for the department; and

35 (G) A telephone number or website offering herbicide label information and material  
36 safety data sheets for the herbicide product.

37 (2) During the herbicide application process, the department shall post temporary  
38 roadwork signs around the worksite. The signs must be at least 24 inches by 24 inches in size  
39 and say "Herbicide Application Ahead."

40 (3) During the herbicide application process, a vehicle transporting spray equipment shall  
41 have lettering on the front and back that is at least six inches in height and says  
42 "Herbicide."

43 (4) The department shall post information about the herbicide application on the depart-  
44 ment's website at least seven days before and seven days following the herbicide application.  
45 If practicable, the public body shall maintain a telephone-recording system that provides

1 telephone-accessible information about the herbicide application at least seven days before  
2 and seven days following the herbicide application.

3 (5) The department shall notify local hospital emergency departments of pending  
4 herbicide applications. The notification shall include the location, product name, active in-  
5 gredients, known inert ingredients and other additives and chemicals mixed with the  
6 herbicide.

7 **SECTION 24.** In addition to any record keeping performed under ORS 634.146 or federal  
8 law, the State Forestry Department shall maintain herbicide application information in a  
9 form readily accessible by the public for a period of six years following an herbicide applica-  
10 tion. The information shall include:

11 (1) The date and location of the application;

12 (2) The product name;

13 (3) The active ingredients and known inert ingredients and other additives;

14 (4) Other chemicals mixed with the product;

15 (5) The actual cost of applying the herbicide;

16 (6) A United States Environmental Protection Agency registration number for the prod-  
17 uct;

18 (7) The targeted type of vegetation;

19 (8) The quantity and concentration of each herbicide product applied;

20 (9) Information about weather conditions, including:

21 (a) The presence and amount of rain;

22 (b) Temperature; and

23 (c) Wind speed and direction;

24 (10) The name and license number of the applicator; and

25 (11) Information concerning any problems known at the time of application with:

26 (a) Handling;

27 (b) Storage;

28 (c) Equipment cleaning;

29 (d) Disposal;

30 (e) Toxic waste;

31 (f) Off-target drifting of the herbicide; and

32 (g) Spills, runoff or migration.

33 **SECTION 25.** (1) The State Forestry Department shall annually issue a report that in-  
34 cludes:

35 (a) The quantity and concentration of each herbicide product applied by the department  
36 during the past year;

37 (b) A list of any herbicides not listed by the State Department of Agriculture under sec-  
38 tion 19 of this 2007 Act proposed for use during the coming year;

39 (c) Under what circumstances the application of a product described in paragraph (b) of  
40 this subsection might occur;

41 (d) The actual cost of applying herbicides during the past year;

42 (e) Nonherbicide control methods that could have replaced herbicide application during  
43 the past year;

44 (f) Nonherbicide control methods that proved ineffective during the past year;

45 (g) Nonherbicide control methods that the public body intends to use during the coming



1 year;

2 (h) The percentage reduction in herbicide use compared with the average for the pre-  
3 ceding three years; and

4 (i) The goal for reducing the percentage of herbicide application during the coming year.

5 (2) The department shall make the annual report available to the public and shall post  
6 the report on the department's website.

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