

Chronology of Oregon Board of Forestry and Oregon Department of Forestry Regulations and Policies relating to Forest Pesticide Applications near Inhabited Dwellings

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Abbreviations used in this document:

OAR: Oregon Administrative Rules
ODA: Oregon Department of Agriculture
ODF: Oregon Department of Forestry
ORS: Oregon Revised Statutes

Following is a timeline of the changes in forest practice rules relating to pesticide applications near inhabited dwellings. The information is from ODF documents.

- **1972.** The Oregon Board of Forestry adopted the first version of the Oregon forest practice rules. The original rules did not mention or prohibit chemical applications near inhabited dwellings.
- **1978.** The Board of Forestry revised OAR 629-24-203 to add the following requirement: “When applying 2,4,5-T or Silvex, maintain a 200 foot buffer strip around Class I streams or areas of open water. Maintain a 500 foot buffer strip around inhabited dwellings unless written permission is received from the resident.” ODF rule guidance dated 1985 indicates that the 500 foot buffer was intended to apply only to applications of 2,4,5-T and Silvex.
- **1979.** The U.S. Environmental Protection Agency canceled registrations for forest use of 2,4,5-T and Silvex. Those pesticides are not currently registered for use in forestry in the United States.
- **1987 (August 1, 1987).** The Board of Forestry revised OAR 629-24-203 to remove the reference to 2,4,5-T and Silvex, which were no longer registered for forest use in the United States. The effect of the rule change was that the 500-foot buffer strip around inhabited dwellings applied to all forest chemical applications. ODF background information indicates that this result was unintentional, as follows:¹

“Mr. Robinson [ODF Assistant State Forester] explained that prior to August 1, 1987, the Forest Practice Rules did not require unsprayed areas around dwellings except when using herbicides 2,4,5-T and Silvex. Since those chemicals have not been registered for forest use in the United States since 1979, the department recommended to delete the provision. While deliberating over rule amendments primarily concerned with management of riparian areas, a

¹ The excerpt is from the minutes of a rulemaking hearing held on February 8, 1988.

Board of Forestry subcommittee agreed that some unsprayed areas would be provided around dwellings, with a specific recommendation to be discussed later. However, without further discussion of the matter, the board adopted new rules which included a provision that a 500 foot unsprayed area, the distance used for 2,4,5-T and Silvex, be left around dwellings when applying chemicals. Those rules went into effect August 1, 1987.”

- **1987.** On August 14, 1987, ODF received a petition from the Oregon Forest Industries Council and the Oregon Small Woodlands Association indicating that the 500-foot unsprayed area around inhabited dwellings constituted an undue hardship for forest landowners who used herbicides to manage unwanted vegetation. At its September 9, 1987 meeting the Board of Forestry adopted temporary revisions to OAR 629-24-203, breaking the rule into separate sections, removing the reference to a 500-foot unsprayed strip, and adding the following text for section (4) of the rules: “When applying herbicides by aircraft near inhabited dwellings, the operator shall leave an unsprayed strip of at least one swath width adjacent to such dwellings.” The rule change took effect on September 14, 1987. As a temporary rule, the change was scheduled to lapse as of March 12, 1988.
- **1988.** On March 9, 1988, the Board of Forestry determined that the one swath width distance for an unsprayed strip adjacent to inhabited dwellings was appropriate. The Board accepted ODF’s recommendation that a swath width be described in rule as 60 feet. Accordingly, the Board adopted permanent rule revisions to OAR 629-24-203, breaking the rule into separate sections, removing the reference to a 500 foot unsprayed strip, and adding the following text for section (4) of the rules: “When applying herbicides by aircraft near inhabited dwellings, the operator shall leave an unsprayed strip of at least 60 feet adjacent to such dwellings.”

Two ODF memoranda dated July 21, 1988 and July 26, 1988, respectively, indicate that the Board intended there would be no chemical residue in the buffer zone near inhabited dwellings. However, Department rule guidance dated March 6, 1995 indicated the intent of the rule was that the dwelling would be protected by requiring an application setback (buffer zone), and that incidental drift into the zone would be acceptable as long as no direct application took place in that area. The guidance also noted that the buffer zone was to be measured in horizontal distance rather than along the slope.

- **1990.** ODF produced a report titled “A Proposal Regarding the Administration of Chemical Rules under the Oregon Forest Practices Act (dated February 8, 1990).” The report noted that regulations for forestry pesticide applications were more restrictive than for other land uses and that this appeared to be inequitable for forest landowners. The report also noted that the Board of Forestry was being asked by other interests to further restrict pesticide use on forestland. The report examined related legal responsibilities and authorities and recommended a formal review of the forest practice chemical rules, with a further recommendation that the Board rely in greater measure on pesticide product label requirements (administered by the U.S. Environmental Protection Agency and ODA) for protection of human health and property. A legal opinion obtained for the report indicated

that the Oregon Forest Practices Act probably did not authorize the Board of Forestry adopt regulations to protect such facilities as organic farms or dwellings.

- **1990 (March).** The Board of Forestry reviewed citizen concerns regarding the forest practice chemical rules. Based on public comment and the ODF staff report, the Board directed the State Forester to:
 - Enter into discussions with the ODA Director to develop a cooperative agreement that would clarify the respective roles of the two agencies.
 - Conduct a study of current forest practice chemical application rules to determine consistency with the terms of the cooperative agreement (when completed) and other applicable pesticide control laws. Note: The Board subsequently determined that a legislatively mandated review of the forest practice water classification and protection system took immediate priority, so the study of the forest practice chemical rules was delayed.
- **1994.** After a lengthy review process, the Board of Forestry adopted revised water classification and protection rules, now called the Water Protection Rules and numbered as OAR 629-635 through 629-660. To account for the water classification changes, the Board also revised and reorganized OAR 629-24-203 in the chemical rules. The changes did not alter the 1988 requirement for an unsprayed strip within 60 feet of inhabited dwellings. However, the requirement was moved from OAR 629-24-203(4) to the new section (6). During this rulemaking process, the Board of Forestry and ODF committed to a full review of the chemical rules in the near future.
- **1995.** The Oregon Board of Forestry and ODA completed a memorandum of agreement noting that ODF and ODA would cooperate in forest pesticide regulation based on each agency's legislative charge. The memorandum indicates that ODA would take primacy in administration of federal pesticide regulations, pesticide product label requirements, and Oregon's Pesticide Control Law. ODF would work under that regulatory umbrella, taking primacy for administration of the forest practice rules, e.g., regulations relating to notification of ODF or to application setbacks along fish use streams on forestland. The agreement also directs that the two agencies will cooperate closely in administering pesticide regulations on forestland.
- **1995-1996:** As directed by the Board of Forestry, ODF led a review of the forest practice chemical rules. The department conducted the review with the assistance of an advisory committee (see Attachment 1 for committee member names and affiliations). To guide the process, the Board of Forestry developed objectives and guiding principles, which included the following concepts:
 - Pesticide regulations should be consistent across land uses.
 - The Oregon Board of Forestry did not have statutory authority through the Oregon Forest Practices Act to impose measures for the protection of human life, health, or property from damage related to chemical applications.

- The Board recognized that protection of human life, health, and property was important, but that such protection was more properly provided by the pesticide product label requirements and by Oregon's Pesticide Control Law (ORS 634).
- **1996 (June).** An ODF staff report to the Board of Forestry reiterated the interpretation that:
 - The Board of Forestry did not have the authority to adopt rules to protect dwellings; and
 - Such protection was already adequately provided by regulations administered by the Oregon Department of Agriculture.
- **1997.** Based on the 1996-1997 review, the Board of Forestry revised the forest practice chemical rules; the changes took effect January 1, 1997. The rules were renumbered from OAR 629-24 to OAR 629-0620 as part of an overall renumbering of the forest practice rules. Based on the Board of Forestry's guiding principles (see the bulleted item above for 1995-1996), the requirement for a no-herbicide application buffer around inhabited dwellings was removed. In OAR 629-620-0000(5), the Board noted that forest pesticide applications were subject to all the following, in addition to the forest practice rules:
 - Pesticide control laws, administered by ODA
 - Hazardous waste laws, administered by the Oregon Department of Environmental Quality
 - Hazard communication rules, administered by the Oregon Occupational Safety and Health Division
 - Water use laws administered by the Oregon Water Resources Department
 - Maximum contaminant levels in drinking water established by the Oregon Health Division

Attachment 1
Public Advisory Committee for the 1995-1996 Oregon Forest Practices Program Chemical
Rule Review Project

[Committee member names and associations are shown starting on the next page]

**Oregon Forest Practices Program
Chemical Rule Review Project**

Public Advisory Committee

(Names and information subject to change)

Dave Anderson, Water Quality Manager
City of The Dalles
6780 Reservoir Road
The Dalles, Oregon 97048
(541) 298-1242

Roger Beyer, representing Oregon Small Woodlands
Association (OSWA)
Beyer Tree Farm
39486 S. Cooper Road
Molalla, Oregon 97038
(503) 829-8646

Tom Gravon
Coast Range Association
P.O. Box 406
Seal Rock, Oregon 97376
(541) 265-8105 (CRA)
(541) 563-4510 (Tom)

Norma Grier, Executive Director
Northwest Coalition for Alternatives to
Pesticides (NCAP)
P.O. Box 1393
Eugene, Oregon 97440
(541) 344-5044

Dr. George Ice, Research Forest Hydrologist
National Council of the Paper Industry for Air and
Stream Improvement (NCASI)
P.O. Box 458
Corvallis, Oregon 97339
(541) 752-8801

Bob Noelle, Water Quality Superintendent
Medford Water Commission
411 W. 8th Street
Medford, Oregon 97501
(541) 857-4401

Norm Parker, President
Western Helicopter Services, Inc.
P.O. Box 369
Newberg, Oregon 97132
(503) 538-9469

Brian Schlaefli, Unit Forester
Western Oregon Area
Boise Cascade Corporation
P.O. Box 100
Medford, Oregon 97501
(541) 776-6685

Anita Ward, Coordinator
Friends of the Greensprings
15097 Highway 66
Ashland, Oregon 97520
(541) 488-5022

Terry Witt, Executive Director
Oregonians for Food and Shelter
567 Union Street NE
Salem, Oregon 97301
(503) 370-8092

Project Coordinator

David Morman, Operations Unit Manager
Forest Practices Program
Oregon Department of Forestry
2600 State Street
Salem, Oregon 97310
(503) 945-7482
Fax: (503) 945-7490
Internet: dave.a.morman@state.or.us

Clerical Support:

Nada Austin
(503) 945-7470

JoDana Bright Taylor
(503) 945-7472

State Agency Advisors

Alan Brog, Forest Practices Forester
Oregon Department of Forestry
763 NW Forestry Road
Toledo, Oregon 97391
(541) 336-2273

Dave Overhulser, Forest Entomologist
Oregon Department of Forestry
Salem
(503) 945-7396

Wally Rutledge, Forestry Assistance Program
Director
Oregon Department of Forestry
Salem
(503) 945-7392

Bill Voelker, State Lands Program Silviculturist
Oregon Department of Forestry
Salem
(503) 945-7369

Dale Mitchell, Pesticide Investigations Supervisor
Oregon Department of Agriculture
635 Capitol Street NE
Salem, Oregon 97310-0110
(503) 986-4635

Richard Gates, Laboratory Division Administrator
Oregon Department of Environmental Quality
1712 SW 11th Avenue
Portland, Oregon 97201
(503) 229-5983

Jeff Boechler, Forest Practices Coordinator
Oregon Department of Fish and Wildlife
2501 SW 1st Avenue
Portland, Oregon 97201
(503) 229-6967, ext. 469

Dave Leland, Drinking Water Program Manager
Oregon Health Division
800 NE Oregon, Suite 950
Portland, Oregon 97232
(503) 731-4010

Michael Heumann, Epidemiologist
Oregon Occupational Health Epidemiology Program
800 NE Oregon Street #21, Suite 730
Portland, Oregon 97232
(503) 731-4025

Dr. Ian Tinsley, Bioanalytical Laboratory Director
Oregon State University
Agricultural Chemistry Department
ALS 107
Corvallis, Oregon 97331-6502
(541) 737-1789

Dr. Michael Newton
Oregon State University
Forest Research Laboratory
Peavy Hall
Corvallis, Oregon 97331
(541) 737-6076

Dr. Nancy Kerkvliet, Extension Toxicology
Specialist
Oregon State University
Agricultural Chemistry Extension
Wenegar Hall 333
Corvallis, Oregon 97330
(541) 737-4387