

ODA Pesticides Program - capacity & authority related to adopting limitations on pesticide products

Oregon Department of Agriculture's Pesticides program has a biennial budget of \$11.3 million (19-21 budget) and 29.29 FTE employees.

ODA Pesticides Program staffing:

- Administrator* & policy specialist (shared with several other programs)
- 2 Program Managers* (Investigations & enforcement; licensing, certification, training & registrations)
- Office Manager (shared)
- 3 Support Staff*
- 14 Investigators, case reviewers* & lead investigator
- 5 Licensing, certification, & registration specialists*
- Worker Protection Standard educator position (in process of filling position)
- Pesticide Analytical & Response Center (PARC) Coordinator*
- Citizen advocate
- Pesticide Stewardship Program (PSP) Coordinator*

* = ODA has made these resources available, along with their other duties, to compile and present data, research other jurisdictions' efforts related to chlorpyrifos, and identify potential mitigation measures.

How the program is funded:

- \$9 million Other funds budget (registration and licensing revenue)
- \$1.3 million Federal funds budget (cooperative agreements with EPA)
- \$0.96 million General funds budget (these are specifically for PSP and are spent at a 1:1 ratio with Other funds)
- The budget supports the following business functions at ODA:
 - Product registration
 - Licensing and certification
 - Water quality sampling and data analysis
 - Education and Outreach
 - Pollinator Protection and ESA Efforts
 - Enforcement and compliance assistance
 - Laboratory analysis of samples
 - Coordinating Oregon's response to pesticide concerns through PARC
- The budget also supports the following fund transfers to other agencies and organizations:
 - \$130K/year to OSU for health and safety education and outreach
 - Agreements with OHA and PARC experts from OSU and OHSU
 - \$100K per year to 211info
 - \$110K/year to OSU for minor crop research
 - \$580K/year to DEQ for water quality sample analysis

How does the program typically handle requests for toxicological evaluations?

- Intergovernmental agreements with OSU and OHSU

How do ODA's pesticide regulation resources compare with our neighbors to the north and south?

- California Department of Pesticide Regulation has an annual budget of approximately \$94 million, for FY 2016-2017, and has approximately 366 employees. The Department's major business functions are as follows:
 - Product registration
 - Human health and environmental assessments
 - Licensing and certification
 - Pesticide use reporting
 - Monitoring/surveillance (including air, groundwater, and surface water monitoring)
 - Mitigation of human health risks (includes Worker Protection Standards implementation)
 - Mitigation of environmental hazards
 - Pest management
 - Enforcement and compliance
 - Product compliance and mill assessment
- Washington State Department of Agriculture's Pesticide program has a biennial budget of approximately \$14.1 million and approximately 50 employees. Funds support the following business functions:
 - Product registration
 - Licensing and certification
 - Pesticide collection events
 - Enforcement and compliance
 - Worker Protection Standards implementation

What are ODA's authorities?

ODA is the State Lead Agency to implement the federal Fungicide, Insecticide and Rodenticide Act (FIFRA) (7 USC § 136 et seq.; 40 CFR Parts 150-180). ORS 634.005; letter from Gov. Straub in 1975; also recognized by EPA as state lead agency.

The US EPA regulates pesticide use, sale and distribution under FIFRA and that is the foundation that we build upon in our work.

- A key element of FIFRA is that all products must obtain EPA approval prior to manufacture, transport, or sale within the US.
- EPA will only register a pesticide product if EPA determines that the product will perform its intended function without causing unreasonable adverse effects on human health or the environment.

- FIFRA provides a “floor,” not a “ceiling”: A state may regulate pesticide use in a manner that is more protective, but not less protective, than EPA’s regulations under FIFRA.

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Key authorities for ODA in state law:

634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agriculture may adopt rules to carry out the purposes and intent of this chapter, including but not limited to rules that:

(1) Establish and maintain a program required for an individual to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to assist a pesticide applicator in the spraying or other application of pesticides by aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this chapter.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under ORS 634.106.

(4) Establish and maintain classifications of pesticides and devices that are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

(5) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in ORS 634.122 (5).

(6) Designate the conditions under which pesticide operators that are or that employ pesticide applicators to spray or otherwise apply pesticides by aircraft may reduce, suspend or terminate the liability insurance required by ORS 634.116, and the periods of time for a reduction, suspension or termination. In this regard, the department may take into consideration:

- (a) Changes in climate or seasons.
- (b) Periods when certain crops are or have been harvested.
- (c) Restricted or limited use of various types or classes of pesticides.
- (d) Possibilities of injury or death to humans and loss or damage to real or personal property.

(7) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by ORS 634.116.

(8) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(9) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to individuals engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultant or applicator and establish charges therefor.

(10) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this chapter. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, to be charged to the department.

(11) Establish registration fees for pesticide brands and formulae or formulations under those pesticide brands.

(12) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(13) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(14) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

634.016 Registration of pesticides and application devices; fee; contents of application; restriction on pesticide distribution and use; exemptions. (1) Every pesticide, including each formula or formulation, manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the State Department of Agriculture.

(2) Every device manufactured, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trademark of the pesticide.

(d) A specimen or facsimile of the label of each pesticide, and each formula or formulation, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each pesticide and each formula or formulation. The registration fee may not exceed \$400 for each such pesticide, or each formula or formulation.

(6) The department, at the time of application for registration of any pesticide or after a declaration of a ground water management area under ORS 468B.180 may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide that is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the federal government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, that might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the federal government and of any advisory committee or group established under ORS 634.306 (10).

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the federal government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in ORS 634.322.

634.322 Enforcement powers of department. In carrying out and enforcing the provisions of this chapter, the State Department of Agriculture is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this chapter.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this chapter.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this chapter, to issue and serve a written “stop sale, use or removal” order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this chapter have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this chapter.

(5) In accordance with the provisions of ORS chapter 183, to amend, suspend or revoke the registration of a pesticide for violation of any of the provisions of this chapter.

(6) To establish limitations and procedures deemed necessary and proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

(d) Methods of sale, including prescription or permit requirements; or

(e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in ORS 634.306 (4), and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the federal government, or any of its agencies, for the purpose of enforcement of the provisions of this chapter or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this chapter.

(10)(a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

- (A) The particular ester allowed;
- (B) The boundaries of the area in which it may be used; and
- (C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this chapter. [1973 c.341 §33; 1979 c.232 §3]

634.372. A person may not:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or willfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this chapter.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this chapter.

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee. This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides that are not specifically authorized by such license.

(9) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license. The operator also may not engage in a class of pesticide application business that is not specifically authorized by license issued by the State Department of Agriculture. The operator also may not employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(10) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this chapter.

(11) Act as, or purport to be, a pesticide dealer or advertise as such without first obtaining and maintaining a pesticide dealer's license.

(12) Act as, or purport to be, a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(13) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by the person without first obtaining and maintaining a private applicator certificate.

(14) As a person described in ORS 634.106 (5), use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(15) Deliver, distribute, sell or offer for sale any pesticide that is misbranded.

(16) Formulate, deliver, distribute, sell or offer for sale any pesticide that is adulterated.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide that has not been registered as required by ORS 634.016.

(18) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride that is not distinctly colored.

(19) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(20) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made. The person also may not make such application contrary to the conditions or terms of the permit so issued.

(21) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in ORS 634.322 (10).

(22) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in ORS 634.322 (3).

634.900 Penalty for certain violations; amount. **(1) In addition to any other liability or penalty provided by law, the Director of Agriculture may impose a civil penalty on a person for violation of any of the provisions of this chapter relating to pesticide application, sale or labeling. The civil penalty for a first violation shall be not more than \$2,000. For a subsequent violation, the director may impose a civil penalty of not more than \$4,000.**

(2) Notwithstanding subsection (1) of this section, if the violation of a provision relating to pesticide application, sale or labeling results from gross negligence or willful misconduct, the civil penalty for a first or subsequent violation may not exceed \$10,000.

(3) A civil penalty may not be imposed under this section for violations other than those involving pesticide application, sale or labeling violation under this chapter.

561.190 Rules and regulations; publication; effect of violation. **The State Department of Agriculture is authorized and directed to make any and all rules and regulations necessary for**

the administration or enforcement of any law with the administration or enforcement of which the department is charged, and not inconsistent with the authority with which the department is vested or with any such law. Such rules and regulations shall be compiled and printed in pamphlet form for distribution. **The violation of any rule or regulation made by the department pursuant to this section shall be a violation of the law to which such rule or regulation applies and shall be punishable in the manner provided for violations of such law.**

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