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Rules governing weedkiller linked to Sisters tree deaths delayed

Last-minute request from pharmaceutical company surprised state agriculture officials



Dozens of ponderosa trees that are dead or dying line U.S. Highway 20 just west of Sisters on Wednesday, May 2, 2018. The Oregon Department of Transportation applied herbicide to kill brush along the highway from 2013-2015 and accidentally killed the trees in the process. (Ryan Brennecke/Bulletin file photo)

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A statewide rule that would limit the use of a weedkiller linked to thousands of dead trees outside Sisters won't be in place as early as state agriculture officials had hoped, following a surprise last-minute request from the company that produces it.

“This really hit everyone out of the blue,” said Rose Kachadoorian, pesticides program manager for the Oregon Department of Agriculture. “Including us.”

To comment

Comments may be emailed to acp@oda.state.or.us. They may also be mailed to:

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The state agriculture agency announced Tuesday it will reopen its public comment period on a proposed rule that reduces where and when aminocyclopyrachlor, the active ingredient in the herbicide Perspective, may be used. The comment period will close April 5.

The decision was made in response to a request to delay implementation from Bayer, the pharmaceutical company that produces Perspective, two days before the new rule was set to go into place, Kachadoorian said.

In a letter dated March 20, Bayer called on ODA to postpone the rule for 90 days, in order to give the pharmaceutical company “sufficient time to provide additional facts, data and arguments” into the public record.

“Bayer anticipates that if ODA takes into account the full record ... ODA will withdraw the proposed permanent rule or, at a minimum, re-purpose it with a significantly revised scope,” the letter reads.

The letter cites an obscure portion of Oregon statute that requires agencies to delay implementing rules for between 21 and 90 days if an interested party requests it under specific circumstances. Kachadoorian said the statute is designed to keep citizens from being blindsided by a new rule.

Kachadoorian noted that the earliest the new rule could now take effect is mid-April.

“We were pretty much set to file the final paperwork,” she said.

The decision comes on the same day a temporary ban on the use of any herbicide containing aminocyclopyrachlor on right-of-ways along Oregon roads was slated to expire. That ban was put in place in September. Until ODA finalizes its new rules, Kachadoorian said local and state agencies will be able to freely use the compound, which has been linked to dead ponderosa pines in Central Oregon and beyond, as long as they follow the directions on the label.

In an email, Lisa Arkin, executive director of the Eugene-based nonprofit Beyond Toxics, criticized the delay as an unnecessary concession that makes it easier to use the controversial compound in the short-term.

Arkin wrote that she thought the timing of the letter was a deliberate attempt to delay the rule and allow Oregonians to keep using the chemical.

“This huge multi-national corporation has a team of corporate lawyers to locate these arcane laws,” Arkin wrote.

She added that spring is when herbicides like Perspective are often applied, and spring rains can carry residue into water sources.

The compound, commonly abbreviated as ACP, first gained notoriety in Central Oregon after contractors selected by the Oregon Department of Transportation chose Perspective in 2012 for a multiyear project to kill weeds along a 12-mile section of U.S. Highway 20, northwest of Sisters.

A couple years later, employees from the U.S. Forest Service noticed browning needles and other signs of declining health among ponderosa pines and other trees in the area. Testing showed that ACP was present in the dead and dying trees. Subsequent reviews by the Forest Service confirmed that the problem was more severe than originally believed, and the agency announced plans in February to remove about 2,100 ponderosa pines in the area.

Separately, ODA last year began a new investigation of ACP's impact statewide, in part because of the compound's effect in Sisters and other, smaller sites in Central Oregon. After the agency introduced its temporary ban last fall, it led several public meetings in Central Oregon and elsewhere as part of its process to devise a new, permanent rule. Kachadoorian said the agency tried to strike a balance between environmental groups that wanted the compound banned statewide, and local road departments that were concerned about not being able to kill roadside weeds at all.

"We felt we were very responsive," she said.

The agency's proposed permanent rule, which was introduced in January, would prohibit the use of ACP in areas where the roots of desirable trees and shrubs may be present, in addition to preventing it from being used in wildlife management areas, sage grouse habitat and other sensitive natural habitats.

In its letter to ODA, Bayer called for the agency to make records from its rule-making process public and raised questions about "potential inaccuracies" in the agency's investigations of the chemical, along with other issues. Representatives from the pharmaceutical company didn't respond to requests for comment.

Kachadoorian stressed that the agency worked with Bayer throughout the process, and was surprised by the letter. She added that the timetable for implementing the rule would likely be closer to 21 days than 90 days, but encouraged other stakeholders to comment before April 5.

"Specifically, we're interested in what Oregonians have to say," Kachadoorian said. "It's their environment."

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