

# Increased DEQ pesticide authority worries farm groups

A potential expansion of the Oregon Department of Environmental Quality's authority over pesticide applications to apply to dry waterways has farm groups worried.

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Agriculture and forestry groups in Oregon worry the state's Department of Environmental Quality is planning to significantly expand its authority over pesticides.

Under the policy being considered by DEQ, the agency would regulate pesticide spraying over state surface waters "whether wet or dry at the time," according to an early draft.

It's unclear how broadly dry waterways would be defined, but the concern is that areas where water pools in winter — such as wet fields in the Willamette Valley — would be subject to regulation during summer, critics argue.

"DEQ would be setting itself up to be the most aggressive regulator of farm and forestry practices in the U.S.," said Mary Anne Cooper, public policy counsel for the Oregon Farm Bureau.

Regulation of pesticides over waterways by DEQ initially became an issue in 2009, when the 6th U.S. Circuit Court of Appeals overturned a federal policy exempting pesticides from regulation under the Clean Water Act.

The U.S. Environmental Protection Agency delegates its Clean Water Act authority to certain states, including Oregon, which developed a "general permit" for pesticide discharges in 2011.

This original policy wasn't a problem for farmers and foresters, though, because it largely just required them to follow the EPA pesticide label and general "integrated pest management" standards, said Scott Dahlman, policy director for the Oregonians for Food and Shelter agribusiness group.

"It formalized what these guys are already doing," Dahlman said,

"Most people were covered but didn't know it," added Cooper.

That original general permit expired in 2016, which prompted DEQ to begin devising an updated version.

The Oregon Farm Bureau and Oregonians for Food and Shelter are concerned by proposed drafts they've discussed with DEQ, which indicate dry waterways would be defined broadly, requiring many more farmers to register with the agency and submit pesticide management plans.

“We’re seeing no justification as to why this is necessary,” said Dahlman.

Even if the DEQ wouldn’t enforce the general permit as applying to every dry puddle, the program would fall under the federal Clean Water Act, which allows for private litigation over alleged violations, Cooper said.

“There would be citizen suit enforcement,” she said.

If the DEQ seriously extended its authority over pesticide spraying, that would also effectively usurp the Oregon Department of Agriculture’s jurisdiction under the agricultural water quality program, Cooper said.

Growers have been encouraged to advise ODA on water quality plans and voluntarily improve water conditions on their properties, which would be undermined by DEQ’s planned policy, she said. “That’s a big betrayal of trust for a lot of farmers.”

Ron Doughten, water quality permitting manager for DEQ, said the agency is in the process of addressing comments about the general permit.

The agency is still analyzing which pesticide applications would be considered to come from “point sources” — opening them to Clean Water Act regulation — and which waters would be covered by the permit, whether wet or dry, Doughten said.

“How and where that applies is still a part of the discussion,” he said. “We’re far from anything being settled.”

The agency plans to release its most recent draft of the permit for public comment in late winter or early spring, then finalize the policy within several weeks, Doughten said.

Beyond Toxics, an environmental group, believes Oregon’s oversight of pesticide spraying should be strengthened, said Lisa Arkin, its executive director.

“Pesticides are persistent in the environment and should be regulated as a point source pollution problem,” she said.

In meetings with the DEQ, however, the organization did not discuss regulating dry waterways as broadly as critics worry about, Arkin said. “We were talking about small streams and irrigation ditches. We were not talking about depressions in a field,” she said.

Even so, farmers should be extremely cautious about potentially contaminating well water with pesticides, some of which can persist in water for up to five years, Arkin said.

“There is so much evidence of contamination of well water in agricultural areas,” she said.

Farmers typically buy pesticides from large suppliers, or are serviced by specialized applicators, so it wouldn’t be problematic to inform them of new general permit requirements, Arkin said. “There are many ways people could be alerted to that.”