



## **HB 3171— Relating to Pesticides**

*Testimony to House Committee on Energy and the Environment*

*21 March 2013, HR - D*

Honorable Committee Members:

Oregonians for Food & Shelter (OFS) is a grassroots coalition of farmers, foresters, and other technology users focused on natural resource issues involving pesticides, fertilizer, and biotechnology. We are writing you today in regards to HB 3171 which would severely weaken the state pesticide preemption law (ORS 634.055 - 634.065). The pesticide preemption statute currently ensures that pesticides are only regulated at the state and federal levels, preempting additional regulations by local municipalities. This would give cities and counties the ability to regulate these tools, opening the Pandora's Box of new regulations. We oppose HB 3171 because it places an exemption into the statute that is broad enough to render the current law completely ineffective and would repeal the intent of preemption without actually repealing the statute.

### *Pesticide Preemption is Good Public Policy*

Oregon's current statute was passed in the 1996 legislative session. Since then 41 other states have passed similar legislation, and not a single one of those have weakened their preemption statute. Why? Because pesticide preemption has shown itself to be effective public policy. County and municipal governments simply do not have the proper resources to make an informed scientific decision on the regulation of pesticides.

When evaluating regulatory preemption, it often helps to look at examples of other products that have a similar regulatory structure. Let's look at an analogy which is less emotionally charged than the pesticides debate. A group of substances routinely found in municipal water are pharmaceuticals. Currently, local governments do not have the authority to pass laws which govern regulated products, such as prescription drugs. Few would argue that cities and townships have the scientific expertise or resources needed to make required medical and legal decisions in a sound manner.

The authority to approve and regulate drugs in the U.S. rests solely with the Federal Drug Administration (FDA). Does the fact that a city or county government cannot approve or ban a medicine for sale and use by its citizens have any negative impact on: whether a hospital purchases it or not? Whether a drug store stocks it or not? Whether a physician prescribes it or not? Or whether an ill person uses it or not? The answer is obviously "NO." Each party's right of choice is protected. However, if a local government was given the authority to control drugs, the right to choose an available remedy could be taken away. Individuals would not have equal access to all approved and legal medicines which may be of benefit to them. Its use could be legal on one side of the street, but illegal on the other, or in the next city or next county.

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The federal laws which are passed are supported by enormous scientific data bases and a review process which cost millions of dollars. How can we expect local governments to make rational regulatory decisions without providing similar resources? HB 3171 would be asking local governments to take on this task, and the results could be devastating.

#### *HB 3171 is a Solution in Search of a Problem*

HB 3171 would allow local government to regulate pesticides “for the purpose of preventing or controlling the presence of pesticides in surface and groundwater”. This presumes that counties and cities need the ability to regulate pesticides to protect potable sources of water because there is a widespread instance of pesticides showing up in water sources at unacceptable levels, and a lack of regulation on those products. The problem with this presumption is that it simply isn’t true.

The Eugene Water and Electric Board (EWEB) provides water and electricity to the City of Eugene, from the McKenzie River. In the spring of 2002, EWEB initiated a pesticide monitoring program as part of their Drinking Water Source Protection Plan. From 2002 through 2010, twice yearly samples were taken from various sites in the lower McKenzie River basin. This watershed is a good example because it has a variety of uses contributing to water quality—agricultural, forestry, and urban landscapes can all be found on the McKenzie. Some of the EWEB samples were taken right at the EWEB drinking water intake. Over the entire eight years of the study, only nine compounds (one being caffeine) were detected and almost all of them were at levels below the laboratory reporting level and had to simply be estimated. The highest concentrations of any compound were less than 0.02 parts per billion (ppb). These levels are thousands of times lower than the drinking water benchmarks for health concerns leading EWEB to conclude that, “Human-health benchmark concentrations were consistently several orders of magnitude higher than detected concentrations at the intake, indicating that pesticide concentrations present a negligible threat to human health.<sup>1</sup>”

Other recent studies in Oregon have also shown that pesticides in drinking water sources are not a widespread concern. The Environmental Protection Agency (EPA), along with several Oregon state agencies, are currently performing a pesticide exposure investigation in the US Hwy 36 corridor (Blachly/Triangle Lake). In the fall of 2011 as part of that investigation, area participants’ drinking waters were tested for 125 chemicals and pesticides. Out of all of that testing only five detections emerged from three compounds, and not a single detection approached the health concern benchmarks.

Under current law, if a concern does arise in a municipalities’ drinking water and they think more regulation is needed, they have a remedy. Under ORS 634.065, “...the State Department of Agriculture shall consider any concern raised by a city, town, county or other political subdivision of the state regarding the regulation of pesticides.” This means that ODA must consider local concerns when making pesticide regulations.

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<sup>1</sup> *Reconnaissance of Land-Use Sources of Pesticides in Drinking Water, McKenzie River Basin, Oregon* <http://pubs.usgs.gov/sir/2012/5091/pdf/sir20125091.pdf>



### *Local Pesticide Regulations are Unworkable*

Pesticides are regulated at the federal level by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under FIFRA the “label is the law”. This means that a pesticide label will inform a user when and under what conditions pesticides can be applied, mixed, stored, loaded or used, fields can be reentered after application, and crops can be harvested. Pesticide labels are approved by the EPA only after a rigorous regulatory review, and must reflect determinations by EPA about use. This is highly technical and the EPA has an entire division devoted to registering pesticides.

Under ORS 634.016, any pesticide that is sold in Oregon must also register with ODA. At this time ODA can require additional restrictions, or refuse to register a product for use in Oregon. During the registration process the EPA approved label is reviewed and if any additional restrictions are required by ODA, they require the manufacturer to amend the label to reflect those restrictions before the product is sold in our state.

Under the FIFRA and the Oregon pesticide statute there is no mechanism for individual municipalities to require a manufacturer to change the label. So, if local governments are given authority to additionally regulate pesticides, they will have no authority to require manufacturers to change the pesticide label to reflect those additional use restrictions. This can lead to a scenario in which a user who is following the pesticide label (the law for use under federal and state law) could unknowingly be in violation of a local law. This is simply not a fair system for users.

Lastly, you have the issue of users who cross jurisdictional boundaries. It is very common for farmers or foresters to have land in multiple counties or cities. Often, a single field can straddle county boundaries. Adding a restriction in one county that is not in place in a neighboring county, creates confusion for users, and can greatly affect their ability to control pests. It also puts growers completely in a regulated jurisdiction at a competitive disadvantage against other growers in Oregon and Nationally.

HB 3171 would allow for a potential of 36 counties and over 400 cities creating new pesticide restrictions. Setting up a new patchwork of regulations across Oregon, especially when there is no demonstrated need, would be a nightmare for users, distributors, manufacturers, and regulators. Pesticide preemption is good public policy and adoption across the US by 42 states testifies to its effectiveness. Please oppose HB 3171 and keep regulation of pesticides with the proper regulatory authorities at the state and federal levels.

Thank you for your consideration.

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Executive Director

