

To: Chair Dembrow and Esteemed Members of the Senate Environment and Natural Resources Committee

Date: March 22, 2017

Subject: SB 500 Report of Loss

My name is Lisa Arkin. I am executive director of a grassroots organization, Beyond Toxics that has long worked in rural communities and served rural Oregonians. By working with rural Oregonians from many different counties, we've come to better understand the barriers they face that are unique to rural living. Thank you for this opportunity to discuss one of these issues – the limitations on filing a little heard of form called the Report of Loss.

Oregon has allowed an outdated, unfair and mostly obscure rule in statute - ORS 634.172. This rule gives a person who has incurred damages from a pesticide application only 60 days from the date of injury or knowledge of the injury to file a form called the Report of Loss. There is no alternative in the law. If this form is not filed, the owner of a property cannot bring a claim forward. This is true for vineyard owners who have grape plants damaged by herbicide drift from other nearby farms or timber operations. This is true for someone whose property is damaged or a family member injured by a pest treatment in their own home. In the case of rural residents who experience a pesticide exposure, the report of loss is required to be filed in 60 days, even while citizens wait for a state regulatory agency to finish their investigation, which often takes many weeks or even months.

Other states do not place this barrier in front of citizens with a legitimate loss. Neither Washington nor Idaho has any such language in their pesticide statutes requiring a short time frame for filing a form.

In the case of the multiple pesticide poisonings that occurred in Gold Beach, the residents there had to wait six months for state officials to complete their investigation. The Gold Beach case is a good example of why Oregonians must work closely with state agencies to obtain the necessary information to fill out the form. The Department of Agriculture stated in a press release how vexing and difficult it was to determine who was spraying and what was being sprayed.

Those facts are exactly what is needed to fill out the Report of Loss. A person must identify the chemicals that were used, the person who sprayed the chemicals, the land owner, contact information and addresses, the history of pesticide use on the property, as well as describe the suspected cause or source of the pesticide damage.

Furthermore within those 60 days, the person who is filing the form must also send or hand deliver a true copy to the land owner and the pesticide applicator.

The Report of Loss is a form you must file with great caution. If the wrong person is named as causing the harm or other assertions are made about a spray incident, a person could find themselves being sued for libel or defamation. As a result, a person doesn't want to rush into filing this form without sufficient facts at hand.

It is entirely understandable and reasonable that the Department of Agriculture needs this form to be provided in a timely fashion to complete their investigation. As proposed, SB 500 recognizes and retains the importance of filing the Report of Loss to inform and initiate an investigation by the State. The issue that SB 500 would solve is unfair complications that arise due to the 60-day limitation. It is a daunting to gather all the information, properly identify who is responsible, fill out the form, make and deliver the true copies to three different entities – all within 60 days. If any additional time is needed, or a person fails to fill out and deliver the forms correctly, the injured party is precluded from bringing forward a legitimate claim. End of story. No extenuating circumstances allowed.

SB 500 will bring Oregon into alignment with other Northwest states with similar timber and agricultural uses of pesticides. Those states have uncoupled the timing of filing a Report of Loss form from the right to bring forward a claim. Oregon should do the same.

Attached to my testimony is a copy of the Department of Agriculture's current Report of Loss form and filing instructions. I hope this helps you understand the detailed information required to complete the form.

We urge you to support SB 500 and recommend its passage to your colleagues. Thank you for your attention to this matter.

Lisa Arkin, Executive Director
Beyond Toxics
1192 Lawrence St.
Eugene, OR 97401

Report of Alleged Loss Due to Pesticides Form

Oregon Department of Agriculture
Pesticides Division
(503) 986-4635



Form date 3/17

Who should file a “report of loss” form?

To claim a loss from the use of a pesticide by a commercial pesticide operator, you must file a “report of loss” form with the Department of Agriculture. According to the Liability Claims Procedure in Oregon Revised Statutes (ORS 634.172), filing a “report of loss” protects your right to pursue civil action against the commercial pesticide operator. The word “pesticide” includes fungicides, herbicides, insecticides, defoliants, desiccants and plant growth regulators. A “commercial pesticide operator” means someone who applies pesticides for hire.

You may also file a “report of loss” to claim a loss stemming from the use of a pesticide by a non-commercial operator, which includes any person—other than a commercial operator—who uses a pesticide.

When to file a “report of loss”

You must file the “report of loss” within 60 days of the pesticide application or your discovery of the loss. If the loss deals with a growing crop, you must file before 50% of the affected crop is harvested.

Investigations

The Oregon Department of Agriculture may conduct an investigation in response to a “report of loss”. Although the Department will record all “reports of loss”, limited resources restrict investigations to certain types of situations. If the Department conducts a “report of loss” investigation, investigators will seek to determine the extent and nature of an alleged loss. Investigations will not determine the source of the damage, the person who may have caused the damage, or the extent of the financial damage. Furthermore, the Department cannot require an operator to pay for a claimed loss.

Enforcement action

A “report of loss” investigation will not, of itself, result in the Department taking enforcement action against a commercial pesticide operator. However, a “report of loss” investigation may result in a “follow-up” investigation to determine the lawfulness of a specific pesticide application. This, in turn, could lead to an enforcement action by the Department against the commercial pesticide operator.

Legal assistance

The Oregon Department of Agriculture cannot act as your legal counsel. If you have questions concerning your legal rights, you should contact an attorney.

Important:

ORS 634.172 requires the claimant to send or personally deliver a true copy of the completed Report of Loss form to the operator who did the application and to the Landowner (renter) for whom the application was done.

Additional information

If you have questions regarding the “report of loss,” including filling out appropriate forms, contact:
Oregon Department of Agriculture
Pesticides Program
635 Capitol St. NE, Salem OR 97301-2532
(Phone: 503-986-4635)

RETAIN THIS SHEET FOR YOUR INFORMATION

Instructions for Completing a Report of Loss Form

Lack of complete critical information may cause ODA to return the Report of Loss form for further information.

1. & 2. Date of claimed pesticide application; Date of Loss (or discovery of damage): Month, day and year.
3. Pesticide product name: Provide as much information as possible to identify the pesticide or pesticides used. For example: manufacturer and trade name (XYZ Chemical Company 2,4-D UHV Weed Killer). The EPA registration number will be very helpful. Lacking the manufacturer, trade name or EPA registration number, identify the pesticide by name of the active ingredient or common chemical name.
4. Describe claimant's loss: Be as specific as possible. Name and type of crop (winter wheat or spring wheat; seed potatoes or market potatoes), variety name, ornamentals, pasture, animals (cattle, sheep, bees, chickens), or individuals affected. Indicate size as acres, number of plants or number of animals or individuals. If a health care professional or veterinarian is involved, please provide their name, address and telephone number.
5. Non-performance: The Report of Loss procedure is not intended for incidents where the pesticide or application did not accomplish its intended purpose. The immediate cause of the problem must be due to the pesticide, not a secondary cause of the pesticide. For example: An insecticide is applied but does not kill the grasshoppers. Subsequently, the grasshoppers destroy the crop. The immediate cause of the crop damage is the insect; the secondary cause of the problem is the insecticide. This example would constitute non-performance of the pesticide and would not qualify under the Report of Loss procedures.
6. If damage to a growing crop, has 50% of the crop been harvested? Answer yes or no. Typically, ODA will not investigate an incident where evidence of the damaged crop or property has been removed from the site where the damage occurred.
7. Who made the pesticide application (choose one) and list the name, address and phone number.
8. Landowner (or renter) for whom the pesticide was applied: Name, address and telephone number of the person, business or agency who contracted for the pesticide application to be made.
9. Suspected cause or source of the damage: Indicate by marking appropriate selections. Explain "other."
10. Statement of facts concerning the pesticide application and claimed damage. Provide as much factual information as possible concerning the incident. A graphical representation such as a drawing or map showing affected areas in relation to the source of the pesticide will be very helpful.
11. History of pesticides, fertilizers, and other chemicals used by you or the previous occupant on damaged site (attach additional sheets if necessary).
12. Other investigators: People such as extension agents, cannery fieldpersons, private consultants, veterinarians, doctors, insurance agents, pesticide manufacturer representatives and representatives of other government agencies who have observed or investigated this incident.
13. Authentication: Sign the Report of Loss form, provide your printed name, your address, city, state, zip code, phone number and the date you signed the form.

Copy Distribution (four copies total needed):

- First: Oregon Department of Agriculture
- Second: Pesticide Operator
- Third: Landowner (renter) who hired the work done
- Fourth: Claimant

Important:

ORS 634.172 requires the claimant to send or personally deliver a true copy of the completed Report of Loss form to the operator who did the application and to the Landowner (renter) for whom the application was done.

Special Instructions:

Attach a map or drawing referencing known points such as streets, roads, towns, directions common landmarks to the Report of Loss. This map will insure the ODA representative can locate your property.

Report of Loss Allegedly Caused by Use of Insecticides, Herbicides, Fungicides and Other Pesticides

Form date 12/16



TO: OREGON DEPARTMENT OF AGRICULTURE
PESTICIDES DIVISION
635 CAPITOL ST. NE
SALEM, OR 97301-2532

1. Date of claimed pesticide application: _____

2. Date of loss (or discovery of damage): _____

3. Pesticide used or product name: _____

4. Description of claimed loss (crop, ornamentals, pasture, animals, individuals, etc.) If a health care professional or veterinarian is involved, please provide their name, address and phone number: _____

5. Is claim due to pesticide non-performance (failure to control insects, weeds or other pests)? Yes No

6. If damage to growing crop, has 50% of crop been harvested? Yes No

7. Who made the pesticide application (check one): Commercial Operator Farmer or Forester
 Unknown Other (specify) Name: _____

Address: _____

City, State, Zip: _____

Phone: _____

8. Landowner (or renter) for whom pesticide was applied:

Name: _____

Address: _____

City, State, Zip: _____

Phone: _____

9. Suspected cause or source of damage (mark all appropriate):

Ground application Air application Neighbor spraying Other

10. Statement of facts concerning pesticide use and claimed damage:

Time of day: _____

Weather: _____

Age or stage of maturity of damaged property at time of alleged damage: _____

11. History of pesticides, fertilizers, and other chemicals used by you or the previous occupant on damaged site (attach additional sheets if necessary): _____

12. Have other investigators observed the damage? Yes No

Name(s): _____

Affiliation: _____

13. The above information is true and correct to the best of my knowledge and I understand the Oregon Department of Agriculture may investigate this claim of loss in order to determine the extent and nature of damage allegedly caused. I agree to allow the said Department reasonable access to any of my property or records in order to carry out these activities.

Signature: _____ Date: _____

Print Name: _____

Address: _____

City, State, Zip: _____