



TESTIMONY

**House Natural Resources Committee
Chair Brad Witt**

DT: March 26, 2019

**RE: Opposition to HB 3044 - *Relating to application of substances by aircraft
Requiring application information to be reported to DEQ with DEQ enforcement***

Submitted by: Katie Fast, Executive Director

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. Thank you for the opportunity to provide comments on House Bill 3044, which would require businesses or individuals making pesticide or soil treatment applications by air to report application information to the Oregon Department of Environmental Quality (DEQ), would allow DEQ to determine drift and notify adjacent property owners and would give DEQ enforcement authority over fertilizer and pesticide applications.

The Oregon Department Agriculture (ODA) pesticide program is recognized and respected as diligent and fair pesticide regulators. They have the statutory authority to enforce pesticide applications made by air or any other method. Additionally, pesticide recordkeeping requirements are in place through administrative rules promulgated under ORS 634 and records are also required federally under the Worker Protection Standard (WPS) (40 CFR 170.311(b)(6)). This bill requires information on applications that are beyond the scope of current state and federal regulations. It not only adds different recordkeeping requirements, it requires reporting this information to DEQ within 7 days of the application. ODA, not DEQ, is the agency with a long-standing cooperative agreement with EPA with delegated authority to enforce the Federal Insecticide, Fungicide and Rodenticide Act in Oregon. DEQ does not have familiarity with the products, the regulatory system or the applicators to properly implement the authorities proposed in HB 3044.

When looking at the information an applicator is to record and report, there are components that must be kept in “real time” that may be nearly impossible for aerial applicators to comply with. Asking for “real time” information to be kept during an application requires equipment that is prohibitively expensive, not reasonably available, and will most likely require lengthy FAA approval.

The complex suite of specific items that must be recorded and reported is not consistent with the current recordkeeping requirements of the ODA, the Oregon Department of Forestry or the federal WPS. This bill adds another layer of inconsistent bureaucracy to one more agency that these professionals must answer to. Giving DEQ the authority to ask for “any other information as required by DEQ by rule”, creates an uncertain regulatory future for aerial applicators and is duplicative to ODA’s authority to request records as needed.

This bill also includes soil treatments including fertilizer, soil amendments, soil minerals and lime products applied by air. This broad-brush approach to regulate the application of all agricultural products is blatantly intended to make it impossible to apply *anything* by air to Oregon’s agriculture and forest lands. Many soil treatments are applied in the spring when the soils are saturated and moving ground equipment over the land is either not possible without getting stuck in mud, creating soil erosion, serious soil compaction and crop damage. Soil treatments are not regulated in the same manner as pesticides, but products are registered and monitored for compliance by ODA.

This bill is also flawed by giving DEQ the authority to make the application information public and subsequently to determine compliance based on the information reported. OFS opposes the posting of private application data on a public website. For many companies, this is proprietary business information regarding the size of their business, customer base and areas of service. These unnecessary postings also open applicators and landowners up for harassment by extremist activists regarding the management of private lands.

Assessing compliance with pesticide applications is the expressed authority of the ODA. ODA is diligent and thorough in their investigations and conduct on-site inspections, sampling, interviews, and much more to determine compliance with the law. It is not possible for DEQ to determine compliance based on reported information. Arm-chair determinations are especially dangerous when they are given the authority to assess a civil penalty of up to \$50,000 for a violation that is determined from a desk in Portland.

The notification of alleged violations to property owners based on the determinations of these paper assessments will unnecessarily alarm citizens and breakdown neighbor to neighbor relationships. Oregon farm and forest communities work diligently to be good neighbors by building relationships in their communities and voluntarily notifying neighbors. One misassessment based on paper work and subsequent notification by DEQ will destroy these years of establishing trust and unjustly taint a company name.

If the legislature is interested in reporting of pesticide use, we already have a program in statute. The Pesticide Use Reporting System (PURS) directs Oregon Department of Agriculture to collect specific data on businesses’ and government entities’ use of pesticides, including private land, government land, and areas where the public has access. The PURS program is the result of significant legislative consensus 20 years

ago, protects confidential data and provides the state with data to understand how registered pesticides are used throughout Oregon. Unfortunately, the program only collected data for a brief period in the late 2000s, due to the legislature defunding the program.

OFS encourages the legislature to prioritize the PURS system, which treats all pesticide applicators evenly and does not single out one type of application method, and pass HB 2980.

For all of the reasons outlined above, ***we ask you to vote NO on HB 3044***. Thank you for your consideration, and please contact us if you have any questions.