



March 24, 2019

To: Chair Michael Dembrow, Oregon Senate Environment & Natural Resources Committee
Regarding: SB 853: Prohibits sale, purchase or use of pesticide chlorpyrifos. Requires State Department of Agriculture to place pesticide products containing neonicotinoid on list of restricted-use pesticides. Amends pesticide product registration fee provision. Reduces maximum fee for certain occupational licenses related to pesticides.

The American Seed Trade Association (ASTA) is writing this letter to oppose SB 853, which is currently pending before the Oregon legislature. This bill seeks to prohibit the use of chlorpyrifos in the State; including its use as a seed treatment.

Founded in 1883, ASTA is one of the oldest trade organizations in the United States. Its membership consists of almost 800 companies involved in seed production and distribution, plant breeding, and related industries. ASTA is a diverse organization. It represents all types of seed companies and technologies – seed from alfalfa to zucchini, technologies from organic to biotechnology, and companies from “mom and pop” to multinationals. It works on behalf of all of its members at the state, national, and international levels. In other words, ASTA represents every seed company that would be affected by the proposed legislation, and it works in cooperation with the rest of agribusiness and consumers, whom the proposed legislation would also benefit.

This bill raises several legal concerns. Depending on the circumstances in which it is applied, the language in the bill may be preempted by federal law. In essence, the bill would impose an additional burden on the users of the federally regulated pesticide and seed treatments. Federal law confers the treated article exemption for seed treatments, as it does with many other products; such as dog collars, lumber, telephone poles, to name only a few.

The treated article exemption is a longstanding policy of EPA. An article is exempt from regulation under FIFRA by virtue of the treated article exemption if the following three conditions are satisfied: (i) the article contains or is treated with a pesticide; (ii) the pesticide is intended to protect the article itself; and (iii) the pesticide is registered for this use. Treated seeds meet all of these requirements.

This bill would impact the seed industry in Oregon and unduly impact interstate commerce. The bill is anticompetitive and potentially discriminatory among different agricultural sectors. The cost of the seed for farmers will increase and/or the availability of seed will decrease. Both of these effects would penalize unnecessarily the many Oregon farmers producing high quality crops from such seed. It would also penalize all others in the seed supply chain, including dealers, as well as small and large companies. It also would reduce the size, offering and competitiveness of the Oregon seed industry compared to other states. To the extent that increases in input and production costs are passed through the food chain, the bill would penalize Oregon consumers, as well.

In summary, the use of seeds improved through modern technologies, such as seed treatments, continues to grow around the world as a result of their economic, environmental, and human health benefits. Farmers’ use of these seeds in Oregon is no exception to this pattern of growth. In our view, SB 853 as it is now drafted raises several serious legal and practical concerns. Of significance, it would add unnecessarily to the cost of doing business in Oregon and penalize Oregon farmers and consumers. Affecting seed companies large and small including farmer dealers, SB 853 would also reduce the size, offerings, and competitiveness of the seed industry in Oregon compared to other states.

Please do not hesitate to contact us if you have any questions. Thank you for your consideration.

Sincerely,

Pat T. Miller
Director, State Affairs

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