



TESTIMONY
April 2, 2019

Senate Environment & Natural Resources Committee
Chair Michael Dembrow

RE: Opposition to SB 931 with -1 amendments -- *Relating to the notification and reporting of aerial application of pesticides to forestland*

Submitted by: Katie Fast, Oregonians for Food & Shelter
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Thank you for the opportunity to provide written testimony in opposition to Senate Bill 931 with the -1 amendments.

Senate Bill 931 would require notification to the Oregon Department of Forestry (ODF) no more than 15 days prior to a proposed application of pesticides by air to a forest site and additional notification for the intent to commence the application between 48 hours prior to, and no later than 5 pm on the day prior to, making the pesticide application. ODF must also be notified of the completion, or partial completion of the application by 5 pm on the day the application was planned to be completed. Notification of planned, and completed, forestry aerial pesticide application is to be made through the FERNS e-notification system. It also requires reporting of extensive application information within seven business days of completion. All information would be posted on the ODF website via FERNS for at least 90 days and available for public inspection for 7 years.

Solution in Search of a Problem

The underlying premise of SB 931 is that citizens should be notified about aerial pesticide applications on an exact date because they are somehow endangered by the operation. Aerial pesticide applications are performed by licensed professionals, following strict rules under the Oregon Forest Practices Act (FPA) as well as Oregon pesticide laws. Adverse incidents involving drift are rare, and alleged misapplications are investigated by the Oregon Department of Agriculture (ODA).

- A search of pesticide complaints and related investigations from ODA show clearly that instances of drift from aerial applications in forestry are exceedingly rare. From data obtained from the ODA pesticides program, over the last 8 years (2011-2018) ODA investigated 39 complaint-driven cases involving aerial applications on forests with only 4 enforcement actions taken. This is almost a 90% compliance rate over 8 years with thousands of aerial applications made to Oregon forests.
- Pesticide investigations of applications made to forestry (both ground and aerial) are only 10.6% of all complaint-driven cases combined).

These data clearly show that there is no problem to fix and that the current regulations are sufficient to monitor compliance, provide regulatory oversight, access necessary application information, and take enforcement actions when needed.

Notifications are Already Available

Concerned citizens already have access to notifications of forestry operations, including pesticide applications. Forest landowners file with ODF before performing an operation and provide a window for when the activity may occur. In contrast to the proposal in SB 931, the current system provides flexibility for exactly when an application will take place. Forest environments are not consistent, and changes to planned applications must be taken on a moment-by-moment basis. The proposed notification and reporting requirements of SB 931 do not adequately allow for changes and adjustments that may need to be made in locations that are remote and may not have connectivity to the FERNS system.

Historically, citizens have been able to subscribe to notifications from ODF about all forest operations, and they are provided paper copies of those notifications for a small fee. In 2015, a series of changes to Oregon pesticide laws were adopted by the legislature. Part of those reforms was funding for an update to the FERNS e-notification which will allow easy public access to notifications for free through the ODF website. That \$1.5 million dollar upgrade, of which almost \$560,000 of was paid for by industry, has been implemented and is working successfully.

Application Records are Already Available as Needed

Under current law, pesticide applicators must create and keep application records for three years. If a question arises about a particular application, ODA (or ODF for forestry applications) has the authority to request copies of those records. ODA is the pesticide regulatory agency for the state and has a division devoted to the regulation of these products. These experts are best equipped to analyze this information for regulatory compliance.

Oregon already has a statewide pesticide reporting system in statute. Unfortunately, the Legislature defunded the program in 2009. Instead of created new reporting requirements, we support reinstating the Pesticide Use Reporting System (PURS) requirements for all commercial pesticide users and not singling only one segment.

Pesticide Reforms Adopted in 2015

In the 2015 Legislative Session several bills were introduced around pesticide use in general, and aerial applications specifically. Following hearings on those bills and workgroups in both chambers, the legislature adopted a package of reforms, which we supported. Those reforms have been implemented over the last two years and include:

- Codifying 60ft buffers around dwellings or schools for forestry aerial applications. The 60ft buffers went into effect on January 1, 2016.
- Updates to the ODF Forestry Activity Electronic Reporting and Notification System (FERNS), to provide a no-cost public portal with access to forestry activity notifications. Will go “live” in April of 2017.
- Investing significantly in new investigators, case reviewers, administrative help, and laboratory capacity at Oregon Department of Agriculture (ODA) pesticide investigation division. ODA has hired four new investigators and a Citizen Advocate & Liaison.
- Creating a dedicated hotline for people to call who are concerned that they, or their property, have been exposed to pesticides. Concerned citizens can now call 211 to file a complaint or get information about a pesticide application.
- An increase in pesticide registration fees from \$160 to \$320. This additional revenue helps fund the new ODA positions and the new 24/7 pesticide hotline.
- Requiring Pesticide Analytical Response Center (PARC) to adopt standard operating procedures for use by PARC member agencies to use when responding to pesticide incidents. All PARC agencies now have in place SOPs for pesticide complaints.
- Doubling of civil penalties associated with a violation of Oregon pesticide laws.
- Authorizing ODA to require applicator retesting in the event of misapplication of pesticides, and suspension of license if the applicator fails the test.
- Loss of an applicator license if a violator fails to timely pay civil penalties.
- Requiring aerial applicators to obtain a separate aerial applicator certificate. The certificate requires 50 hours of aerial training, a national test, and ongoing education requirements.

As outlined above, aerial applicators, especially related to forestry applications, have accepted significant regulatory changes over the past few years to address citizen concerns. The current systems are working and should be allowed to continue without adding additional regulatory burdens.

Please Vote NO on SB 931