

DT: April 5, 2007

TO: Senator Brad Avakian, Chair
Members of the Senate Environment & Natural Resources Committee
Senator Jason Atkinson, Vice-Chair
Senator Alan Bates
Senator Roger Beyer
Senator Floyd Prozanski

BY: Terry L. Witt, OFS Executive Director

RE: Senate Bill 20 Testimony

Senate Bill 20 is a very poorly written, unnecessary regulation with extremely broad and potentially catastrophic impacts on the economic, environmental and economic welfare of Oregonians. **OFS members, and the attached list of twenty-seven other Oregon groups, strongly OPPOSE this bill.**

Even before I comment on the proposed statutory changes in the actual text of the bill, the “whereas” clauses in the preamble are littered with errors or based upon false interpretations and manipulated statistics that are misleading. Such erroneous statements have no place in Oregon Revised Statutes. As an example, SB-20 makes the false statement: “...*the overall incidence of childhood cancer increased 10 percent between 1974 and 1991, making cancer the leading cause of childhood death from disease...*”

According to a reputable report in the Journal of the National Cancer Institute (journal summary attached), “*Cancers diagnosed from 1975 through 1995 in 14,540 children under the age of 15 years...were investigated. The authors found no substantial change in the incidence of major pediatric cancers, and the rates have remained relatively stable since the mid-1980s.*” *The study also notes they “observed dramatic declines in childhood cancer mortality...”*

The only statement we do agree with is that “children deserve to be in a safe and healthy environment while they are at school...” However, safe and healthy schools include **protection against:** plant and insect allergens (see cockroach article); vector borne diseases; molds, germs, bacteria and pathogens; noxious and poisonous weeds; insect and rodent bites -- all of which are most effectively eradicated or controlled by the responsible and judicious use of a lawful pesticide.

To start, OFS questions the purpose and need for the bill. One can only presume it is based upon data that shows exposure to pesticides applied by licensed applicators (primarily by aerial or power-driven equipment) have

created widespread, unreasonable exposures and health risks for school children across Oregon. I am not aware of credible incident data or medical evidence supported by data from PARC reports dating back to 1988 or physician reports of pesticide related illness to Health Division (required since 1987). Instead what we hear are anecdotal stories or repeated allegations over and over again by a handful of anti-pesticide activists.

So what does SB-20 really do? A careful reading of the bill and understanding of the current pesticide laws within ODA and ODF indicate the impacts would be significant, but not positive.

◆ **No** trained and licensed pesticide/public applicator or trainee would be allowed to apply **any** pesticide by hand or backpack application equipment **within one-half mile** of a school property during the academic year or to a road that services that property during certain times of the day. This is a total ban on any pesticide use by a licensed applicator inside a school or within one-half mile of all school property.

Interestingly, as written the bill would allow an unlicensed school janitor, homeowner or business person to spray any property in this one-half mile radius using non-power driven equipment with any pesticide they could buy at Home Depot or legally purchase at an Agricultural dealer (i.e. any non-restricted use product). This would dramatically increase the amount of pesticides applied by non-licensed, untrained people.

◆ **No** trained and licensed pesticide/public applicator or trainee would be allowed to apply **any** pesticide by aerial spray or other power driven equipment **within one mile** of a school property during the academic year or to a road that services that property during certain times of the day. This is a total ban on any pesticide use by a licensed applicator using a truck-mounted tank with a pump and hose within one mile of all school property – including any homes, commercial businesses (i.e. restaurants) or industrial properties within that one-mile radius.

In most cities, this would completely ban all use within the city limits, plus some. For example there are about 70 well distributed K-12 schools servicing Salem/Keiser. Drawing 1 mile radius no-use buffers around those schools covers just about every bit of property within the Salem/Keiser city limits except a small piece near McNary airport.

◆ **No** trained and licensed pesticide/public applicator or trainee would be allowed to apply **any** pesticide by any means **within five miles** of a school property **unless** the landowner, possessor of property or the timber operator submits a detailed written plan **at least 14 days to 21 days in advance** of the proposed pesticide application.

A two week advanced submission of a notice or plan of application, plus at least one to seven days of additional delay for the agency to respond, is totally unworkable for any applicator using the preferred Integrated Pest Management (IPM) approach. This means the majority of current urban and many of the forest and farm applications would be required to observe the **5 mile** buffer around all schools. Drawing a 5-mile radius around a single school, would ban all power driven equipment or aerielly applied pesticides on 78.5 square miles of property! Going back to the Salem/Keiser city limits example, the size of the impacted area from all 70 schools would measure 17.5 miles by 23 miles – equaling over 400 square miles total.

◆ The bill states that the plan or notice is to be filed by the landowner or legal possessor of the property (renter or lessee) to be treated, NOT the more knowledgeable licensed commercial applicator. Not filing or filing misinformation is subject to a \$2,500 civil penalty.

There is no way a homeowner or even a non-professional applicator can comprehend and

accurately report the following list of required information, much less want to be held accountable for its accuracy 21+ days in advance:

- Name of person for whom the pesticide is to be applied;
- Location of the land or property;
- Date and approximate time of application;
- Supplier of the pesticide;
- Trade name and strength of pesticide;
- Amount of active ingredient or concentration of the pesticide used per acre;
- Specific property or crop;
- Summary of equipment to be used, and FAA number if an aircraft;
- Name of the pesticide operator or public applicator/trainee;
- Detailed written plan ensuring no drift into prohibited areas; and
- A map with identifiable landmarks showing boundaries of the target spray area.

◆ Once a notice is received by ODA or ODF receives a written plan under the amended Forest Practices Act, either is required to send this information within 3 working days to all schools, plus all other persons requesting notification, within five miles of the proposed use site.

To many this probably sounds pretty innocuous. A look at some numbers shows just how great of a burden this would really create. I will only look at the URBAN (non-Ag or forestry) burden to ODA. Once again going back to the Salem/Keiser city limits as an example, knowledgeable people in the commercial application business conservatively estimate that 60,000 applications to residential, business and institutional properties are done every year. Based on 260 working days per year, the department would have to comment/process 230 notices/day on average to keep up. Since there are no fewer than half of the 70 schools in the Salem/Keiser area within a five mile radius of any potential application location within the city limits, **at a minimum ODA would need to send out 8,000 notifications to schools (plus any other requesting persons in that area) every working day of the year.** Even though I'm not a fiscal analyst, I'd say the financial impact of such a requirement would be staggering.

◆ SB-20 grants any person private right of action to file suit to enforce these requirements. In addition to any person, it also specifies that a city District Attorney may bring an action for injunctive relief "to prevent a violation." This appears to be a new legal concept being put into statute to in essence negate current state law preempting local governments from regulating pesticides below the ODA level. Such rights of action would also provide a legal mechanism to further interfere with farmers' and foresters' statutory Rights to Farm and Forest.

◆ The impact of SB-20 could actually be far greater than the initial reading would indicate depending upon how certain terms are defined. For example:

- How do you define "a road that services a school property"? IF it literally means any road that any vehicle uses to travel to the school, including the entire bus route, the geographic reach of this bill is expanded greatly.
- What happens when the 14 to 21 day period has elapsed, and the application date on the notice/plan arrives, if it is raining, the wind is blowing at 25 MPH or in the wrong direction, such as toward a sensitive site? Or what if, while waiting during the comment period, another pest reaches a critical damage threshold, and the pesticide product(s) in the notice need to be changed or the designated applicator breaks a piece of equipment, or had to use a different FAA numbered aircraft? Since these are all specifically detailed on the notice that

was given at least 14 days in advance, will a new notice/plan have to be filed requiring another 14-21 day waiting period? And would such “inaccurate” data be viewed as a “failure to submit the information described” in the law and be subject to \$2,500 fines?

- The bill allows ODF or ODA to assess a filing fee for written plans/notices, of which ten percent would go to DEQ for monitoring air and water quality in areas where pesticides have been sprayed. What is the budget for this monitoring activity and who will have to pay this unspecified, unrestricted tax? Even if this filing fee/tax were the modest amount of \$5 per notice, it would likely cost the larger urban commercial applicators between \$50,000 – \$75,000 per year!
- SB-20 will have serious negative impacts on the citing of schools in rural farm and forest zones. For example, the farm community would strongly oppose the building of new schools in EFU zones. A new school would render 78.5 square miles in the immediate area useless for traditional and generally accepted farming practices -- especially practices like the lawful use of pesticides that are necessary for them to make a profit?
- Any regulatory action under SB-20 which decreases the productivity of farm or forest land due to severe pesticide restrictions could be argued as a taking, resulting in millions of dollars of Measure 37 claims and/or legal challenges the state would have to defend.
- SB-20 will impede proper treatment of serious health and sanitation concerns due to pestilence in food handling establishments, restaurants and other institutions. Recently most of you likely saw the abhorred TV coverage of the severely, rat-infested Kentucky Fried Chicken/Taco Bell in New York City. Should this problem occur in an Oregon metro area, this bill would not allow KFC/Taco Bell to treat the building for at least 14 days and probably would have to wait until the full 21 days had elapsed!
- The end result if this measure passes would be increased structural damage to private and public property and structures and unavoidable delays in selling property. If a problem with wood destroying organisms is identified on a structure listed for sale (i.e. carpenter ants, termites, wood beetles, mold, etc.) the property could not be treated, a requirement for the transfer of real estate property, in a timely manner as it would require submission of notice and waiting 14 -21 days.

The bottom line is that this bill, with its unreasonable advanced notice, will likely result in one of two scenarios: (a) farmers, foresters and urban applicators returning to old practices before IPM when it was common to apply pesticides by a calendar date based on past years experiences, not on current scouting and monitoring of pest damage; or (b) force applicators into a situation where they feel they must spray when their advanced date finally has arrived regardless of weather conditions or other factors – greatly increasing the chance of off-target movement.

Anyone who reads SB-20 carefully, and understands the current myriad of state and federal laws tightly controlling the use of pesticides, can only come to one conclusion: “This bill has nothing to do with protecting school children – it is simply a thinly masqueraded attempt to stop the use of pesticides in Oregon.”

I will end this testimony the way I started -- OFS members, and the attached list of twenty-seven other Oregon groups, strongly OPPOSE this bill and ask that you do NOT move this bill out of committee.