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REPORT BACK
Lane County Board of County Commissioners
Aerial Pesticide Spray Drift and Dwelling Buffers
Prepared by Alex Cuyler, Intergovernmental Relations Manager
August 26, 2009

Background

The Board was contacted by a resident of rural Lane County through their "one-pager" procedure regarding his concern for drift from aerial pesticide applications by private forest landowners. Mr. Day Owen then made a presentation to the Board on July 21, 2009, and has subsequently asked the Board to draft a letter to the appropriate state agency regarding the issue of pesticides drifting across property boundaries.

The Board asked that my office look into the issue of so-called buffer zones being developed around human habitations.

NOTE: The Board was also asked to look into alleged conflicts of interest at the State Board of Forestry at the same meeting and in subsequent communications from Mr. Owen. This Report Back is limited, however, to the issue of aerial drift of pesticides.

Resources

This Report Back is based on communications with:

- Mr. Day Owen, resident and farmer, Triangle Lake, Oregon
- Mr. Mike Carrier, Natural Resources Advisor to Governor Theodore Kulongoski
- Mr. Dale Mitchel, Assistant Administration, Pesticides Division, Oregon Dept of Ag
- Mr. Dave Lorenz, Western Lane District Forester, Oregon Dept of Forestry
- Ms. Lisa Arkin, Executive Director, Oregon Toxics Alliance
- Mr. Terry Witt, Executive Director, Oregonians for Food and Shelter
- Representative Suzanne Bonamici, House District 34

Analysis

State and Federal laws govern the application of pesticides on private forest-land. Oregon Revised Statutes, Chapters 634 (Pesticide Control) and 527 (Forest Practices) are pertinent, as well as related Administrative Rules. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, U.S.C. 7 §136 et seq.) provides for state authority, as well as manufacturer labeling requirements.

It is clear that the Oregon Department of Agriculture is the agency that regulates the use of pesticides when that use may involve human health issues, even if that use is on private forestlands. The Forest Practices Act is silent on human health issues and a 1995 agreement between ODA and ODF formalizes the segregation of responsibility. However, notification requirements for aerial applications of pesticides remain under the Forest Practices Act.

The mantra with regard to federal regulations is that the manufacturers label is to be the guiding document with regards to application standards. There has been a no aerial spray policy on federal lands at least since 2002 due to litigation centering around the Clean Water Act and the determination by the courts that aerial application of pesticides requires a National Pollutant Discharge Elimination System (NPDES) permit.

State pre-emption

In the 1995, HB 3486 was a bill that created a local pre-emption on regulations aimed at pesticide sales or use. The bill passed both chambers of the Legislature, but was vetoed by then Governor John Kitzhaber. In the subsequent special session of the Legislature (2/96), HB 3486 was introduced, passed, and signed into law. This bill also pre-empted local government from regulating the sale or use of pesticides, however, it also added language that allows local government to regulate pesticides on property it owns (634.060) or in order to comply with building codes (634.063). The bill also included language that directs the State Department of Agriculture to consider “any concern” voiced by local government regarding its regulation of pesticides (634.065).

Inhabited Dwelling Buffers

There are no regulations currently contained in Oregon law which speak directly to a buffer zone around human habitations with regard to pesticide applications. There have been several related legislative efforts:

- SB 637 was passed by the Oregon Legislature in 2009. It creates a requirement that schools (with limited exceptions) adopt Integrated Pest Management (IPM) plans rather than utilize pesticides.
- SB 902 was a bill introduced by the Oregon Legislature in 2009 that died for lack of a hearing. It proposed to create a one quarter mile buffer zone around Oregon schools, with the exception that the buffer would not be necessary if the school were notified 48 hours in advance of an aerial application of pesticides.
- HB 2978 was a bill introduced by the Oregon Legislature in 2007 that died for lack of a hearing. It proposed to create a buffer zone of one-half of a mile around parks, schools, and child care facilities within which pesticides would not be able to be applied without the written permission of the owner of each property within that zone.
- Senate Bill 20 was a bill introduced by the Oregon Legislature in 2007 that received one hearing (Senate Environment and Natural Resources), but remained in committee upon adjournment. It did, however, result in the formation of a non-formalized interim task force chaired by Senator Suzanne Bonamici that dealt with pesticide application issues around schools (and resulted in the drafting and passage of SB 637 in 2009). The bill proposed to establish several types of buffer zones around schools (one half mile, one mile, and 5 miles) with corresponding levels of notification and approval required prior to pesticide applications.

Within Oregon Administrative Rules, there used to be some language that addressed buffer zones around human habitations, developed and approved by the Board of Forestry in 1988. It was specific to herbicides applied from aircraft and established a 60ft no spray strip near inhabited dwellings. As a result of the 1995 MOU between ODF and ODA, the language was removed in 1997.

Recommendation

The statutory responsibility for regulations related to pesticide applications and human health impacts lie within the Department of Agriculture. Statutory responsibilities with regards to notifications of aerial application of pesticides onto forestland lie within the Department of Forestry. In Oregon, any person may petition an agency to adopt rules per ORS 183 (Administrative Procedures).

With regards to developing a buffer zone around human habitations or improving notification procedures, it does not appear as if the Administrative Rule development is an avenue that has been pursued by advocacy groups or individuals. The Board could write a letter in support of such a petition, obviously dependent on the proposed language.