



OFS Update: October 2011

Oregonians for Food & Shelter

1149 Court Street NE, Suite 110, Salem, OR 97301

Grass Roots Director Paulette Pyle

Office: 503-370-8092

Executive Director Terry Witt

Since the close of the 2011 Legislative Session on June 30, the staff has been very involved in issues both at the state and federal levels. While the challenges are significant, they do provide opportunities to make positive impacts on behalf of our natural resource members.

OFS Has Highly Successful Session: A more balanced Legislative Assembly in 2011 (a 30-30 tie in the House and 16-14 slight Democrat majority in the Senate) created a much better business and natural resource friendly environment. Nearly sixty bills were tracked by OFS over the session, and none of the bills OPPOSED by OFS were passed. Thanks to great leadership by House Co-Speaker Bruce Hanna and a full cast of outstanding House Committee Co-chairs, a number of potentially disastrous bills never made it to a floor vote. These included: a bill to undermine current preemption statutes that prohibit local governments from regulating pesticides; a bill to change the definition of Integrated Pest Management (IPM) by eliminating aesthetics, feasibility and cost effectiveness as criteria for determining the best method of control; a bill to combine all existing natural resource State Agencies into one, mega Natural Resource Department; and five separate bills to needlessly regulate genetically engineered food or products. While OFS and our coalition partners were successful once again in 2011, these attacks will return again and again as they have in the past, often reintroducing the exact same bill. Environmental zealots will not give up their relentless efforts to repeal pre-emption and Right-to-Farm & Forest statutes, or their attempts to stop pesticide use through outright bans or imposing excessive buffers on farms, forests, rights-of-ways or urban properties. We need a coalition ready to fight back as well.



Co-Speaker Bruce Hanna
"OFS 2011 Session MVP"

Triangle Lake - Lane County Activists Continue Pesticide Battles: The Forestland Dwellers, Pitchfork Rebellion and Oregon Toxics Alliance activists have escalated their quest to stop the use of pesticides. Initially focused on the application of aerially applied forestry herbicides, some of these radicals have now broadened their mission stating at a public meeting, "It makes no sense to use pesticides at all...they are not necessary and should be stopped." At the same meeting they distributed their "**7 Point Platform**" in print. This clearly gives the key points of their attack: Repeal of the Oregon Pre-emption Laws; Repeal of Oregon Right to Farm and Forest Laws; Change the Oregon Forest Practices Act and ODOT policies to herbicides only as a last resort; and push Congress to make the risk/benefit analysis used to register pesticides under FIFRA illegal.

Twelve investigations by state agency members of PARC over the past ten years have not verified the activists' claims of human health or environmental damage from herbicide drift. Oregon Health Authority (OHA), in conjunction with Region 10 U.S. EPA and the Agency on Toxic Substances and Disease Registry (ATSDR), have begun an "exposure investigation" based upon 2,4-D and Atrazine herbicides reportedly detected in some area residents' self-submitted urine samples in Spring 2011. The analyses were done by Dr. Dana Barr, a reputable researcher with Emory University. However, Dr. Barr and the residents have refused to provide any sampling or analyses details to the State for verification. The several hundred thousand dollar investigation was launched without data, solely on the belief that the alleged exposures were "plausible."

On August 29-30, 2011 sixty-six urine samples were collected from 38 households within 1.5 miles of recently harvested forest units around Triangle Lake / Highway 36. The samples were sent to the Center for Disease Control lab for analyses of 2,4 -D and Atrazine. Results are expected in 30-60 days from the date submitted. Between September 19 and 23, samples of drinking water, soil and homegrown food products (vegetables, fruit, milk, eggs and honey) were taken at the same 38 households. Water will be analyzed by DEQ using three methods capable of detecting a total of 126 pesticides or metabolites. All other samples will be analyzed by ODA for 11 herbicides: Atrazine; Hexazinone; Imazapyr; Sulfometuron-Methyl; Metsulfuron-Methyl; Aminopyralid; 2,4-D; Clopyralid; Triclopyr; Picloram; and Glyphosate. Results are expected in about 50 days. Additional urine and environmental samples apparently will also be collected in Spring 2012. OFS has repeatedly challenged some of the procedures and protocols as well as the lack of security during sample collection. These issues raise concerns about the validity of the resulting analyses.

OFS thanks all of those who have joined together on this issue. Once again the leadership and involvement of Rep. Bruce Hanna has been of critical importance. Other key individuals include: Director Katy Coba and Dale Mitchell at ODA; Peter Daugherty at ODF; Richard Whitman and Brett Brownscombe in Governor Kitzhaber's Office; Chris Jarmer at OFIC; Barry Bushue at Oregon Farm Bureau; and numerous forest land and farm land owners from the area or representatives on the OFS and OFIC boards.

Local Citizens Organize to Protect Their Rights: Major discontent of local residents in the area who do not support the activist movement has resulted in the formation of a grassroots group **Concerned Citizens of Lake Creek Community**. The group is doing a great job of providing the facts to all 700+ area residents through a "community letter" and other activities to help protect their right to responsible farming or forestry and to maintain their livelihoods and property values. The group is empowered and growing.

Activists File Right to Farm & Forest Lawsuit: On July 8, 2011, Jan Wroncy, Gary and Forest Hale (her husband and son), plus four other plaintiffs, filed suit in the Lane County Circuit Court challenging the constitutionality of Oregon's Right to Farm and Forest statutes (ORS 30.930 to 30.947). Wroncy, a vocal member of the Forestland Dwellers, has an organic farm and residence near Blachly just east of Triangle Lake. The suit argues in part, "The substances (chemicals and toxins) released in such (forestry) operations have a high potential to trespass onto the Hale farm, and thereby to interfere with the plaintiffs' organic growing practices, to contaminate the plaintiffs' irrigation and domestic water supplies, and to cause adverse health impacts...but (plaintiffs) are unable to obtain remedies for damage caused thereby due to the Right to Farm and Right to Forest statutes which immunize such practices." The suit sought: "a declaratory judgment finding and declaring that ORS 30.930 to 30.947 are unconstitutional, void, and unenforceable..."

A Capital Press editorial summed the situation up nicely, concluding, "The act has not deprived these plaintiffs from protections against the actions of their neighbors, it merely requires that more than their aesthetic sensibilities have been harmed." The Wroncys are very bitter toward their forestry neighbors, as years ago they filed a damages lawsuit against a forester and chemical applicator but did not prevail -- and had to pay the defendant's legal fees.

The current case was heard on September 6 by Circuit Court Judge Karsten Rasmussen in Eugene. The State of Oregon argued for dismissal in a short proceeding, as the issue was procedural and therefore there was no discussion as to the constitutionality of Right to Farm and Forest laws. On September 8, 2011, Judge Rasmussen issued his order simply granting the dismissal. It is not known if the Plaintiffs will appeal the decision or perhaps devise a different argument and file another lawsuit. OFS believes the probabilities are very high for more legal action in the future -- especially noting that leader of the Pitchfork Rebellion Day Owen openly stated they are considering a class action lawsuit seeking compensation for being "poisoned." Only time will tell, but be ready!

Center for Biological Diversity (CBD) "Mega" Lawsuit Update: The "Mega" Endangered Species Act (ESA) litigation filed by CBD and the Pesticide Action Network North America (PANNA) on January 20, 2011, continues to laboriously go through legal process in the U.S. District Court in San Francisco. CropLife America, American Farm Bureau Federation (AFBF) and the American Chemistry Council have been granted Defendant-Intervenor status in the case. OFS and Washington Friends of Farms and Forests are also intervenors through AFBF. Our main goal is to present and protect the interests of our farm and forest user communities in any settlement action that may take place.

The Mega suit against U.S. EPA alleges they failed to consult with U.S. Fish & Wildlife and the National Marine Fisheries Service regarding the effects of over 370 registered pesticides active ingredients on 216 threatened or endangered species in 49 states -- thereby violating Section 7(a)(2) of the ESA. The basis for this suit is similar to the ongoing suit by the Washington Toxics Coalition in the Pacific Northwest regarding 37 pesticides and various salmon species. Both lawsuits are based on theoretical or potential for harm, not actual evidence of harm to T&E species of concern.

Since January, numerous meetings and conference calls have taken place between the plaintiffs, defendants and intervenors -- including support of a joint motion to stay the litigation while the parties explore the possibility of settlement -- which was granted on March 15. These discussions continue, as the stay has been extended and the status conference moved to November 18. Although no substantive agreements have been reached to date, OFS and other Intervenor do not object to further settlement talks, provided all parties continue to be involved. With both aquatic and terrestrial species targeted, this action could be highly disruptive and damaging to every type of agriculture and forestry across the entire country.

NPDES Permits for Discharge of Pesticides Into or Near Water: Court-ordered National Pollutant Discharge Elimination System (NPDES) permits will soon be required by the U.S. EPA for pesticide applications "to, over, or near" water. Congress never intended to regulate pesticide applications with Clean Water Act NPDES permits -- relying instead on FIFRA. EPA has no concerns in this area, but the Agency must comply with the 6th Circuit Court order in *National Cotton Council v. EPA*. The implementation deadline was extended until October 31, 2011. While coalition efforts are in high gear to find a way to urge Congress to amend federal law, state pesticide agencies like ODA and DEQ are scrambling to finalize a permit and have procedures in place to implement the order.

EPA's own analysis suggests that the NPDES permits program for pesticides will result in the single greatest expansion of the program in its history, covering approximately 5.6 million pesticides applications per year by 365,000 applicators. Those affected include state agencies, city and county municipalities, mosquito control districts, water districts, pesticide applicators, farmers, ranchers, forest managers, scientists and others. The expected general permit will cover applications of pesticides registered for aquatic use and applied to water, or pesticides applied over forest canopies, into or over flowing or seasonal waters, and conveyances to those waters. EPA does not intend for the permit to cover pesticide applications registered and intended for terrestrial use. However, activists make no secret their intention is to continue their citizen suits until all pesticide applications are permitted if there is even a chance the pesticide could come in contact with any "water," either flowing water or seasonal drainage ditches that "*could be a conveyance*" to a water of the US.

H.R. 872, convincingly passed by the U.S. House on March 31, fixes this duplication of regulation by amending FIFRA and the Clean Water Act clarifying that a pesticide used according to its EPA-approved label does not require an additional NPDES permit. While the bill did move out of the Senate Ag Committee, it unfortunately has run into major roadblocks in the D-controlled U.S. Senate in spite of hard work by Senators Debbie Stabenow (D-MI) and Pat Roberts (R-KS). Current efforts to attach the 872 language as an amendment to a Senate bill have not been successful. CropLife America, OFS and a large coalition from across the U.S. are still trying to find a way around Senate Majority Leader Harry Reid's (D-NV) opposition and pass this needed statutory clarification to render the 6th Circuit Court order moot.