Oregon's Pesticide Right to Know Law:
Re-enactment Necessary for Future Health

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The Oregon Legislature passed the bill that created the Pesticide Use Reporting System in 1999 by an overwhelming majority, which is not small feat for an environmental bill in an era of dichotomized party politics. However, the system was defunded in 2003, before full implementation, due to a state budget crisis created by poor economic times. The bill in the legislature was in response to the city of Eugene's Toxic Right to Know Initiative passed in 1996. Both bills were a huge step forward in the fight against non point source pollution in the Willamette River.

Non point source pollution is the next phase of the fight in environmental politics. After a large scale clean-up of major industrial polluters, there are still substantial amounts of pesticides and other contaminants found in the water and sediment of the Willamette River. It has been deemed non point source, because no one is sure exactly where it is coming from, though many argue that run-off into the streams from rain water is a large contributor.

The Pesticide Use Reporting System was an attempt to collect data on who was using what chemicals so that corollary conclusions could be drawn between the use of pesticides in a particular area and their presence in a nearby stream or river. Up to this

point in time there has been a lot of research about the contaminated state of the river by the United States Geological Survey (USGS) and other groups but no data to indicate where the contaminants were coming from.

This paper will examine the merits of the Pesticide Use Reporting System and some of its shortcomings. I will look at the current findings about the polluted state of the river and how it could adversely affect human and wildlife health and safety. I will recommend that the system be given adequate funding as soon as possible because comprehensive data about the use of pesticides and other chemicals are desperately needed if we are ever going to find solutions to the current environmental problems.

The most notable and relevant history of pesticide use starts with DDT (dichlorodiphenyltricholoethane). At the time of its inception, DDT was hailed as a virtual panacea for many of the ills affecting the world. It reduced the amount of pests eating crops, thus increasing crop yield. It also killed the mosquitoes associated with malaria, curbing outbreaks of the disease with great success. It also appeared to have no real adverse affects on humans or other mammals. The huge success of DDT led to the creation of other such pesticides, eventually leading to boom that has created thousands of pesticides in last fifty years.

Now we know that even low exposure to DDT can cause cancer. One of the reasons for the effectiveness of DDT was that is almost impossible to break down, meaning that it did not have to be applied very often. In fact, DDT has a half-life of about 12 years, at which point it breaks down into DDE, which is still considered a cancer-causing agent, meaning that DDT is a risk to the health of humans and wildlife for many years after it has been used. As a result of this, DDT was banned in 1972.

There are many who advocate its return to fight malaria, as the number of malaria deaths has risen sharply since the ban of DDT. In her book, *Trashing the Planet*, Dixy Lee Ray has this to say about DDT and malaria:

> Public health statistics from Sri Lanka testify to the effectiveness of the spraying program. In 1948, before the use of DDT, there were 2.8 million cases of malaria. By 1963, there were only 17. Low levels of infection continued until the late 1960s, when the attacks on DDT in the U.S. convinced officials to suspend spraying. In 1968, there were one million cases of malaria. In 1969, the number reached 2.5 million, back to the pre-DDT levels. (Ray, 71)

From this it is clear that DDT was saving lives, however we also know that there are consequences to the environment that come along with these benefits. As with all pesticides there is a cost/benefit analysis that must take place, and the answers are not always clear. While DDT is still a factor in the local contaminant concerns there are others as well. A report published in 1996 by the Northwest Coalition for Alternatives to Pesticides (NCAP) lists the top 25 pesticides implicated in the hormone disruption in mammals (NCAP, 5). The effects of hormone disruption that the report is concerned with include infertility, genital deformities, low sperm counts, hormonally-triggered humans cancers (e.g. breast, prostate and gland), neurological disorders in children (e.g. hyperactivity) and reproductive problems in wildlife (NCAP, 1). Another report that sites the contamination of the Willamette was done by the USGS in 1999. The USGS has done voluminous research on many areas of the northwest and their environmental status. The sites tested in the USGS study were at the Texaco dock and the Oregon Steel Mill dock in Portland Harbor. Both sites were found to be contamination by DDT and DDE.

To tie all of this to Oregon specifically, it is important to know that agriculture is a very large industry in Oregon and thus the Willamette Valley. Agriculture is the second largest use of land in the Willamette Valley. Among other things, Oregon is the largest exporter of hazelnuts, boysenberries and Christmas trees in the United States. This means a couple of things, first, that there are a lot of pesticides used in the Willamette Valley as a result of agriculture. Second, that there is going to be a great deal of resistance regarding any sort of legislation that aims to curb, monitor or otherwise inhibit farmer's use of pesticides, as they view them as being directly linked to their livelihood and sustainability in the agriculture industry.

This leads directly to the legislation that we have regarding pesticides and their uses. Largely the only laws regarding pesticides are federal, the most important law being the Federal Fungicide, Insecticide and Rodenticide Act originally passed in 1947, then amended and updated greatly in1972. This law says that all pesticides must be registered with the Environmental Protection Agency. In order to obtain registration the manufacturers have to submit a copy of the label, the claims of the pesticide, directions for its use and a confidential copy of the formula for it (US Code Chapter 7, Section 6, Subchapter II). The EPA is then to gather data and determine whether or not the pesticide poses are risk to humans or the environment that outweighs the benefits of using the pesticide. In 1972, when the act was amended, it called for the re-registration of all pesticides. The original mandated date for the completion of re-registration was 1988; by this time little had been accomplished. The Congress then passed a new set of goals for the EPA with a strict time line. It called for all re-registration to be completed by 1998. At that time, only about half of what was scheduled to be done actually had been

accomplished. The new projected finish date for re-registration was somewhere around 2002 (NCAP, 7). All the while, there are products continuing to be used that have not been tested by current standards. Given the problems with this law and the distance from which it is governed it makes sense for cities and states to pass their own laws to protect citizens against the dangers of pesticides, while making use of what information is available from the federal government.

. Enter the Toxic Right to Know law of Eugene. It is considered to be one of the best Toxic Right to Know laws in the country. It is widely available to public, as there is an online database of what chemicals are used by who where, available to anyone who wants to know on the World Wide Web. However, there is not a lot of agriculture in the city of Eugene, so the information does not necessarily directly link to the majority of problems in the watershed. It is important as a precedent setter that holds industry and others responsible for their actions. It also clearly spells out that citizens have a right to know what is going on where they live.

The State law that came about in response to this was somewhat different. It has labored clauses about who has rights to the information, penalties for violations of privacy and the bringing forth of frivolous lawsuits. While I would say that the law is in the spirit of gathering information that will help determine the cause of current environmental problems, it is also clearly protective of those of the farming industry who feared that they would be targets if the information were widely available.

The Pesticide Use Reporting System (PURS), however, is not without merits. It is a gigantic step in the right direction as far as gathering information on pesticide use and relating it to environmental problems. The bill is wide in the scope of what it covers,

even requiring stores to report how much of what they sell for private use on residential lawns. Despite the fact that any given person is not using a large amount of pesticides, it may be the case that the aggregate of personal use it enough to cause alarm (ORS 634, 2). This type of information was the exact thing that the PURS system was supposed to obtain. The PURS calls for the Department of Agriculture to create a registration system for pesticides, assemble an annual report on the pesticide use in the state based on watersheds, develop training and authorization programs for pesticide users and sellers and create regulations for the use of pesticides. The Department of Agriculture is also charged with informing the public about the potential dangers of pesticides.

The Department of Agriculture did begin the implementation of the PURS by collecting one million dollars in registration fees from farmers and retailers. They also issued the preliminary report that was called for in section seven of the bill. The purpose of this report was to find the most cost-effective ways of collecting to best data, including "how any existing state or federal databases could be incorporated into the statewide system" (PURS, 2). After this, there were to be annual reports issued discussing the most pertinent and useful information gathered during the year. It is important to note that the report was to be organized by watersheds, so that those patterns were readily apparent. This shows that the law really was meant for environmental efforts and not simply expanding on state bureaucracy. It also explicitly states that the preliminary report was for "protecting public health, water quality, fish and wildlife" (PURS, 2).

Another interesting aspect of the law is its appeasement of the farm lobby. There are considerable provisions for the punishment of those who use the information gained

from the PURS for harassment purposes. Section 11 says that if a lawsuit filed "as a result of the operation of the pesticide use reporting system . . . is found by the courts to be frivolous, or was filed in bad faith or for the purposes of harassment, the court may impose an appropriate sanction on the person who filed the action" (PURS, 3). In addition to this provision, the statute also rewrites the two Oregon Revised Statutes that deal with information that is exempt from disclosure, as an attempt to keep the information of the pesticide use reporting system out of the hands of possible eco-terrorists. This again, is meant to reassure the farm lobby that they will in no way be adversely affected by the implementation of the PURS. I do not think that this lessens the effectiveness of the law in any way.

I do, however, wonder if this would not cause problems if there were to be a legitimate lawsuit filed against a pesticide user. It often seems to be the case in lawsuits against corporation that the inability to prove a case hinges on the inability to gain access to the appropriate information. For example, the prosecution of the tobacco industry took decades because they were able to hire scientists to lie for them and no one could get access to the internal information that they were producing. It is clear that this is not a crippling provision and the program is workable enough with this restriction. What is not restricted is the sharing of information for academic purposes. This means that universities and other groups interested in the information for the pursuit of knowledge and other non-hostile endeavors would not be barred from it.

Despite all of the merits of this program it was defunded in 2003 because of a state budget crisis. While it is possible that this program could fund itself with fees in the future, it needs money to get the ball rolling. There are salaries that have to be paid

and research that has to be done before the program can be fully implemented. This is not a wildly expensive program; it was allocated the small sum of $50,000 for research and development of the PURS, plus an additional $180,000, for general operation during the biennium of 1999-2000. That brings the grand total for the program to $140,000 a year, the rest to be paid by fees that it collects from pesticide users. When one realizes how little money was it would take for the program to be implemented, it is hard to see why the State could not find the money.

However, I do think that it shows this is not a program doomed to rot on the shelves. An active group could easily raise that amount of money; the challenge would be to keep it coming. This may not be the best way to save to program though. Once it has been shown that the State need not take responsibility for the program, they will not want to assume responsibility thereafter, no matter how good the economic times are. I do believe that the amount of money that it will cost to fund the program is a small price to pay for the possible life saving information that it could yield. The overall thrust of this is that I think this program should be refunded as soon as possible. There should be an active lobby in favor of the program that can show the perils we are facing if we do not get to the bottom of the growing non point source pollution problem.

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