David Morman
21352 Bartlett Lane
Bend, Oregon 97701

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Oregon Board of Forestry
2600 State Street
Salem, Oregon 97310

To Members of the Oregon Board of Forestry:

Through potential legislation or other means, forest pesticide use is likely on your agenda again in the near future. I say "again" because these issues and debates are not new.

I led the Oregon Department of Forestry staff work and the citizen advisory committee process that resulted in the Board's 1996 forest practice chemical and other petroleum product rule revisions (OAR 629-620-0000 to 0800). Since it has been 19 years since the last revisions to these rules it is probably appropriate for the Board of Forestry to again review and, if necessary, revise the regulations based on new information. Revisiting a bit of this now ancient history may be useful as you consider this topic.

Contrary to recent media reports, the 1996 rule revisions did not eliminate protections to dwellings from pesticide applications. The rule changes reflected a Memorandum of Agreement between the Board of Forestry and Department of Agriculture clarifying that it was appropriately Agriculture's sole jurisdiction to administer regulations and label requirements protecting private property and dwellings. This authority applies to all land uses, not just forestland. Protections were not eliminated, but rather more clearly centralized into a single state agency.

I encourage the Board to review and either reaffirm or update this Memorandum of Agreement with the Department of Agriculture and also revisit the guiding principles adopted by the Board for the 1996 process as prerequisites for any future forest practice rule review.

One change made by the Board at the time of the 1996 rule revisions was a five-fold increase, from 60 to 300 feet, in stream buffer widths for aerial applications of non-biological insecticides and fungicides due to their much higher toxicity and documented greater potential for off-target drift. Using a similar analysis and monitoring data, it was concluded for herbicides that, if state and federal laws and

product label requirements were complied with, 60-foot buffers along fish bearing and domestic use streams were adequate to protect human health and the environment. I believe a similar analysis would be needed today to determine if current application technologies and pesticide toxicities would lead to a different conclusion and therefore necessary changes in buffer requirements.

I also represented the Department of Forestry on the Oregon Pesticide Analytical and Response Center (PARC) Board during the late 1980s and early 1990s. PARC has been conducting multi-agency investigations of complaints of human exposures and environmental damage from pesticides for over 30 years. There is a valuable history to be gleaned from those investigations. PARC case information was used as one basis for the 1996 forest practice chemical rule revisions. I strongly support continued funding for PARC.

It is important to note that not every complaint received by PARC or its member agencies results in documentation of pesticide exposure. But where there is conclusive evidence it can inform policy discussions about regulatory changes. In 1996, I recall a study of PARC case histories showed that there were indeed many records of citizen complaints about forestry pesticide applications dating back the early 1980s. However, only a small fraction of those complaints resulted in a documented conclusion of exposure to humans or off-target drift damage from pesticides when the forest practice rules were followed. In other words, PARC cases documented that, like in 2013 Curry County case, when the regulations weren't followed, problems often resulted and when the regulations were complied with there were rarely problems. Not a big surprise.

This same PARC case history also documented much more serious human exposures to pesticides in structural and agricultural applications. For this reason, it would seem appropriate that agricultural and residential pesticide applications, which often involve much more toxic chemicals and more frequent applications, be given equal scrutiny along with forestry in any future review of state pesticide regulations.

Regarding more current controversies, all parties seem to agree state regulations were violated in the 2013 Curry County incident. Appropriate enforcement actions were eventually taken. But that does not necessarily lead to the conclusion that the regulations themselves are inadequate. Perhaps administration of the regulations should be examined first. Otherwise, it is sort of like reducing the speed limit from

55 to 45 because someone is caught going 80. It is likely the wrong approach to solve the problem.

Mandating prior notice of the precise timing of aerial forest pesticide applications has been recently discussed. Such a change in the rules will be problematic as such decisions are often modified at the last minute in response to changing weather conditions and the need to prevent off-target drift. That operational flexibility is important to ensure off-target drift does not take place. If a rigid prior notice requirement is placed into state law, concerned neighbors might be repeatedly notified about applications that are then postponed or don't take place at all. I am not sure that is helpful to anyone.

A final point on the topic of Department of Forestry responses to citizen complaints regarding any forest practice rule, not just pesticides. Prompt, professional, and thorough investigations are critical to maintaining credibility and public support for the Forest Practices Act. I believe when I served as the Operations Unit Manager for the Forest Practices (now Private Forests) Program that our directives required initiation of an investigation within 24 hours of it being received. Sometimes it is tempting to minimize this effort when the call comes in from a frequent, chronic complainer. But I also recall an instance a citizen known for numerous, unsubstantiated complaints about pesticide applications phoned in one more complaint. It would have been easy to dismiss it but the Forest Practices Forester didn't and the new complaint became the trigger for an investigation and subsequent enforcement action for herbicide damage to the vegetation required to be maintained in a riparian management area. With cooperative attitudes from all involved, the public can be an asset to state agencies to ensure high levels of regulatory compliance.

Thank-you for considering these comments as you deliberate on possible changes to the forest practice chemical and other petroleum product rules and their administration.

Sincerely,

David Morman
Bend, Oregon