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Via Electronic Mail: senr.exhibits@oregonlegislature.gov

Senate Committee On Environment and Natural Resources
Sen. Michael Dembrow
Sen. Alan Olsen
Sen Herman Baertschiger, Jr.
Sen. Floyd Prozanski
Sen. Arnie Roblan
900 Court Street, NE
Salem, OR 97301

Re: **SB 892 and SB 500**

Dear Senators:

I understand there is a Hearing on these two Bills set for March 22, 2017. Unfortunately, I have another matter scheduled that day. Consequently, I write to provide written testimony on both Bills.

SB 892

This Bill would allow citizens to learn when they or their property might be subject to aerial application or spraying of toxic chemicals. That would allow a citizen to try to take appropriate precautions to protect themselves and/or their property.

It would also allow citizens to learn what they had been sprayed with, so that they could inform their doctors or take appropriate steps to try to mitigate the damages to their property. These notifications could easily be accomplished with an existing notification system, that the Oregon Department Of Forestry already maintains.

I have been an attorney practicing law for over thirty years. Many of my cases have involved herbicide drift. These applications of herbicide are exceedingly dangerous and virtually impossible to control.

The Oregon Supreme Court recognized this fact over five decades ago in a case called *Loe v. Lenhardt*, 227 Or 242, 362 P.2d 312 (1961). In that case, and in a number of subsequent decisions, the Oregon Supreme Court made it clear that it is virtually impossible to prevent drift when aerially applying these toxic chemicals.

The *Loe* Court even went so far as to find that common law strict liability (where no fault is required) for an ultra-hazardous activity applies in such circumstances. The court did so because of the well recognized danger to people and property, that aerial application of herbicides pose.

Yet currently, people who are in an area that is going to be sprayed - or which has been recently sprayed - have no good way of knowing that there will be spraying, or what will be sprayed, or what has been sprayed. That means property owner can't take precautions to protect their property or themselves. They also can't take steps to try to mitigate their damages, once they learn they have been sprayed.

This makes no sense. It is an unfair, dangerous, and outdated, approach. Oregon should do away with this anachronism which allows the "secret" use of toxic chemicals in and around private and public property. A simple solution exits, and SB 892 is that solution.

SB 500

This Bill would reform a little-known, but highly damaging, provision of Oregon law. Currently, a person who has been damaged by herbicide drift - or even direct misapplication - typically has **only 60 days** from the time they learn of the damage to report that situation to the Oregon Department Of Agriculture. This is called a Report Of Loss, or ROL.

The damaged person must use a specific form, that must be filed in a specific manner, and served on specific people. If the damaged person does not properly file the ROL in precisely the right manner, they are typically **barred by law** from bringing a damages claim – no matter how legitimate their damages claim is, no matter how serious their damages are. This is true even in the type of strict liability claims recognized by the Oregon Supreme Court in *Loe.*

This is completely unfair. It precludes many legitimately damaged property owners from recovering damages, against someone who clearly negligently or wantonly applied toxic chemical. SB 500 would modify the law that creates that horrendous and unexpect (and unfair) consequence.

The current ROL requirement basically creates a 60-day Statute Of Limitations (SOL). That's shorter than **any** other Oregon SOL that I am aware of, on any issue. For example, even the Oregon Tort Claims Act, which is designed to protect government by creating a very short notice requirement – provides for a 180 days notice period. *See*, ORS 30.275. Why should citizens damaged by a highly dangerous activity, have less than half that much time? Why should insurers for private users of toxic chemicals get a proverbial "free ride" simply because a damaged Oregonian does not meet such an absurdly short deadline, in precisely the right manner?

I have lost track of the number of times that I have had to explain to people with legitimate serious damages claims, that they are precluded by law from bringing those

claims - merely because they did not properly file an ROL. This is a form that most people never even knew existed. If the property owner happens to learn of the ROL form, they then have to send it to all of the right people, in exactly the right manner, with all the proper information, or they can potentially be barred by law from bringing a completely legitimate claim.

Again, this makes no sense. It's particularly harmful to people with private property who have been exposed and don't know who the perpetrator of the act was, or don't know key information about it. It is little more than a trap for unsuspecting landowners, where if they miss even a single step in the complicated dance that is involved in completing and filing an ROL, they lose **all** their rights.[1]

Making a Report Of Loss can be a useful tool. The revisions proposed in SB 500 allow for that kind of reporting and investigation to occur. However, it takes away the unfair bar against legitimate (and often significant) damages claims, merely because the Oregonian involved didn't cross all the proper "t's" and dot all the proper "i's" **within 60 days.**

I urge you to pass out both SB 892 and SB 500. I hope these comments have been helpful.

Sincerely,

/s/ *Karl G. Anuta*

Karl G. Anuta

KGA/kr
cc: Beth Patrino (beth.patrino@oregonlegislature.gov)

[1] It also, by the way, creates a significant trap for lawyers. Even most long practicing lawyers don't know about the 60-day SOL created by the ROL requirement, not unless they have previously done herbicide drift work.