

Texas State Legislature
Senate Committee on Agriculture and Rural Affairs
Interim Committee Hearing March 24, 2010 at 9 a.m.

Charge: Study the impact of windblown herbicides on grape growing and other agricultural production. Make recommendations for improving the safety and quality of Texas agricultural products

Testimony of Lou Bright, General Counsel, Texas Wine and Grape Growers Association

Dear Mr. Chairman and Members:

For the record, my name is Lou Bright. I am the General Counsel of the Texas Wine and Grape Growers Association. It is my privilege to be able to speak on behalf of the Association and to offer their comments and recommendations about the regulation of the herbicide 2,4-D and the ways in which our statutory and regulatory structure might be improved for the benefit of grape growers, herbicide users and Texas agriculture generally.

While recognized as a useful tool for agricultural producers, the chemical 2,4-D is also well known as a product that can present a significant threat to non-targeted vegetation because of "drift or uncontrolled use." *Tex. Ag. Code §76.141; 4 Tex. Admin. Code §7.30*. For this reason 2,4-D, and other such products, are subject to a number of restrictions imposed through statutes and regulations which follow the standard regulatory model.

One must obtain a license from the Department of Agriculture in order to distribute, sell or use 2,4-D in more than small quantities. *Tex. Ag. Code §76.105*. License holders must pass examinations to qualify for licensure; attend continuing education classes, and maintain records of use of 2,4-D and other regulated herbicides. *Tex. Admin. Code §§7.22, 7.24; Tex. Ag. Code §§76.075; 76.114; 76.101*. Licenses are subject to suspension or revocation, and license holders are subject to financial penalties for violations of laws or regulations or for operating in a "faulty, careless or negligent manner." *Tex. Ag Code §12.021, 76.076*.

County Commissioners Courts may, after hearing, determine that extra levels of regulatory control should apply in their counties. *Tex. Ag. Code §76.144*. There are fifty-four such regulated counties and within them, during designated periods, users of 2,4-D must obtain spray permits in addition to their normal state license. Such permits last for up to 180 days. *Tex. Admin. Code §7.50*

Within regulated counties, Commissioners impose specific limitations and conditions on the time and place of use and method of application of 2,4-D and other regulated herbicides. These local limitations reflect the common sense notion that responsible use of 2,4-D requires consideration of a number of factors including the proximity of vulnerable crops, the phase of the growing cycle for those crops and atmospheric and weather conditions.

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Unfortunately, such localized decisions regarding the necessary conditions for responsible use are not made for those areas of Texas that are the source of our growing viticulture industry. As the committee has heard, the result is unintended damage to valuable vines and inhibition of future growth of the industry. The members of the Wine and Grape Growers Association are convinced that these negative effects can be avoided without adverse effect to other agricultural interests by altering our regulatory structure in three ways.

First, Texas should follow the successful example of several other states and establish and maintain, through the appropriate regulatory agency, a database providing the location of every commercial vineyard in Texas. This information could and should be readily available to both herbicide users and regulators. Such a database would be sensible in light of the inescapable conclusion that the beginning of responsible use of a volatile herbicide is for users and regulators to know the crops put at risk by a particular use of that herbicide.

Second, in counties containing commercial vineyards, or that are adjacent to counties with viticulture production, users of 2,4-D should be required to obtain a spray permit during the critical time in the vineyard growing cycle, as users now do in the fifty-four regulated counties. The object of the permit is not to prohibit the use of 2, 4-D except in those limited periods when its use presents an unreasonable risk of harm to non-targeted crops. Rather, the permitting system can and should be designed to regulate and control the time, place and manner of use by reference to then prevailing local conditions.

Local conditions are, of course, ever changing; particularly wind and other atmospheric conditions. So, in order to insure the most sensible decisions about the use of 2,4-D, spray permits should be both site and application specific and should therefore be of more limited duration.

Finally, the requirement to obtain a spray permit in areas containing vineyards should only apply during the growing cycle of the vines. Generally speaking, this cycle begins with what vineyard operators refer to as "bud break" in the spring and ends when the vines become dormant for the winter: usually after the first hard freeze of the fall.

Clearly these events do not occur at the same time in vineyards around the state, or even within the same region in different years. For this reason, the Association recommends that the beginning and ending date of the regulated period for 2,4-D users in viticulture areas should be determined by the regional viticulture advisor employed by Texas Agrilife Extension. The viticultural advisor should determine the beginning and ending dates of the regulated period by reference to historical trends in the area, prevailing local conditions, consultation with agricultural producers and other relevant factors.

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The members of the Wine and Grape Growers Association are settled in their view that adoption of these recommendations would significantly lessen threat and damage to vineyards by the use of 2,4-D and, of equal importance, would lessen the risk of civil and administrative liability to herbicide users because of careless or uninformed use of 2,4-D.

We appreciate your attention and efforts in this important matter and stand ready to help in any way we can.