

Oregon Residents Challenge The State's "Right-to-Farm" Law

Rebekah Wilce - Progressive CMD

A group of residents of the Cedar Valley area near Gold Beach in Curry County, Oregon say their properties were doused with pesticides by a helicopter aiming for privately-owned timberlands last October.



"Right to Farm" Law allows heavy aerial pesticide applications.

forest practice. These can include heavy aerial pesticide applications, and, in fact, Oregon's law specifically states that pesticide use is protected practice as long as it complies with applicable laws and "is done in a reasonable and prudent manner." There is no exception to this protection carved out for pesticides that end up on adjacent properties

Pesticides Falling from the Sky

John Burns, assistant chief of the local volunteer fire department, was outside doing yard work one morning last October. So were several of his neighbors, he said—it was a nice day. "I noticed a helicopter kept going over the top of me, with kind of a horrible smell to it, but I didn't realize it was dropping product on me. Burns told CMD. He later found out the helicopter had made seven passes over the valley. He didn't notice the immediate effects from the exposure, although as the day wore on he says he says he felt progressively worse.

Burns' neighbor, James Welsh,

who was out in his backyard talking on his cell phone, was hit with chemicals and immediately felt sick, had difficulty breathing and felt nauseous. His son, Jim Welsh, was left to tell the story because his father passed away in April. He had a pre-existing heart condition, but Jim said his father was healthy enough over all until that day last October. When his condition "deteriorated rapidly...he couldn't be treated because he couldn't tell what he was sprayed with," Jim said.

Welsh and his neighbors didn't find out until April 8, 2014 that what had fallen on them was a mix of 2,4-D and triclopyr combined with an adjuvant, and that the applicator had "applied one product at a rate above the maximum allowed by the label instructions." Burns called the combination that had fallen on them "extreme poison." James Welsh died of a heart infection later that month. His family wanted an autopsy, and offered to pay for it, but were told there was no one in Oregon that could perform the procedure.

James Welsh's 90-year old mother, for whom he was the sole caregiver, is one of the plaintiffs in the case challenging Oregon's "right-to-farm" law. Her grandson Jim and his family now care for her.

Burns said that 45 people in Cedar Valley were affected by the weed killers falling from the sky. Thirteen of them were children.

ALEC's Role in Spreading the Controversial Legislation

All 50 states have Right-to-Farm laws, but their provisions vary. The American Legislative Exchange Council (ALEC) supports a particularly controversial version, and lists it in a June 2014 pamphlet obtained by the Center for Media and Democracy/Progressive, Inc (CMD) as one of the five "key model" policies in the area of energy, the environment and agriculture.

Like the ALEC bill, Oregon's law contains a provision ordering the plaintiffs – those who say they've been harmed by an agricultural practice like aerial pesticide application – to pay the legal fees of the defendant if they lose the case.

The first Right-to-Farm laws were intended to protect family farmers against their new suburban neighbor filing illegitimate nuisance lawsuits against them when, in fact, the farms were there first. But in the past few decades, intensive corporatization of farming has threatened both the future of family farming and the ability of neighbors to regulate the development of industrial agriculture operations that have transmogrified many farms into factories.

Giant agribusiness interests have capitalized on the sentiment of protecting traditional farming and convinced some states to revise their right-to-farm laws to protect the most egregious of industrial farming practices from legitimate nuisance suits.

Oregon's law, adopted in 1993, extends protection from liability even to agricultural operations that don't predate homeowners. Oregonians for Food and Shelter (OFS), an industry lobby group founded to "do battle with activists seeking an initiative to ban the aerial application of forest herbicides" (according to an earlier iteration of its website), supported the bill.

Missouri, which already had right-to-farm laws on the books, recently voted on a ballot initiative to add the policy to the state constitution. Preliminary results from the August 5th election show the initiative passed by 2,490 votes.

"Insufficient" Regulation Sinks Oregon

"Below Ethical Minimum

Lisa Arkin, Executive Director of Beyond Toxics, a grassroots environmental health non-profit organization working to help communities respond to incidents like the one in Cedar Valley, calls Oregon the "lowest common denominator in the west on forestry policy." An in-depth report Beyond Toxics published in 2013 called Oregon's forestry laws "loose and antiquated" and its pesticide spray regulations "insufficient" compared to surrounding states. The same timber companies that comply with Washington's stricter requirements of pesticide use posting, restrictions, and buffer zones without trouble argue that the same level of accountability in Oregon would put them out of business.

State Agency Failures and Lax Laws Leave Residents in the Lurch, Critics Say

Beyond Toxics' Arkin sees many gaps in the state's investigation into the pesticide incident in Curry County. The state concluded that the problem was due to failure of a pesticide applicator and his company, she said. But when Beyond Toxics filed a public record request, it was denied and later enforced by the Department of Justice. Arkin was surprised to find that the contracted manager for the timber company, that had hired the applicator, was overseeing the pesticide application on site that day and was reported to have personally witnessed the spray set-up and helicopter departures. But neither the contract manager nor his timberland management company were fined or cited.

Challenging "Right-to-Farm"

So Cedar Valley residents are challenging the state's "right-to-farm", which effectively prevents them from suing for damages when they allege they and their loved ones were harmed.

The lawsuit challenges "right-to-farm" under the clause of the state constitution that guarantees that every individual will have a legal remedy for the violation of any fundamental legal right. It seeks a declaratory judgement.

John Burns, who is one of the plaintiffs, told CMD, "We feel our rights have been violated. Until the laws and the way they spray pesticides are changed, this will continue to happen to people in the state." *A longer version of this article is on PR Watch.*