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.

In what has been called a ‘severe sanction’ the pesticide applicator and the aerial spray company he owns has been fined $10,000 each by the state and had their pesticide licenses suspended for a year for providing false information that misled investigators.

But at least one of those affected says this basically amounts to a big traffic ticket, when instead he believes the incident should be considered an act of ‘criminal trespass’ linked to 45 illness reports.

The problem is that a law passed in the state in 1990s prevents residents from successfully suing the pesticide applicator and timberland owners for damages. So 17 of the residents are challenging the state’s Right-to-Farm Act.

The ALEC bill, Oregon’s law, contains a provision ordering the pesticide applicator and his company, that had hired the applicator, to pay for it, but were told there was no one in Oregon that could personally witness 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 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 up 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.