

Oregon Residents Challenge the State "Right-to-Farm" Law (<http://www.prwatch.org/news/2014/09/12585/oregon-residents-challenge-states-right-farm-law>) [2]

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](http://earthfix.opb.org/communities/article/oregon-issues-hefty-fine-revokes-license-of-compan/)" (<http://earthfix.opb.org/communities/article/oregon-issues-hefty-fine-revokes-license-of-compan/>) [3], the pesticide applicator and the aerial spray company he owns have been [fined \\$10,000](http://odanews.wpengine.com/news-release-oda-takes-enforcement-action-in-curry-county-pesticide-incident/) (<http://odanews.wpengine.com/news-release-oda-takes-enforcement-action-in-curry-county-pesticide-incident/>) [4] 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 by the state in the 1990s prevents the residents from successfully suing the pesticide applicator and timberland owners for damages. So 17 of the residents are [challenging the constitutionality](http://crag.org/wp-content/uploads/2014/08/COMPLAINT-final-8-12-14.pdf) (<http://crag.org/wp-content/uploads/2014/08/COMPLAINT-final-8-12-14.pdf>) [5] of that law, the "[Farm and Forest Practices Act](#) [6]," often called the "Right to Farm and Forest Law."

Such so-called "[right-to-farm](http://sourcewatch.org/index.php?title=Right_to_Farm_Act)" laws ([http://sourcewatch.org/index.php?title=Right to Farm Act](http://sourcewatch.org/index.php?title=Right_to_Farm_Act)) [7] insulate agricultural operations -- including large industrial livestock confinement operations and, in Oregon, private timber companies -- against lawsuits as long as they're following what is (or, in some cases, may become) a "[generally accepted](http://nationalaglawcenter.org/wp-content/uploads/assets/righttofarm/oregon.pdf)" (<http://nationalaglawcenter.org/wp-content/uploads/assets/righttofarm/oregon.pdf>) [8] farming or forest practice.

These can include heavy aerial pesticide applications, and in fact Oregon's law specifically states that pesticide use is a 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 an immediate effect from the exposure, although as the day wore on 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 preexisting heart condition, but Jim said his father was healthy enough overall 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](http://odanews.wpengine.com/oda-completes-curry-county-pesticide-use-investigation-finds-violations/) (<http://odanews.wpengine.com/oda-completes-curry-county-pesticide-use-investigation-finds-violations/>) [9] that what had fallen on them was a mix of [2,4-D](http://www.beyondpesticides.org/pesticides/factsheets/2-4-D.pdf) (<http://www.beyondpesticides.org/pesticides/factsheets/2-4-D.pdf>) [10] and [triclopyr](http://www.beyondpesticides.org/pesticides/factsheets/Triclopyr.pdf) (<http://www.beyondpesticides.org/pesticides/factsheets/Triclopyr.pdf>) [11] 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 weedkillers 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](http://www.alecexposed.org/w/images/a/af/3A8-Right_to_Farm_Act_Exposed.pdf) ([http://www.alecexposed.org/w/images/a/af/3A8-Right to Farm Act Exposed.pdf](http://www.alecexposed.org/w/images/a/af/3A8-Right_to_Farm_Act_Exposed.pdf)) [12], and lists it in a June 2014 pamphlet obtained by the Center for Media and Democracy/Progressive Inc. (CMD) as one of five "key model" policies in the area of energy, the environment, and agriculture.

Like the [ALEC bill](http://www.alecexposed.org/w/images/a/af/3A8-Right_to_Farm_Act_Exposed.pdf) (<http://www.alecexposed.org/w/images/a/af/3A8-Right to Farm Act Exposed.pdf>) [12], 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.



Pesticide applicator's helicopter

applicator and timberland owners for damages. So 17 of the residents are [challenging the constitutionality](http://crag.org/wp-content/uploads/2014/08/COMPLAINT-final-8-12-14.pdf) (<http://crag.org/wp-content/uploads/2014/08/COMPLAINT-final-8-12-14.pdf>) [5] of that law, the "[Farm and Forest Practices Act](#) [6]," often called the "Right to Farm and Forest Law."

Missouri, which already had right-to-farm laws [on the books](http://nationalaglawcenter.org/wp-content/uploads/assets/righttofarm/missouri.pdf) (<http://nationalaglawcenter.org/wp-content/uploads/assets/righttofarm/missouri.pdf>) [13], recently voted on a ballot initiative to add the policy to the state constitution. Preliminary results from the August 5 election show the initiative passed by 2,490 votes. Election officials are conducting a [recount](http://www.sacbee.com/2014/08/25/6652982/recount-requested-on-missouri.html) (<http://www.sacbee.com/2014/08/25/6652982/recount-requested-on-missouri.html>) [14].

When CMD exposed ALEC in 2011, PRWatch published a [quick history of "right-to-farm" laws](http://www.prwatch.org/news/2011/08/10922/alec-exposed-protecting-factory-farms-and-sewage-sludge) (<http://www.prwatch.org/news/2011/08/10922/alec-exposed-protecting-factory-farms-and-sewage-sludge>) [15]:

In defense of family farming, Massachusetts passed the first "Right to Farm" (http://www.sourcewatch.org/index.php/Right_to_Farm_Laws) [16]" law in 1979, to protect these farmers against their new suburban neighbors filing illegitimate nuisance lawsuits against them when, in fact, the farms were there first. Since then, every state has passed some kind of protection for family farms, which are pillars of our communities and the backbone of a sensible system of sustainable agriculture.

However, 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 agricultural operations that have transmogrified many farms into factories. Small-scale farms that resembled Old MacDonald's farm (with an oink oink here and a moo moo there) have increasingly disappeared or been turned into enormous livestock confinements with literal lagoons of liquified manure and urine, super-concentrated smells that could make a skunk faint, or vast fields of monoculture crops grown with a myriad of chemicals and pesticides and sometimes even [sewage sludge](http://www.sourcewatch.org/index.php/sewage_sludge) (http://www.sourcewatch.org/index.php/sewage_sludge) [17]....

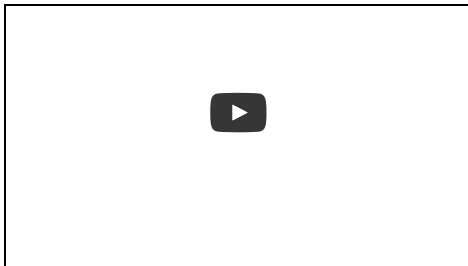
Capitalizing on the sentiment of protecting traditional farming, giant agribusiness interests have convinced some states to revise their Right to Farm laws to stealthily protect the most egregious of industrial farming practices from legitimate nuisance suits.

Oregon's law was first adopted in [1993](http://www.oregon.gov/ODA/shared/Documents/Publications/Administration/OregonRightToFarm.pdf) (<http://www.oregon.gov/ODA/shared/Documents/Publications/Administration/OregonRightToFarm.pdf>) [18] and jumped straight to the expanded version, [extending](http://nationalaglawcenter.org/wp-content/uploads/assets/righttofarm/oregon.pdf) (<http://nationalaglawcenter.org/wp-content/uploads/assets/righttofarm/oregon.pdf>) [8] protection from liability even to agricultural operations that don't predate homeowners. [Oregonians for Food and Shelter](http://www.sourcewatch.org/index.php?title=Oregonians_for_Food_and_Shelter) (http://www.sourcewatch.org/index.php?title=Oregonians_for_Food_and_Shelter) [19] (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](#) [20] of its website), supported the bill. John DiLorenzo, who has lobbied for the group, [testified](#) [21] in 2013 that OFS chief lobbyist "Paulette Pyle and I were among the proponents of that legislation during the 1993 legislative session."

DiLorenzo is also credited with writing the 2013 law overriding the ability of Oregon's citizens to regulate their own food systems locally, as [The Progressive has reported](http://www.progressive.org/news/2014/05/187699/oregons-gmo-sellout) (<http://www.progressive.org/news/2014/05/187699/oregons-gmo-sellout>) [22].

OFS Executive Director Scott Dahلمان has told the Associated Press, "If [right-to-farm] were overturned, I think there would be very devastating consequences." OFS staff did not return CMD's call for comment.

"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." She says that regulation of the timber industry in Washington, Idaho, and California helps to protect citizens in those states from practices that endanger human health, the environment, groundwater, and wildlife.

But "[Oregon's Industrial Forests and Herbicide Use: A Case Study of Risk to People, Drinking Water and Salmon](http://www.beyondtoxics.org/work/pesticide-reform/forest-practices-act-report-media-access/)" (<http://www.beyondtoxics.org/work/pesticide-reform/forest-practices-act-report-media-access/>) [23], an in-depth report published by Beyond Toxics in December 2013, called Oregon's forestry laws "loose and antiquated" and its pesticide spray regulations "insufficient"

compared to surrounding states. It used geographic information system (GIS) mapping and measurements from Lane County, Oregon, where citizen complaints about aerial pesticide spray have garnered [national media attention](http://cironline.org/reports/oregonians-fear-harmful-effects-timberland-herbicides-3731) (<http://cironline.org/reports/oregonians-fear-harmful-effects-timberland-herbicides-3731>) [24] and a higher-than-usual amount of data from timber companies and scientists.

Arkin says that some of the same timber companies active in Oregon comply with Washington's stricter requirements of pesticide use posting, restrictions, and buffer zones, for example, without trouble, but argue that the same level of accountability in Oregon would put them out of business.

The pesticide spray over Cedar Valley is certainly not the first residential exposure due to aerial pesticide application. Residents of the Triangle Lake area in Lane County say they have been exposed to aerial pesticide drift multiple times in recent years, especially in 2011, as CMD [has reported](http://www.prwatch.org/news/2012/02/11263/atrazine-molecular-bull-china-shop) (<http://www.prwatch.org/news/2012/02/11263/atrazine-molecular-bull-china-shop>) [25]. Urine tests performed by scientists at Emory University in spring 2011 confirmed 2,4-D in 100 percent of their urine samples and the weedkiller atrazine in most.

But a [preliminary report](http://public.health.oregon.gov/HealthyEnvironments/TrackingAssessment/EnvironmentalHealthAssessment/Hwy36/Documents/Highway_36_PHA_%20Final%20PC) (http://public.health.oregon.gov/HealthyEnvironments/TrackingAssessment/EnvironmentalHealthAssessment/Hwy36/Documents/Highway_36_PHA_%20Final%20PC) [26] on pesticide drift and its effects on the area performed by the Environmental Health Assessment Program and the Oregon Health Authority in cooperation with the U.S. Centers for Disease Control and Prevention (CDC) Agency for Toxic Substances and Disease Registry (ATSDR) reached vague conclusions such as that residents had been exposed and had higher than average levels of 2,4-D in their urine, but couldn't determine how they'd been exposed.

Lane County residents also tried to challenge the state's "right-to-farm" law, but the Oregon Court of Appeals [dismissed the case on a technicality](http://www.columbian.com/news/2013/nov/18/court-tosses-right-to-farm-challenge-oregon/) (<http://www.columbian.com/news/2013/nov/18/court-tosses-right-to-farm-challenge-oregon/>) [27].

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 the failure of a pesticide applicator and his company, she said, but when Beyond Toxics filed a public records request (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.

The Department of Agriculture's [investigation notes \(http://s3.amazonaws.com/s3.documentcloud.org/documents/1104676/case-report-detail-140147-draft-april-4-2014.txt\)](http://s3.amazonaws.com/s3.documentcloud.org/documents/1104676/case-report-detail-140147-draft-april-4-2014.txt) [28] also show that the agency received a fax from the applicator on November 26, 2013 stating that a 2,4-D product and a triclopyr product had been sprayed on a property near the residents on the day in question, but residents weren't notified of the makeup of the spray until April 2014.

Jim Welsh, whose father and grandmother said they were exposed to the pesticides in October, said, "The state really dropped the ball on this whole deal... My dad went to the doctor and had these symptoms, and all the doctors could do was ask what were you sprayed with so they'd know how to treat it. It was mind-blowing. I've been in law enforcement for 28 years. The government's first priority should be public safety, making sure that people are safe."

Oregon Public Broadcasting has been the primary local media reporting on the incident since October. In April 2014, in an article titled "[Southern Oregon Pesticide Case Highlights Gaps In State Oversight \(http://earthfix.opb.org/communities/article/curry-county-pesticide-case-highlights-gaps-in-sta/\)](http://earthfix.opb.org/communities/article/curry-county-pesticide-case-highlights-gaps-in-sta/)" [29]," OPB noted a former federal investigator's scathing criticism of the state's investigation.

Richard Kauffman, a former regional director of the CDC's Agency for Toxic Substances and Disease Registry who worked on both the Cedar Valley and Triangle Lake cases before he retired, said of the state's Pesticide Analytical Response Center or PARC (a coalition of state agencies responding to pesticide complaints):

"To be open about these applications and then to respond quickly to complaints seems to be something they're not able to do whether it's a matter of motivation, a matter of funding or a combination of the two," Kauffman said...

"In Cedar Valley, the state took seven leaf samples from residents' properties a week after the spray. That's a sample too small, too narrow and too late after the fact to be useful for understanding exposure, toxicologists and investigators said.

"That's completely inadequate," Kauffman said of the Cedar Valley sampling plan. He said environmental sampling should be done within 48 hours and should include at least soil and water in addition to foliage. Residents also should have had their blood or urine tested, he said...

"I would say given our history in this state with these particular communities, and the problems with aerial applications, we should be taking at least urine samples immediately when people begin feeling exposure symptoms," Kauffman... said."

The combination of these regulatory failures and lax laws means that "Oregon has sunk below the ethical minimum by which a state should observe human rights and human health protections," Arkin says.

Challenging "Right-to-Farm"

So Cedar Valley residents are challenging the state's "right-to-farm" law, which effectively prevents them from suing for damages when they allege they and their loved ones were harmed. The public interest environmental law firm [Crag Law Center \(http://crag.org/about-us/\)](http://crag.org/about-us/) [30] has taken the case.

Crag attorney Chris Winter said he was interested in the case because he became "concerned that people weren't able to defend their property rights against toxic chemicals." The lawsuit challenges "right-to-farm" under the 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 judgment.

Winter said, "Because toxic chemicals and aerial application are so risky, courts have said there's a higher standard of care, more than just being reasonably prudent, but being careful that nothing gets on neighbors' property." But because of the "right-to-farm" law, citizens still can't sue. That means courts have "tipped in favor of chemical companies and applicators."

Winter says that the plaintiffs hope to change the "Right to Farm and Forest Law," but that additional changes are needed to address structural problems in the state's regulatory system, like "basic standards and guidelines for how pesticides are applied."

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."

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Links:

- [1] <http://www.prwatch.org/users/35294/rebekah-wilce>
- [2] <http://www.prwatch.org/news/2014/09/12585/oregon-residents-challenge-states-right-farm-law>
- [3] <http://earthfix.opb.org/communities/article/oregon-issues-hefty-fine-revokes-license-of-compan/>
- [4] <http://odanews.wpengine.com/news-release-oda-takes-enforcement-action-in-curry-county-pesticide-incident/>
- [5] <http://crag.org/wp-content/uploads/2014/08/COMPLAINT-final-8-12-14.pdf>
- [6] https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors030.html
- [7] http://sourcewatch.org/index.php?title=Right_to_Farm_Act
- [8] <http://nationalaglawcenter.org/wp-content/uploads/assets/righttofarm/oregon.pdf>
- [9] <http://odanews.wpengine.com/oda-completes-curry-county-pesticide-use-investigation-finds-violations/>
- [10] <http://www.beyondpesticides.org/pesticides/factsheets/2-4-D.pdf>
- [11] <http://www.beyondpesticides.org/pesticides/factsheets/Triclopyr.pdf>
- [12] http://www.alexexposed.org/w/images/a/af/3A8-Right_to_Farm_Act_Exposed.pdf
- [13] <http://nationalaglawcenter.org/wp-content/uploads/assets/righttofarm/missouri.pdf>
- [14] <http://www.sacbee.com/2014/08/25/6652982/recount-requested-on-missouri.html>

- [15] <http://www.prwatch.org/news/2011/08/10922/alec-exposed-protecting-factory-farms-and-sewage-sludge>
- [16] http://www.sourcewatch.org/index.php/Right_to_Farm_Laws
- [17] http://www.sourcewatch.org/index.php/sewage_sludge
- [18] <http://www.oregon.gov/ODA/shared/Documents/Publications/Administration/OregonRightToFarm.pdf>
- [19] http://www.sourcewatch.org/index.php?title=Oregonians_for_Food_and_Shelter
- [20] <https://web.archive.org/web/20080704110449/http://www.ofsonline.org/ofs-history.htm>
- [21] <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/8704>
- [22] <http://www.progressive.org/news/2014/05/187699/oregons-gmo-sellout>
- [23] <http://www.beyondtoxics.org/work/pesticide-reform/forest-practices-act-report-media-access/>
- [24] <http://cironline.org/reports/oregonians-fear-harmful-effects-timberland-herbicides-3731>
- [25] <http://www.prwatch.org/news/2012/02/11263/atrazine-molecular-bull-china-shop>
- [26] http://public.health.oregon.gov/HealthyEnvironments/TrackingAssessment/EnvironmentalHealthAssessment/Hwy36/Documents/Highway_36_PHA_%20Final%20PCV%205%203%
- [27] <http://www.columbian.com/news/2013/nov/18/court-tosses-right-to-farm-challenge-oregon/>
- [28] <http://s3.amazonaws.com/s3.documentcloud.org/documents/1104676/case-report-detail-140147-draft-april-4-2014.txt>
- [29] <http://earthfix.opb.org/communities/article/curry-county-pesticide-case-highlights-gaps-in-sta/>
- [30] <http://crag.org/about-us/>
- [31] <http://www.prwatch.org/topics/atrazine-exposed>
- [32] <http://www.prwatch.org/topics/environment/agriculture>
- [33] <http://www.prwatch.org/news-types/news>