

Group Challenges Constitutionality of Oregon Right to Farm Act

JEFF BARNARD, Associated Press

GRANTS PASS, Ore. (AP) — A group of people whose families, homes and pets came under a cloud of herbicides meant for neighboring timberlands is challenging the constitutionality of the Oregon Right to Farm and Forest Act.

The lawsuit filed Wednesday in Curry County Circuit Court in Gold Beach argues that immunity the law grants to pesticide sprayers treating farms and forests violates the Oregon Constitution's guarantee of the right to seek a legal remedy to violations of property rights.

"If you are a commercial farmer and your crops are sprayed, you can sue the person who sprayed your crops for damages," said attorney Chris Winter of Crag Law Center in Portland, which is representing the plaintiffs. "But if you are just a regular person, if you get sprayed, or your pets get sprayed, you can't sue the person who sprayed those pesticides."

The law carries an extra deterrent to lawsuits, by awarding legal fees to defendants who claim immunity, Winter said.

The lawsuit was brought by 17 residents of the Cedar Valley area north of Gold Beach, who were victims last fall of herbicides meant for neighboring timberlands. People reported respiratory problems, headaches, balance problems, swelling of eyes and hands, and stomach cramps. The lawsuit seeks a ruling that the immunity granted to pesticide applicators is unconstitutional. It also asks a judge to bar defendants from claiming immunity and to award unspecified damages.

"We have the right to defend our families and our private property from chemical trespass," John Burns, an assistant chief of the local volunteer fire department and one of the plaintiffs, said in a written statement. "Nobody should have to live through what we've experienced over the past several months. These irresponsible practices are making us sick, killing our pets and interfering with the use of our land."

The lawsuit was filed against the pesticide applicator, Pacific Air Research Inc. of White City; timberlands owners Crook Timberlands LLC of Coos Bay and Joseph Kaufman of Gold Beach; the Barnes and Associates logging company of Roseburg; and Pro Forestry Consulting LLC of Coos Bay.

Defendants did not immediately return telephone calls seeking comment.

In April, the Oregon Department of Agriculture determined the Pacific Air Research helicopter pilot "more than likely" allowed herbicides to fall over the homes as it

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flew to spray neighboring timberlands. But it reached no conclusions about whether the small amounts found on the ground accounted for people's health complaints.

This week, the department fined Pacific Air Research and applicator Steven Owen \$10,000 each and suspended their pesticide licenses for a year for providing false information that misled investigators.

All 50 states protect the right to farm. Oregon's law was last revised in 1993 and 1995. It was challenged once before by some residents of the Triangle Lake area of Lane County who complained they were made sick by herbicides sprayed over neighboring timberlands. The Oregon Court of Appeals dismissed their lawsuit against the state on a technicality.

Oregonians for Food and Shelter executive director Scott Dahlman said the law was enacted to stop newcomers in rural areas from suing over accepted farm and forestry practices.

"If it were overturned, I think there would be very devastating consequences," he said.

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