

NEWS

BY CARL SEGERSTROM

SUE, DIE OR KEEP WAITING

Victims of aerial pesticide sprays still waiting for relief

John Burns could feel the spray on his body from a helicopter applying a mixture of pesticides to a nearby clearcut. He describes the well-publicized October 2013 incident as nothing less than an attack on himself and his property.

Landowners in Oregon like Burns, who have had their health, property or water supply damaged by pesticide spraying, are left with limited options to hold the sprayers accountable under state laws that protect agricultural and forestry industries over people.

The Oregon law commonly referred to as the Right to Farm and Forest Act (RTFF) allows landowners to sue neighboring timber or agricultural operations only in the case of “damage to commercial agricultural products; or death or serious physical injury.”

Lisa Arkin, the executive director of statewide advocacy group Beyond Toxics, says the law represents a misguided value system. “The fact that showing that your grape plants are harmed is more important in this state than showing that your child was harmed demonstrates how economics can trump human health and human worth,” she says.

Recently proposed Senate Bill 499 in the Oregon Legislature, which died in committee, would have given private landowners the right to sue for damage to their water supply and would have lowered the personal injury threshold of the current law. The bill would have also taken away the requirement that losing plaintiffs pay the defendants’ legal fees, which can be a deterrent to those affected by pesticide sprays.

Burns says he can’t comprehend how state lawmakers have done so little to provide protections or relief for Oregon landowners affected by

aerial pesticide spraying. He describes the resulting health impacts of the volatilized chemicals used in aerial pesticide sprays as “simply evil.”

“How would you feel if I flew a drone over your property and dropped poisons on your kids?” he asks.

Burns says he and his wife, Barbara, have had lingering health problems since the exposure, which included the chemicals 2,4-D and triclopyr. The spray also affected dozens of Burns’ neighbors in Cedar Valley, a community on the southern Oregon Coast. Some neighbors won’t even let their grandchildren visit their property.

“Something is terribly wrong when the laws and people charged with protecting us aren’t doing their jobs,” Burns says. “As far as aerial spraying goes, there’s no accountability.”

Timber and agricultural industry groups point out that there are state pesticide drift laws that protect landowners from chemical trespass. Pesticide sprayers have been fined thousands of dollars for spraying where they should not.

The laws that prohibit pesticide drift are separate from the Right to Farm and Forest Act, which agricultural and forestry industries argue protects the essential activities of food and timber producers.

In a statement provided to *EW* by the director of public affairs for the Oregon Forest & Industries Council, Sara Duncan wrote: “The natural resource associations representing farmers and foresters across Oregon, including Oregon Forest & Industries Council, Oregon Farm Bureau and Oregonians for Food and Shelter, among others, are opposed to SB 499 because it seeks to remove important provisions of the Right to Farm and Forest Law, compromising a law that protects two industries critical to the economic welfare of this state. SB 499 exposes farmers and foresters to frivolous lawsuits that only seek to limit legal practices and would result in a heyday for needless environmental litigation.”

Chris Winter, the co-executive director of Portland’s Crag Law Center, supported SB 499 — which he argues would help landowners protect their health and property. According to Winter, current pesticide drift laws are ineffective because they rely on the Oregon Department of Agriculture for enforcement.

“The ag and forestry industries are just too cozy with the Department of Agriculture, and the enforcement has been so weak that it has

been ineffective at protecting public health,” Winter says.

Winter says the combination of poor enforcement by ODA and the legal protections for agriculture and timber producers under the RTFF act have created a situation where landowners have little hope for justice after chemical trespass.

“The law strips away the ability of private property owners to protect their family and their property from a neighboring property owner who sprays them with pesticides,” Winter says.

Given the lack of legal protections and the unwillingness of ODA to hold industry accountable, Winter predicts Oregonians will continue to be sprayed by pesticides and see their health and their land suffer until a legal or legislative solution is reached.

The lack of scientific knowledge about the cumulative health impacts of mixing pesticides is also cause for concern for municipalities affected by aerial sprays. The mayor of the coastal town of Depoe Bay, Barbara Leff, made this point in an April 5 statement calling for the postponement of an aerial spray operation near the city’s water supply that included the chemicals atrazine, 2,4-D, glyphosate, hexazinone, clopyralid, penoxsulam, oxyfluorfen and indaziflam.

In a city press release, Leff wrote: “This ‘cocktail’ of chemicals has never been tested for their toxicity in aggregate. This information is essential to any assessment of the environmental and human health effects of the proposed spraying.” Depoe Bay is in Lincoln County, which has a spray ban on its May ballot.

Activists and property owners affected by chemical trespasses were hopeful that SB 499 would give them the legal authority to hold their neighbors accountable. After it failed to go to a vote, the options for victims of chemical trespass don’t look good.

Without a legislative solution landowners are left to rely on the oversight of a state agency critics say is closely aligned with timber and agricultural industries, file expensive lawsuits challenging the constitutionality of current laws or wait until a family member dies and pesticide sprayers lose their immunity under the RTFF.

John Burns says he is baffled by the current system, which he compared to that of a third-world country. “Not only are your rights being violated — you have no recourse against the perpetrators under the laws,” Burns says. “I’m all for the logging industry, but they have no right to cause harm to their neighbors. The health of people and especially children should take precedence.” ■

‘How would you feel if I flew a drone over your property and dropped poisons on your kids?’

— JOHN BURNS

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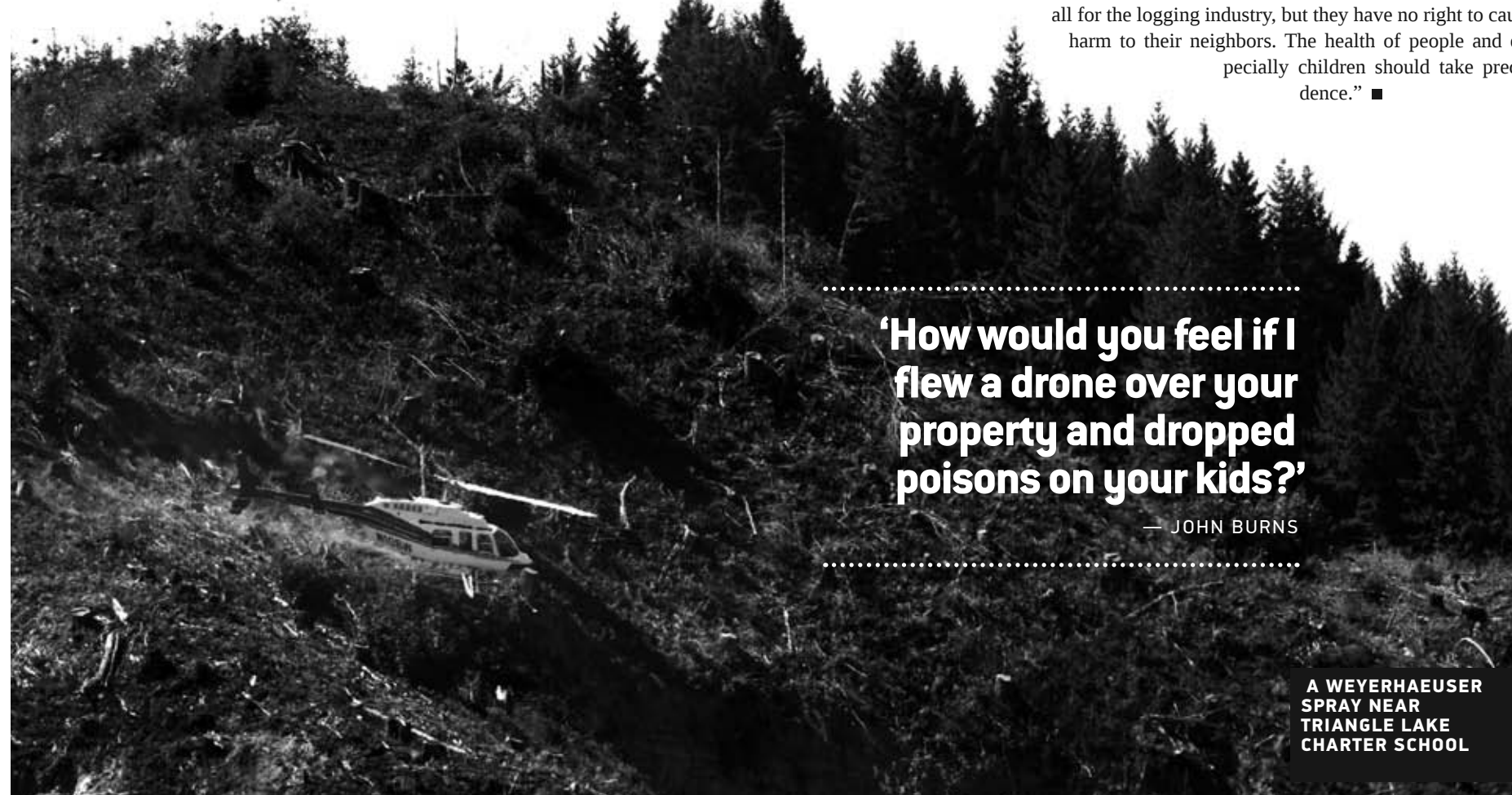


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