

Wafting poison makes fertile ground for suit in Stearns County

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Oluf Johnson's 12,000-acre farm in Stearns County is an organic island in a sea of chemically treated corn and soybeans.

Improperly applied pesticides repeatedly drift over from neighboring farms, often with dire consequences for Johnson. But now, thanks to a new court ruling, he and other farmers can sue to recover their losses.

Letting damaging chemicals cross property lines is trespassing, the Minnesota Court of Appeals ruled on Monday. Moreover, since those pesticides made his crop unsalable in the organic market, Johnson is entitled to damages from the company that applied it, the Paynesville Farmers Union Cooperative Oil Co., the court said. "Whenever this happens it will give people with overspray a legal avenue to pursue," said Doug Spanier, an attorney with the Minnesota Department of Agriculture, which administers pesticide enforcement regulations in the state. And that could go for any farmer whose crop is made inedible by someone else's chemical spray and even homeowners whose property has been damaged by a neighbor's overuse of RoundUp, legal experts said.

It's one case among many across the country that illustrate how the fight over pesticide use is becoming increasingly contentious. Consumers and health experts are worried about the consequences of pesticides and herbicides in the food chain, and the demand for organically grown food is rising in lockstep.

Courts are responding

Recently, an organic farmer in California won \$1 million in damages when pesticides were carried by fog from faraway fields to his own. He had to throw away a season's worth of herbs destined for organic markets.

The Minnesota court's decision on Monday "puts it in line with how other jurisdictions have dealt with this," said Alexandra Klass, a professor of environmental law at the University of Minnesota. "The vast majority of jurisdictions find that pesticide drift is a trespass."

The state Agriculture Department said it fields 100 to 150 complaints a year from farmers about overspraying. But only about 35 a year result in some kind of financial penalty, state agriculture officials said.

For Johnson and his wife, Debra, it's been a long, hard fight. Their attorney, Arlo Vande Vegte of Long Lake, said they would not comment on the decision because talking about it publicly could jeopardize their case.

It will get another hearing in Stearns County District Court, where it was originally dismissed, he said.

But their story was detailed by the appeals court.

The Johnsons made the decision to become organic farmers in the 1990s, an arduous process that takes at least three years of careful planning and scrupulous record keeping. They asked the local pesticide cooperative, Paynesville Farmers Union, to take precautions with spraying around the farm.

Nonetheless, the cooperative repeatedly sprayed pesticide and herbicide on neighboring fields in a way that violated Minnesota law, the court said in its decision.

The attorney representing the cooperative did not return phone calls on Monday.

The first time it happened in 1998, the cooperative apologized but refused to pay the Johnsons for the damage caused by the overspraying. When it happened again in 2002, Johnson complained to the Agriculture Department, which determined the chemicals had been sprayed illegally, tainting Johnson's crop.

He sold it at lower, nonorganic prices, and, following federal rules, removed the contaminated field from production for three years. That time the cooperative settled out of court with the Johnsons.

But it happened again in 2005, 2007 and 2008. In all, the state cited the cooperative four times for violating pesticide laws by applying the chemicals on windy days.

But the Johnsons also paid a price each time it happened. They had to burn fields and plow under soybeans and take their fields out of production. In 2009 they sued the co-op, charging negligence and trespassing. But the district court threw out the suit, saying Minnesota does not recognize trespassing "by particulate matter," and that the Johnsons could not prove damages. The Appeals Court disagreed. It said that thrown objects and even bullets constitute trespass, and that the state Supreme Court has ruled that beekeepers can collect damages for pesticide-contaminated bees that destroyed their hives.

Perhaps even more significant for other organic farmers, the Johnsons' attorney said, they are entitled to damages because they couldn't sell their tainted crops in the organic market.

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ANNUAL REMINDER ABOUT PESTICIDE AND FERTILIZER COMPLAINTS

To report a complaint about pesticide or fertilizer misuse in Minnesota:

- **The MDA's Pesticide Complaint web page** at:
<http://www.mda.state.mn.us/en/chemicals/pesticides/complaints>
Complaints can be filed online 24/7 using the link provided on the web page//online complaints are reviewed by staff several times a day during regular business hours.

OR

- **Call 651-201-6333**, our complaint intake phone number---we have multiple phone lines for this number and several staff members who take calls. This number is answered during regular business hours 8AM to 4 PM.
- **If it's an emergency or after hours, call the MN Duty Officer at 1-800-422-0798 out state and 651-649-5451 metro area.** The Pesticide and Fertilizer Management Division's on-call staff receive notification from the MN Duty Officer 24/7 and then move the complaint to the staff in the Inspection Unit.