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Potential Spray Drift Damage: What Steps to Take?

by

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As many farmers know all too well, applications of various pesticides can result in drift and cause damage to neighboring property owners. In recent years, incidences of spray drift damage have been frequent and well-publicized. In the event a farmer discovers damage to his or her own crop, it is important for the injured producer to know some steps to take.

➤ **Document, Document, Document**

First and foremost, any farmer who suspects possible injury from drift should document all potential evidence, including taking photographs or samples of damaged crops or foliage, keeping a log of spray applications made by neighboring landowners, noting any custom applicators applying pesticide in the area, documenting environmental conditions like wind speed, direction, and temperatures, and getting statements from any witnesses who might have seen recent pesticide applications. Photographs should be taken continually for several days, as the full extent of damage may not occur for several weeks after application. The more documentation a landowner has, the better his chances of recovery will be; whether it is from the offender, the offender's insurance or potentially even the injured party's insurance.

➤ **Talk with Neighbors**

Taking time to talk with neighboring landowners can be very important. First, before any pesticide is sprayed during planting season, having a conversation with neighboring landowners about who is growing what crops, what tolerant varieties may be planted in certain areas, and identifying nearby sensitive crops can help avoid damage in the first place. Second, if damage has occurred, it can be helpful to visit with surrounding landowners to determine if they, too, suffered damage from chemical drift. This can help trace where the drift may have come from. Third, if an injured farmer is able to determine who sprayed the pesticide that caused the damage, it may be possible to calmly discuss the issue and begin to work out some sort of agreement, rather than having to resort to getting the State involved or to civil litigation.

➤ **Contact State Agency**

Every state has an agency that governs pesticide application and investigates complaints. For example, in Texas, this falls under the jurisdiction of the Texas Department of Agriculture. In Arkansas, it is the Arkansas Plant Board. In Indiana, it is the Office of Indiana State Chemist.

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When potential drift damage occurs, contacting the appropriate state agency in the particular location is an important step. These agencies can conduct investigations to determine what chemical caused the damage, who may have applied that chemical nearby, and whether state regulation and label requirements were complied with during application. If the agency discovers a violation of applicable regulations has occurred, they can levy fines against the pesticide applicator and may impose restrictions on that person's ability to continue applying pesticides.

It is important to note, however, that any fines levied by the State are regulatory fines paid to the agency. This money does not provide monetary compensation to the damaged farmer. An injured farmer seeking compensation would have to seek remedy through negotiating with the applicator or instituting a civil lawsuit.

➤ **Consider Seeking Monetary Damages**

In many instances, damage to a crop from spray drift can result in significant monetary damages for the injured farmer. The next step to consider is seeking compensation in the form of monetary damages from the person who applied the pesticide.

An initial consideration is to analyze who may be proper defendants in the case. If a landowner used a custom applicator to apply pesticides, the injured farmer will likely need to consider whether the landowner, custom applicator, or both may be proper defendants. This is a decision that will be made in coordination with your attorney after looking at all the facts.

Once potential defendants have been identified, it is important to determine the status of potentially applicable insurance policies. Crop insurance policies through USDA Risk Management Agency likely will not allow loss recovery for an injured farmer due to pesticide drift. It is important to determine whether the farmer applying the pesticides has a liability insurance policy that may be applicable to pesticide drift claims. Additionally, if a custom applicator was used, the injured party should determine who that applicator was and what type of insurance coverage he or she may have.

Next, an injured party should consider what legal claims may be appropriate in the particular situation. The most common legal claims seen when spray drift occurs have been negligence, nuisance, and trespass. Laws vary greatly by state, so farmers should talk with an attorney licensed to practice in their own state to analyze what potential legal claims may be available, whether proceeding with a civil lawsuit makes good financial sense, and what statutes of limitations may apply to potential claims.

➤ **Conclusion**

Pesticide drift is a serious issue that can have real, significant, and far-reaching impacts on an injured farmer. Understanding the steps to take in the event this damage occurs is important and may help an injured farmer recover from current concerns while avoiding future issues.