

## Part 7b - A Cyclic History: Pollute, Distort, Pacify, Repeat . . . In an Ag Zone, No One Can Hear You Scream

By Doug Baird

Early Sunday morning, June 4, 2017, I was sicker than I had ever been before.

Too sick to even bend over, as I vomited all over the toilet, myself, and the bathroom floor— and I didn't even care.

The previous afternoon, when I was outside mowing the lawn, a high-clearance agricultural boom sprayer sped towards me from an adjoining field and sprayed me with a cloud of a toxic herbicide.

I immediately went inside and cleaned up as best I could, and then left a message with the farmer using that field. Later that afternoon I was called by a representative of the Helena Chemical Company who informed me, without any apology, that they had been in a hurry to finish spraying before the rain started, and advised me to get cleaned up.

Having inadvertently breathed in a quantity of this toxic chemical into my lungs and nasal passages, and from there into my bloodstream, there was no way that any "cleaning up" could effectively remove it.

Attacks of diarrhea began after midnight on the 4th, followed by severe vomiting, then more diarrhea, and it was 24 hours before I left my bed except to struggle to the bathroom.

It was more than a week later that I began to feel well enough and angry enough at this dismissive treatment to make a complaint to the NYSDEC.

Following up on the complaint, a couple of NYSDEC agents stopped by my house to investigate the incident. They took a statement and viewed patches of dead lawn showing where the herbicide had landed in full strength. I was assured I would be informed of the results.

### Results of the Investigation

Helena Chemical was only given a warning, nothing more was done — but I was told that if they did this to me again it would be considered "more serious" the next time. I was also given to understand that somehow I was at fault for not properly marking off my yard to prevent this from happening.

### FOIL – It's a Wrap

*6NYCRR 325.2 Requirements for the use of pesticides:*

*"(a) Pesticides must be used in such a manner and under such wind and other conditions as to prevent contamination of people, pets, fish, wildlife, crops, property, structures, lands, pasturage or waters adjacent to the area of use."*

It required a Freedom of Information Law [FOIL] request to gain access to the incident report, and it arrived in a redacted state.

Download the report: 08151701.PDF

“Helena Chemical was issued Warning No. 20910 for application of pesticide to non-target area, 6NYCRR 325.2(a)”

I wasn’t surprised at the lack of any positive action on the part of the NYSDEC, but the contents of the report were more than disappointing.

The report states that I “was politically active against farming.” This is incorrect. I have both worked on a dairy farm in my youth, and have rented land to a local farmer for twenty-five years. I also served on the Lansing Ag Committee in the first year of its existence. My beliefs are clearly set out in my blog, and need no further reiteration here.

The reporting agent states “I noticed other areas of [redacted] Lawn had dead grass and [redacted] stated that [redacted] had used roundup herbicide on his lawn.” This is incorrect. It would be ludicrous for me to spray the lawn with Roundup. Only the weeds that can’t be pulled up in the gravel driveway are spot sprayed, and I had not sprayed anything at or around the time of the incident. The driveway runs down the middle part of the yard, and is nowhere near the outside boundary, adjacent to the rented fields.

The report makes a point that “the lease provided no boundaries or physical descriptors” and that there was a difference between the land rented and the land in the lease. The lease was a commitment to a 5-year contracted use of 8.5 acres of land, and is a form provided by the county for agricultural assessment purposes. The “2 acres” was also land that Jeff Cook had always rented, but land that I did not want tied into a 5-year lease with penalties.

The report also finds it important to state “The residence and leased farm land are all on one tax parcel.” Of course they are on one tax parcel — not only are they contiguous, the County assesses the first acre of every tax parcel at \$30,000!

I had an extended conversation with Jeff Cook on the site discussing the killing of weeds with herbicide some days before the spraying, and I stipulated clearly, several times, that I did not want any of my lawn sprayed and killed. He never mentioned any difficulty with this stipulation, or the need for any boundary markings. The boundaries have been the same for almost 20 years.

Even a child could tell the difference between a plowed and harrowed field of earth and a lawn of mowed grass surrounding a residence and garage, especially with a fringe of taller Quackgrass separating them.

The report states “Overspray of herbicide was found on the south and east edge of the property.” This pattern is consistent with a strong north wind and the spray boom actually positioned over my lawn and the spray being blocked and contained by the taller Quackgrass. Herbicide overspray on the northern boundary would be carried and diffused by the wind unless it hit a blocking object, like myself.

My weather station, located within 30 feet from where I was sprayed, recorded the wind speed [20 mph] and direction [from the north] at the time of the incident, and this direction and wind speed was typical throughout the afternoon. The applicator disputed this without giving any basis for his contention.

The insistence that the tractor was always and only traveling at 12 mph when spraying is inconsistent with the explanation of Helena on the phone that they were in a hurry to get the job done before it rained. [These tractors are very fast and can be seen traveling up and down rural roads, with the spray booms folded, at speeds in excess of 40 mph.]

A fast moving tractor and spraying in high winds is entirely consistent with a company under great pressure to fulfill agricultural contracts and maintain farmer’s schedules for planting after a spring with

the saturated fields and heavy rains that we had in 2017. This likely scenario could easily have been confirmed by talking to employees and looking at logs and contracts.

Most disappointingly, the chemical applicator was never asked if he saw me that afternoon when he sprayed me. Or more to the point, asked to explain how someone sitting in a machine ten feet above the ground and traveling at 12 miles an hour [according to him], with a completely unobstructed view and not even one bush in the way, can miss seeing something the size of a person on a lawn tractor directly in front of him.

To me, the whole report seems to give the impression that I am evasive, if not an outright liar, acting out of malice and hate. It's a very interesting and revealing response to my complaint from the NYSDEC.

I will leave it to the readers to weigh the evidence and decide for themselves on the quality of the investigation and its intent.

### The Right to Harm

Some readers will question my not taking this further in the courts, but they don't understand what rural life is like under agricultural law. Rural residents living only a few miles north were hurt far more seriously than I — an 80-year-old man [Fred Coon] had his lower eyelids removed when they became blistered and infected from exposure to hydrogen sulfide fumes from manure spreading and a boy living around the corner was diagnosed with irreversible brain damage. Other people were seriously injured as well.

When they sued the farm, the case was dismissed, and the injured parties were fined for bringing this “nuisance suit.”

In making this ruling, the US Court of Appeals, Second Circuit commented on Willet Dairy's seven year “shield” against any citizen suits:

*“We recognize that limiting citizen suits in this respect can cause serious injury to persons living near environmental dangers if the DEC and other environmental regulatory agencies are unable to monitor and sanction polluters effectively before compliance deadlines. Consequently, limiting the ability of “private attorneys general” to bring suit until after compliance deadlines may be inadequate for ensuring the safety of our environment and for protecting citizens from serious injury. But that is the remedy that Congress has provided and to which we are bound.”*— Coon Coon v. Willet Dairy LP LLC, Decided July 30, 2008.

Contrary to the heavily promoted stereotype, it was Coon's family who had lived there since the 1800s and the farmer's family that moved into the area in 1974, continually expanding and buying out the neighbors until his residence was surrounded on three sides by fields saturated with liquid manure.

County legislators may publicly pretend that their Mission is to “create and implement policies that safeguard the health, safety, and rights of our residents”, but they know very well that in rural New York, it's not what you do, but who you are [and who you do it to] that's really important.

Agricultural interests not only have the “ears” of politicians and bureaucrats, they also have a strong grip on the hands that write these rural policies and regulations. Not that agribusinesses are above the law — they've just created new laws and regulations to put them in a legally privileged position above everyone else in the rural community.

In a strange, backdoor validation of the Nuremberg Defense, agricultural interests are held unaccountable for the injuries they inflict if committed within the scope of these regulations — “regulations” that take no account of the health and welfare of the rural community, but are designed to promote the unrestricted expansion and profit of corporate agribusinesses.

### Bureaucratic Backdoor

Serious injury to neighbors as a byproduct of “right to farm” agricultural laws is a topic that Tompkins County legislators won’t openly acknowledge or discuss. Local and state legislators play a game of hide-and-seek with disclosure statements and risk management that covers up serious health consequences while covering their asses at the same time. A typical example of this can be seen in the New York State *Agricultural District Disclosure Form and Notice*:

*“This disclosure notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not limited to, activities that cause noise, dust and odors.”*

A more honest disclosure would read as follows:

Such farming activities may include, but not limited to, activities that cause disfigurement, brain damage, chemical poisoning, asthma, mood disorders, memory loss and immune system degradation, and death, as well as noise, dust and odors.

Sometimes not saying is just the same as lying. [More on this topic in my upcoming blog on ethics.]

### Ripples

After I told a neighbor of my bout with herbicide, he said that he had had diarrhea and felt nauseous after cleaning up brush and rocks adjacent to this same field shortly after my incident, but didn’t associate it with any agricultural activity, and was never informed about the spraying. How many times have rural residents been the unknowing victims of “modern farming practices”? And how many currently suffer from the long term effects of these continuous and pervasive assaults on the air, water and land of the rural countryside?

While the results of studies on the long term health effects of everything from smoking and asbestos to eating pizza are readily available to the public, there seem to be none on this subject. Why?

### Can things take a turn for the worse?

As evidence has increased that CAFOs [Factory Farms] may pose health risks to people living nearby, such as respiratory problems, increased blood pressure, and increased stress, exposure to antibiotic resistant bacteria and mental health strains — states are writing laws to shield farms from interference by neighbors.

In North Carolina, a new bill is being pushed through that excludes any liability for the health effects of CAFOs on their neighbors.

Oklahoma has a bill pending to ban lawsuits due to agricultural activity in almost every conceivable case, claiming:

*“If that agricultural activity is undertaken in conformity with federal, state and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.”*

Other states are following.

This posting will be continued in *Part 7c - A Cyclic History: Pollute, Distort, Pacify, Repeat . . . Committees and Cover-ups*

New York State DEC Office of Public Protection  
HELENA CHEMICAL

Call for Service #17-011694

General Information
<p>Type: Complaint</p> <p>County: Tompkins</p> <p>Town: Town of Lansing</p> <p>Street Address: 477 Lansingville Rd</p> <p>Nature of Complaint: 8920 - Environmental Quality - Pesticides</p> <p>Date Received: 06-17-2017</p> <p>Time Received: 13:43</p>

Complainant
<p>Name: [REDACTED] Home Phone: [REDACTED]</p> <p>Address: [REDACTED] Work Phone:</p> <p>[REDACTED] Cell Phone:</p>

**Facts and Information provided by Complainant**

The following information was received through the DEC website "Report an Environmental Violation Online" or sent directly by the complainant to an OPP dispatch mailbox:

Who Did It: Helena

What Occurred: I was mowing my lawn, when I noticed a large high-clearance ag sprayer racing down the adjacent field towards me. It passed me only a few feet [less than 30 ft.] away and covered me with a strong smelling cloud [I was down wind in a 20 mph wind according to my weather station.] I immediately went inside and tried to clean up, but there was nothing I could do about what I had already breathed in and absorbed through my nasal passages, and then called the farmer, Jeff Cook, who was renting the land. Through the windows I could see the boom sprayer flying around the fields which surround my house on three sides. [There are dead patches in my lawn where overspray has killed the grass.] Jeff told me it was herbicide/"round-up", and a short while later someone from Helena called and told me they had spoken with the applicator, but they were rushing to spray before the rain came, and I should take off my clothes and shower — there was not even an apology.

Early Sunday morning, the diarrhea started, followed by fairly severe vomiting a couple of hours later. It took over a week before my digestion seemed back to normal, but the anger still remains.

When Did It Occur: On Saturday, June 3, 2017 in the afternoon [around 3:00 pm]

County: Tompkins

Municipality: Lansing

Location Or Address: 477 Lansingville Road

How Did It Occur: Reckless endangerment through arrogance and unsafe application of poison by licensed company.



Additional Details: I'm sure they'll do it again — they're protected by Ag Law.

Complainants Name: [REDACTED]

Complainants Phone: [REDACTED]

Complainants Email: [REDACTED]

Date of Submittal: 06/17/2017

Possible Responsible Parties Information

Name: Helena Chemical,  
Address: [REDACTED], NY

Date of Birth:

Homephone:  
Workphone:  
Cellphone:

Closing Information

Prosecutor: None  
Referral Date:

Tickets  
None

Warrants Executed

Search Warrant: NO  
Arrest Warrant: NO

Court Ordered Seal Executed  
Sealed: No

Dispatch Information

Date Entered: 06-17-2017  
Time Entered: 06-17-2017  
Officer: 582(Jeffrey Krueger)

Approved By: 362(Kenric Warner)  
Approved Date: 08-02-2017

Case Disposition: Closed  
Date Disposed: 07-15-2017  
Opened By: Sprague(Amber Sprague)





**Narrative**

Date	Time	Notes
06-25-2017	07:52:08	<p>On Saturday, June 17th, at approximately 1500hrs, ECO Eisenberg and I met with [REDACTED] at [REDACTED] residence. A statement was received from [REDACTED] indicating that [REDACTED] leases [REDACTED] land, approximately 10.5 acres, to Jeff Cook for agricultural work. [REDACTED] stated that on June 3rd, specialized spraying farm equipment sprayed pesticides in a reckless manner by traveling at a high rate of speed, spraying in high winds (20mph from the North read from [REDACTED] weather station), and by spraying past the cornfield, into [REDACTED] adjacent lawn. [REDACTED] stated that [REDACTED] was sprayed with the pesticide, and has been violently sick for the following week. [REDACTED] contacted Jeff Cook who said that the chemical was an herbicide, and [REDACTED] was later contacted by Helena advising [REDACTED] to remove [REDACTED] contaminated clothes and shower if [REDACTED] was sprayed. Overspray of herbicide was found on the south and east edge of the property.</p> <p>Upon questioning, [REDACTED] did not seek medical attention for the spraying and I advised [REDACTED] to do so. [REDACTED] did not provide an answer for why [REDACTED] did not report the incident immediately. [REDACTED] expressed [REDACTED] views on farming and that [REDACTED] was politically active against farming.</p>
06-25-2017	08:05:31	<p>On Wednesday, June 21st, 2017, I visited the Cook Farm located on Lockerby Hill Rd, T/Lansing. Jeff Cook was on vacation, but a farm worker provided the details and contact information for Andy Miller at Helena Chemical. The farm also provided a basic map of pesticide application areas, but was not able to provide a lease for the 477 Lansingville Rd property. I contacted Andy and he agreed to meet on Thursday.</p> <p>On Wednesday, I visited [REDACTED] as [REDACTED] was able to find a copy of the lease of the the property. Upon investigation of the lease, the lease provided no boundaries or physical descriptors, additionally [REDACTED] stated that the lease covered 8.5 acres, but [REDACTED] was leasing the remaining 2 acres on a verbal agreement with Jeff Cook. The residence and leased farm land are all on one tax parcel. On this</p>



07-15-2017 14:09:13

visit, I noticed other areas of [REDACTED] Lawn had dead grass, and [REDACTED] stated that [REDACTED] had used roundup herbicide on his lawn.

On Thursday, the 22nd, I met with Andrew Miller of Helena Chemical, applicator # C7809771. Andrew had all required, paperwork and licenses. No previous violations with Helena Chemical. Andrew was aware of the complaint and disputed the wind speed and high speed of the tractor and stated that the tractors must travel at 12 mph as the dosage rate is fixed.

Helena Chemical was issued Warning No. 20910 for application of pesticide to non-target area, 6NYCRR 325.2(a)

The complainant was contacted via telephone and notified of the outcome of the investigation.

Case closed!