

June 28, 2016

Paula Wilson
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

Re: DEQ Docket No. 58-0101-1601

As the former Executive Director of Safe Air for Everyone and a current member of the Crop Residue Advisory board, I would like to submit these comments for the record.

First, I wish to comment on some of the bullet points of the handout from the meeting that took place on June 23, 2016.

1. “Positive comments were received on the current implementation of no burning when PM 2.5 levels reach or are forecasted to reach 75% of the NAAQS. Participants stated the program was working.” This comment leaves out the MOST important aspect of the “positive” comment: That is, the program is working well to protect public health in its **current** form with a 75% of NAAQS protection for **BOTH** ozone and PM 2.5. As we saw from the public health presentations put before the CRB meetings, both pollutants are of concern for public health. It is the protective level of these two combined which has been critical, not one NAAQS vs. the other. Any characterization of my remarks which have been summarized as “no one objected to the 90% ozone level” is incorrect. I strenuously oppose any loosening of the ozone standard without a corresponding percentage lowering of the PM 2.5 level.
2. “When asked, DEQ was unable to scientifically justify a lowering of the PM 2.5 trigger to ensure the crop residue burn does not cause or significantly contribute to a violation of the PM 2.5 NAAQS.” We are not at the table to ensure that DEQ meets the NAAQS; we are here to continue a program that is in place to have extra precautions that fall under the level of violations because at least 7 people perished in Idaho and many more were hospitalized or sought medical care from the impacts of agricultural burning even when no NAAQS were violated. This leads to point #3.
3. “The NAAQS are set at a level that is protective of public health, including sensitive populations.” This point is very important, because it sounds like DEQ is saying that the current NAAQS are protective enough. However, we know from our own public records that this was never the case for agricultural burning. The specific reason for this is that 24 hour averages can mask local impacts of plumes that expose citizens to levels of air pollution that can be fatal. For example, if DEQ will examine the public record of historic air monitor levels in the year 2000, we can see that on September 13, 2000

monitors on the Rathdrum Prairie were at 161 micrograms of PM 2.5. This was not enough to exceed the NAAQS for the day, because when averaged over 24 hours, the average came under that limit. But it was enough to kill Marsha Mason. The full story of how she died can be read in the attached September 3, 2001 US News and World Report Article, as her death received national news coverage.

Furthermore, each criteria pollutant is evaluated on its own. There is little research to describe what happens (for example) with both elevated ozone and elevated PM 2.5 levels. This is why the original agreement had that safety buffer built in, to stop burning at levels that fell below the maximums so we could reasonably ensure that there would be no more deaths and curb hospitalizations, doctor visits, and make sure public health was secured. Without the 75% buffer for ALL NAAQS, no agreement would ever have been signed. We needed an agreement that would hold over time, and reflect changes over time in federal law.

Another helpful way to understand how averages work in this unique problem is to imagine that we will give you the average amount of oxygen you need for a day of breathing. Except for purposes of our experiment, we will hold you underwater for 5 minutes and greatly reduce your access to the oxygen you need to breathe. After that, you will be pulled from the water and given more than average oxygen to breathe. What will be the result? You received either your average or higher than average oxygen that day, but does it matter? You are dead after 5 minutes without adequate oxygen to breathe. You have met the arithmetic measure of an “average” to meet the requirements of law, but you have thrown the baby out with the bathwater. This example, while extreme, is helpful to understand how those with lung and breathing problems really function. They cannot withstand these high levels of air pollutants for very long without severe health consequences.

4. “75% of the NAAQS for P 2.5 is consistent with the Nez Perce Tribe Program.” This is a true statement, but it is not the end of the story. We began negotiations using that tribal program as a place to start and then added more protections to ensure we had an agreement that made sense to protect public health. We did not agree to have the identical program of the Nez Perce tribe.
5. “Emissions from crop residue burning do not affect ozone concentrations like they do PM 2.5 concentrations. Raising the ozone trigger to 90% of the ozone NAAQS does not then necessitate a lowering of the PM 2.5 trigger level to protect public health—meaning the emissions do not cause or significantly contribute to a violation of the applicable NAAQS.” Again, DEQ completely misses the point. We are not working only toward compliance with NAAQS, but a measure of safety so that no other Idaho citizen will suffer the fate of those who died in years prior to this agreement. The critical protective factor for public health has been to hold at 75% of **ALL** criteria pollutants.

Should DEQ continue down this path of proposing that 8 years after this successful agreement has been working so well, that we now begin stripping the crucial health protections piece by piece, then what does the future hold? DEQ, as an agency, then simply discards any health protections that are deemed inconvenient? DEQ hasn't been taking some of these protections seriously to begin with. Another critical piece of the public health protections includes special precautions for places where people can't flee plumes of smoke when burns go wrong, such as hospitals, nursing homes, group homes, and day care facilities. We learned at the 2016 CRB meeting that these critical locations have not been updated in 8 years! These protections were not "optional" parts of our agreement, but the implementation of those protections has been treated so lightly that the percentage of NAAQS protections becomes even more critical.

This is simply irresponsible. DEQ argues that loosening the ozone protections we currently have would greatly improve public health, because it means they will burn on days with better dispersion. It is important to note that DEQ already has in its power the ability to NOT burn on marginal days, but it refuses to do this. Given the agency's preference to burn under marginal conditions, we believe it's critical to increase the PM 2.5 safety level by lowering it to a percentage equal to the loosening of the ozone levels.

At the June 23, 2016 meeting, DEQ also presented 3 "options" for addressing concerns with getting the new rule and legislation active so that the 2017 season would not be subject to current restrictions under the state's current SIP. Some of those options appear to be an "end run" around the Federally enforceable SIP, and as we heard concerns from the Attorney General, we cannot help but wonder why anyone would choose to advise growers to take such a risk. As we heard, the penalties for violations are substantial and I think it's foolish to even propose. It has the potential of poisoning the goodwill that has been painstakingly built over the last 8 years.

In conclusion, I can only recommend that DEQ approach this challenge of finding a path forward by first of all, listening to the consensus that has existed at the table. The CRB committee agreed that in principle, if ozone limits are to be relaxed, then PM 2.5 levels are to be tightened. This path forward was agreed to as the core principle to move forward into the rule making process. It has simply been shocking to see that DEQ missed the boat on Draft 1 by simply yanking the public health protections on ozone, leading to a dangerous precedent. I am hopeful that in Draft 2, DEQ will truly listen to all parties at the table and make a fair and equitable approach to these numbers. A fair and equitable approach means that the agency loosens ozone protections by a certain percentage, then it needs to tighten PM 2.5 by an equal percentage. This is the only path forward to protect the good faith efforts of all parties at the table and to give growers the certainty and predictability they need to be successful.

I will attach to this letter the documentation of the known deaths from agricultural burning, but one must also examine the public records from the complaint lines to understand the magnitude of the public health impacts of agricultural burning. Those records are too lengthy to include here.

Sincerely,

A handwritten signature in cursive script that reads "Patti Gora-McRavin". The signature is written in dark ink on a light-colored background.

Patti Gora-McRavin

Idaho Agricultural Burning Victims

To get an idea of the impact of field burning in Idaho, we can examine the known cases of deaths and injuries that resulted from field burning smoke. This is not comprehensive list; many other cases exist but are too numerous to detail in this introductory section. Each year, over a thousand complaints were documented to the smoke complaint hotline, most of which documented serious physical harm to citizens, as well as damages to local businesses such as tourist-based industries and seasonal workers such as landscapers and painters when smoke and falling ash made it impossible to work.

These deaths and injuries are important to understand and read through fully to get a true idea of what was happening to the public health as recently as 2006, before the current agreement was developed and signed.

September 14, 1995 Kelly McAnally was at home in Coeur d'Alene, preparing to go to work at Kootenai Medical Center where she was a registered nurse in the Intensive Care Unit. She began having difficulty breathing from the large amount of smoke in the air from grass-field burning in Idaho and Washington. It was so smoky outside that she had to use her headlights to get to work. McAnally suffered a "near respiratory collapse" when she arrived at KMC and was admitted to the emergency room. She remained in the hospital for several days. McAnally continues to have respiratory problems and has been hospitalized several times since September 18, 1995. Her physicians attribute her respiratory difficulties to the smoke inhaled on that day. She has sued all the farmers burning that day, as well as the Intermountain Grass Grower's Association. (Supreme Court of the State of Idaho, Docket number 26688, 2002 opinion 93, filed July 2, 2002)

Sharon Buck Vogel, a 38-year old mother of two, died from a massive asthma attack on the first day of grass field burning in 1996. She had been camping out in her backyard with her two children and was affected by grass field burning smoke that rolled into Sandpoint from the Rathdrum Prairie. At midnight, she came inside to try to use her breathing machine, but collapsed and died in her husband's arms. Her last words were, "I don't want to die."

Mr. Paul Vogel, her husband and an attorney in private practice in Sandpoint, has the autopsy report confirming the cause of death. Mr. Vogel gave SOS (Save Our Summers) permission to share this letter he wrote in which he describes the events surrounding Sharon's death. Reading how Sharon died can give the members of this committee some idea of how quickly those with lung problems can perish when a plume of smoke hits them.

Marsha Joy Mason, age 49, died on September 14, 2000 when grass fields were burned in north Idaho. The coroner found the cause of death to be "intense air pollution" from field burning. Although the coroner referred to "wheat field burning" there was substantial smoke from grass field burning that day rather than wheat burning. The full account of how Ms. Mason died can be found in an article entitled, "Fields of Fire" by David Whitman, US News and World Report, September 3, 2001. The article also contains a copy of the coroner's death certificate. Marsha's body was found slumped near the front door of her home, with her nebulizer on, waiting for the ambulance to come. She died there.

Another death of an Idaho man (who remains anonymous because of medical confidentiality issues), was documented by Dr. Henry Covelli of Coeur d'Alene. (Declaration of Dr. Covelli, United States District Court for the District of Idaho, case number 02-0241 IN- EJL at paragraph 10.)

"As Respiratory Care Medical Director at Kootenai Medical Center, I have witnessed the immediate death of at least one patient who was exposed to smoke from North Idaho grass field residue burning, experienced immediate respiratory difficulty, and expired as a result of an exacerbation to his respiratory disease. In my work at Kootenai Medical Center, I have also witnessed patients exposed to smoke from North Idaho grass residue burning experience life-threatening episodes of respiratory distress that required immediate medical intervention to avoid death."

A review of the 2001 log of complaints to Idaho's agricultural burning hotline reveals that ordinary citizens in large numbers were experiencing severe adverse health effects from grass seed field smoke. These complaints -- almost 1800 between August 21st and September 13th, 2001 -- document hospitalizations, bleeding sinuses, sore throats, burning eyes, shortness of breath and other adverse effect on Idaho citizens. In fact, even the emergency room at Bonner General Hospital in Sandpoint had to be closed because of smoke intrusion into the hospital.

Other Idaho field burning victims in Southern Idaho

10-28-2000 (Times News) RUPERT -- A Utah man was killed Saturday afternoon in the middle of a series of car crashes in rural Minidoka County.

Steven S. Mitchell, 18, of Clinton, Utah, was killed after his stopped pickup was struck from behind and pushed into a crash in front of him, the Idaho State Police said.

The crash in front of Mitchell involved trucks driven by Oscar Juarez, 25, of Rupert and Jorge Gonzales, 22, the ISP said. Juarez and Gonzales were not injured, the ISP said.

Mitchell's truck was struck from behind by a truck driven by Enrique A. Torres, 45, of Rupert and pushed into Gonzales' truck, the ISP said. A passenger, Kylee Mitchell, 18, of Syracuse, Utah, was later flown to a Utah hospital, the ISP said. His condition and Torres' condition were unknown, the ISP said. The photos are from this crash.



The third accident occurred when a truck driven by Paul B. Henscheid, 55, of Rupert rear-ended Gonzales' truck, the ISP said. Henscheid and passenger Deborah M. Henscheid, 48, were uninjured.

The ISP said nearby smoke contributed to the first crash. All three crashes happened around 1 p.m. on 400 West, the ISP said.

The crashes are still under investigation, the ISP said.

10/20/95

By: [The Times-News](#) Document Name: [fatal.nsn7475.b01](#)

Headline: MC edition. Multi-vehicle accident claims Oakley man.

BURLEY - An Oakley man was killed Thursday in a four vehicle accident south of here.

The man, whose name has not been released pending notification of his family, was killed immediately when the truck he was driving smashed head-on into a potato truck, according to a Cassia County Sheriff's Office press release.

Smoke from a burning ditch apparently contributed to the accident which occurred at 4:52 p.m., the release said. Traveling south through the smoke on Highway 27, the truck driven by the deceased man apparently went left of center, colliding with the potato truck.

The impact pushed the truck back into two following cars, the release said.

The driver of the truck and the three people in cars were taken to Cassia Regional Medical Center.

The accident is still under investigation by the sheriff's office.

10/12/96 (Times News)

By: [Kent McCleary](#) Document Name: [fatals.rup8816.b01](#)

Headline: Valley teen-agers die in separate accidents.

Two Magic Valley teen-agers died within 12 hours in separate automobile accidents Thursday and Friday.

A Valley High School student was remembered as a likeable person and a "great kid," after she died Friday morning in a car wreck. Dannial N. Rich, 16, Jerome, died on her way to a morning junior varsity volleyball practice.

School officials announced her death to the school Friday afternoon, and allowed students to take the rest of the day off.

A 16-year-old Rupert boy died after the car he was riding in ran into the back of a truck on a road obscured by smoke Thursday night.

Jamie Cecil Hinton, a sophomore at Minico High School, enjoyed outdoor sports and sharing morning coffee with his grandparents, according to an obituary in today's edition of [The Times-News](#).

Rich was a likeable person and well-known at Valley High School, said Julian Escobedo, head volleyball coach.

"She was a great kid," Escobedo said. "She really loved volleyball. As varsity coach, I encourage my athletes to take track. She didn't like track, but she took track, and worked to improve her skills."

The varsity volleyball team is scheduled to play in a tournament at Vallivue High School in Caldwell today. Escobedo said he gathered the teams together to talk about the accident.

Team members elected to play in the tournament, he said, and members of the junior varsity team may go along, he said.

"I think it's better if they go with the team, so they're all together," he said.

Rich's team is next scheduled to play Monday against Hansen.

Escobedo said coaches learned of the accident after Rich didn't make it to the early practice.

Idaho State Police reports say Rich was driving west on State Highway 25 near the Hunt Road intersection at about 6:20 a.m. when her car drove off the road, overcorrected, and rolled. Rich was ejected from the vehicle, and the car landed on top of her, the report said.

The report said Rich was not wearing a seat belt. Funeral arrangements are being handled by Reynolds Funeral Home in Twin Falls.

Twin Falls County sheriff's reports say the Thursday accident that killed Hinton also injured the driver, Joshua Denton, 18, Rupert.

The report said a loaded potato truck driven by Exequiel Torres Ambriz was on 3400 East, about three and a half miles south of Hansen. Smoke from a field burn next to the road obscured the view, and Ambriz had slowed to about 20 mph to follow a truck ahead of him, the report said.

The report said Denton's subcompact car ran into the back of the truck hard enough that Ambriz felt the impact. Ambriz was uninjured.

Denton suffered a broken arm, the report said. Hinton died around midnight at Magic Valley Regional Medical Center of massive head injuries, the report said.

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Idaho Falls Post Register (Idaho Falls, Idaho)

September 11, 2004 Saturday HEADLINE: Car-fatal tied to smoke probed - Field burning may net charges

BYLINE: COREY TAULE , ctaule@postregister.com

BODY:

A Blackfoot man has died from injuries he suffered in a car accident allegedly caused by smoke from field-stubble burning near Shelley on Sept. 2.

The death could lead to charges against an unnamed Shelley-area farmer who burned his field that day, resulting in a haze over West River Road, which is located just off Exit 108 along Interstate 15.

An Eastern Idaho Regional Medical Center spokesman confirmed Friday that Lyle W. Tanner, 77, died Sept. 4. Three other people injured in the accident were treated and released, she said.

Idaho State Police and the Idaho Department of Agriculture are trying to determine whether the Shelley-area farmer should have been burning his field on Sept. 2.

Smoke from that fire is believed to have contributed to the four-car accident that resulted in Tanner's death. Troopers on the scene said visibility on West River Road was nearly zero at the time of the accident.

"We're still investigating," said Idaho State Police Lt. C.R. Kaffenberger, who declined to release the farmer's name.

The Department of Agriculture also is investigating, spokeswoman Kathy Sodhi said.

Sept. 2 was a "burn day" for Bingham County farmers, but that doesn't mean farmers can simply drop a match.

First, according to the Department of Agriculture, they must submit a registration form detailing all fields to be burned. Next, the farmer must contact the department on the day he plans to burn his field and report the number of acres going up in flames.

Sodhi at first wouldn't say whether anyone from Bingham County contacted the department Sept. 2, saying "when it's under investigation, we can't comment."

But a St. Anthony resident Jim Nelson got a different answer.

Nelson said he called the department and spoke with Sherm Takatori, the manager of the department's Smoke Management Program, who told him that no approvals to burn were given that day.

Told of Nelson's call, Sodhi talked to Takatori and then called back to say that nobody had registered to burn fields on Sept. 2.

Even if the farmer did not register or call the department on Sept. 2, the Idaho Legislature has ensured that he won't be punished for it.

Idaho code says a farmer who violates the rules a first time shall be prohibited from burning crops for one year. A second violation results in a \$10,000 fine.

But here's the catch: Punishment applies only to farmers burning in Kootenai, Benewah, Boundary, Bonner, Shoshone, Latah, Clearwater, Nez Perce, Lewis and Idaho counties, all places where farmers regularly burn bluegrass.

"As if our lungs are not as valuable," said Nelson, whose 4-year-old son suffers from asthma. "There are old people suffering from these field burnings. In my case, I know young children do."

Nelson said he believes many farmers don't know they're supposed to register and call the Department of Agriculture before dropping the match. The department lists the requirements on its Web site and Sodhi said informational meetings are sometimes held.

But though the Legislature may have saved the Shelley-area farmer from being disciplined by the Department of Agriculture, the death of Tanner may land him in hotter water.

Kaffenberger said ISP investigators have consulted with Bingham County Prosecutor J. Scott Andrew to see whether criminal charges are applicable.

Government reporter Corey Taule can be reached at 542-6754.

LOAD-DATE: September 11, 2004

This accident was also reported in the Idaho Statesman, the Spokesman Review, and the Idaho Falls Post Register:

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Idaho Falls Post Register (Idaho Falls, Idaho)

September 3, 2004 Friday

HEADLINE: Several hurt in 4-vehicle crash - Smoke from burning field believed to be catalyst for accident

BYLINE: BEN BOTKIN, bbotkin@postregister.com

BODY:

SHELLEY - Smoke from a fire on a field of stubble is believed to have contributed to a four-vehicle accident Thursday near Interstate 15 in Shelley, police said.

At about 1 p.m., four vehicles were traveling on West River Road, which is off Exit 108 along Interstate 15. Two were traveling eastbound, and the other two westbound.

The driver of a Chevrolet van traveling eastbound apparently became disoriented because of the hazy smoke and drifted into the westbound lane, according to Idaho State Police. Visibility at the time was nearly zero, troopers said.

The vehicle was struck by a semi-truck and spun around in the road, and then was hit by a Pontiac Grand Am traveling eastbound. When the semi-truck and van collided, a Ford Explorer rear-ended the semi-truck, troopers said.

The driver of the van, Lyle W. Tanner, 77, of Blackfoot, and the driver of the Ford Explorer, Ismael Zamudio-Farfan, 26, of Hansen, were taken to Eastern Idaho Regional Medical Center.

Farfan's two passengers, Edgar Farfan-Galvan, 16, and Gabriel Cisneros-Lira, 17, both of Hazelton, also were taken to EIRMC with injuries.

None of those injured was wearing a seat belt, troopers said.

Tanner was in critical condition Thursday night and Cisneros-Lira was in fair condition, according to a hospital spokeswoman. The hospital had no information on Zamudio-Farfan or Farfan-Galvan.

The driver of the semi-truck, Albert Scott Gay, 36, of Blackfoot, and the driver of the Grand Am, Aharon W. Smith, 28, of Shelly, were not injured. Both were wearing seat belts.

No citations have been issued, and the investigation is ongoing.

Reporter Kathleen O'Neil contributed to this report.

Bingham and Jefferson counties reporter Ben Botkin can be reached at 542-6742.

OTHER IDAHO ROAD ACCIDENTS DUE TO BURNING FIELDS:

September 6, 2001, a police car was rear-ended on Hwy 95 due to field burning, according to a public records request made to Latah County by SAFE. The crash involved a semi truck and was caused by poor visibility due to field burning smoke covering the highway.

Here is his statement:

“Synopsis: On 9-6-01, at about 1339 hrs., my patrol vehicle was rear-ended on Hwy 95 at approximately milepost 349 in Latah County, Idaho. I suffered a strained neck in the collision and was transported to Gritman Medical Center in Moscow, Idaho.

Narrative: On 9-6-01, at about 1330 hrs., I was relieved at a collision investigation on Hwy 95 near the Hwy 95 and Lewis Road intersection. I had been assisting the Idaho Department of Transportation with traffic control and the Idaho State Police with the collision investigation.

I started driving southbound on Hwy 95. I could see smoke from a field that was burning, blowing across the highway. I had my headlights on and continued southbound for a short distance. Near milepost 349, I was unable to see more than a few feet in front of my patrol car due to the thick smoke from the burning field. For example, I could not see from one yellow dashed line to another.

I radioed Sgt. Jordan to inform him of the field fire and the act that visibility was about zero. I told Sgt. Jordan that I couldn't see and I had turned my emergency lights on. I said I had stopped on the Hwy and, “I hope I don't get hit.”

I was still in the driver's seat and I had my seat belt on. I looked in the driver's side mirror and saw a yellow colored light coming up behind me. I wasn't sure if it was a parking light or a fog light. I thought for a moment that it could have been one of the 6 ISP Troopers that had been at the other collision scene. As far as I knew, the highway was still closed due to the other investigation since ISP hadn't advised otherwise.

I saw that the vehicle wasn't slowing down and it appeared to me to be going about 45 mph. I watch in my mirror as the green pickup ran into the rear of my patrol car. My body was flung slightly forward and my head jerked forward and to the right. I was wearing my seat belt so I didn't com in contact with the steering wheel.

After a couple of seconds, I radioed to dispatch that my car had been rear -ended and I was having pain in my neck and back. I saw the green pickup back up and begin to pull around my patrol car. I opened the door and put my hand out. I yelled to the driver to stop and said that ISP was coming to the scene. The make driver rolled his window down and asked me where he should park. I told him to back his pickup up and get out of the oncoming lane. I saw the pickup back up and come to a stop behind my patrol car,

There was a slight break in the smoke that was rolling across the highway. I saw another vehicle, what appeared to be a pickup with side racks, about 25 yards in front of me. I could see an individual standing towards the rear of the vehicle, waving his/her arms. I had no idea the vehicle was there until the break in the smoke.

About 9 minutes later, Sgt. Jordan told dispatch on the radio that he was in the area. I looked forward but could not see anything due to the thick smoke. I asked Sgt. Jordan which way he was coming. He told me he was coming from the south side of my location. A few seconds later, I saw the ambulance then Sgt. Jordan's Jeep.

The EMT's put a C-Collar around my neck and put me in the ambulance. I was transported to Gritman Medical Center. Dr. Melina ordered a cervical series of X-rays and gave me a shot of Imitrex for the migraine headache that I had. Dr. Melina concluded that I had suffered a neck sprain and the X-rays were all negative for fractures." Phil A. Gray #320 "

FILE COPY

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February 5, 1997

David P. York, M.D.
700 Ironwood Drive
Suite 334
Coeur d'Alene, Idaho 83814

RE: Sharon A. Buck

Dear Dr. York:

Thank you for speaking with me by telephone on February 3, 1997. Your courtesy in returning the call and discussing potential causes of my wife's death is greatly appreciated.

As I advised you, it is my intention to file a lawsuit against the Intermountain Grass Growers Association and individual growers seeking recovery of damages on behalf of myself and my two children, Hannah, age six, and Dylan, age three.

I appreciate your taking time to consult with Dr. Steven Puffer of Sandpoint concerning the possible cause of Sharon's asthmatic attack. Your expertise was helpful to Dr. Puffer and I am also hopeful that your expertise will be available to assist in the litigation as an expert witness.

As we discussed briefly, I was the Clean Air Coalition's initial attorney. In addition to incorporating the Coalition, I also served on its Board of Directors and as their attorney until 1995. Accordingly, as have many others, I devoted substantial time towards working with Art Long and other Clean Air Coalition advocates in an effort to bring an end to the practice of burning Kentucky blue grass fields. Those efforts consisted primarily of working towards compromise and seeking legislation that would be of benefit. Since my practice does not consist of accepting personal injury cases, I never thought that I could be involved in this type of litigation.

Certainly, in my worst nightmares, I never thought I would be a plaintiff in litigation.

I now believe that this litigation, if successful, has a greater potential to eliminate field burning than any other avenue

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conceivably available at the present time. It is my sincere hope that, as a result of your good association with the Clean Air Coalition, and your desire to contribute towards elimination of field burning, that you will consider becoming involved in this litigation as an expert witness for myself and my children.

Your assistance and the help of other pulmonary specialists is vital not only to my chances of prevailing, but also an essential prerequisite to any acceptance of this case by a qualified personal injury law firm. I have exercised care in the effort to secure representation by attempting to insure that the firm chosen has sufficient resources to prosecute the case and sufficient expertise to understand the medical issues involved.

Although I realize that virtually no one welcomes the prospect of depositions and the time commitments required of trial testimony, it is my belief there is a strong potential that your assistance in this litigation will directly and effectively contribute towards an elimination of field burning.

The field burners are on record as saying that this practice is an economic issue. Only by holding them economically accountable for the adverse health effects of their burning will they be dissuaded from burning their fields each summer.

You will find enclosed copies of Sharon's medical records that I have available. As to the events of August 15, 1996, you should know that Sharon spent most of the day at Kootenai Point on Lake Pend Oreille. Kootenai Point is located approximately five miles east of Sandpoint. Sharon was outside during that time, having ridden to Kootenai Point with friends in a boat and returning the same way. She did not drink any wine during the course of the day; she was not inside during the course of the day. It was a very hot day and the time was spent on the beach.

I was in Spokane that day picking up a friend arriving from California. We reached Sandpoint at about 5:00 P.M. and I spoke with Sharon shortly thereafter to ask her if she wanted to go back out on to the lake. She declined on the basis that she had already spent the day on the lake, had a great time, and simply wanted to go home with the kids.

Tom Norton and I took our small boat out on the lake. I brought a camera with me to take photographs, but quickly decided not to due to the amount of smoke that was on the lake. It was obvious that the smoke had come up the main part of the lake from the south and then spread out at the northern end with a significant amount coming west toward Sandpoint. The farther east we looked, the thicker the smoke was. It was very thick and increasingly so over what could be viewed in the morning. Our

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house, five miles west of Sandpoint, and 1,000 feet higher in elevation, looks out over the lake so I know, from the moment I look up, what the visibility is like over the lake. In the morning the Cabinet Mountains could be seen from the house; at 6:00 P.M. they could not be made out at all.

Tom and I returned home about 8:30 P.M. and had dinner with Sharon and played with the kids. Sharon decided to sleep in a tent on the east side of our house with the children that evening and went to bed at about 10:30 P.M. I went to bed at 11:15 P.M. Sharon had no difficulty with her breathing that I could perceive during the time period I was with her. She did not complain about any difficulty breathing earlier that day. However, I do note that there had been smoke from wild fires in the area since at least August 11, 1996. I remember that day as we had picked huckleberries in the morning and had picnicked at Riley Creek on the Pend Oreille River in the afternoon. However, a strong wind came up out of the west and brought smoke from the Washington wild fires into the area. I also remember that on August 14, 1996 Sharon declined to take Hannah to a festival concert due to the amount of smoke in the area. However, I also note that the air quality appeared to be better the morning of August 15, 1996 than it was the evening of August 14, 1996.

I awoke very close to midnight to find Sharon in our bathroom struggling to breathe. She has a breathing machine and asked for assistance in putting it together. This alarmed me because in all instances she had previously used it she was sufficiently in control to put it together. I feel as though I fumbled in getting it together, but feel as though I had it to her in less than a minute. After several seconds of breathing, it appeared apparent that it was not providing her relief. I asked her if I should call an ambulance. She said "Yes." I called an ambulance and returned to her. She looked at me and said, "I don't want to die." I then woke up Tom to tell him I had to go to the hospital and to watch the children. I came back to the bathroom; Sharon stood up, looked at me, said "I am going to die" and collapsed through my arms onto the floor, and into unconsciousness.

Tom and I carried her down two flights of stairs to the car. I was at Bonner General Hospital in less than five minutes from the time I called 911. I probably averaged close to eighty miles per hour getting her down the mountain road into the hospital.

I am told that Sharon was dead on arrival; however, due to my difficulty in reading medical reports, I am not sure what they reflect.

It was very painful for me, in the weeks after Sharon's death, to see her referred to, in the media, as a "37 year old Sandpoint

David P. York, M.D.
February 5, 1997
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asthmatic woman." I felt as though that unfairly depicted not only who Sharon was, but also the condition of her health. Admittedly, and obviously, she suffered from asthma, and I assume seriously. However, she was not a weak, frail, sickly individual. She was, other than the asthma, in excellent physical shape. She was very active and an accomplished athlete. Although she had needed to use her inhaler on a regular basis in the weeks before her death, her use was not significantly increased beyond that of the previous year.

Often times when she would have difficulty breathing, I could simply massage her neck and shoulders to relax her and open up her air passageways; other times her inhaler would be necessary. She very seldom had to use the breathing machine.

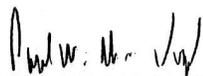
I would like to get this correspondence to you at the earliest possible time so I will not go into the events on the day in question or Sharon's background history at any greater detail. I am happy to, however, respond to any requests for information that you may have after your initial review.

I believe that the question that would ultimately be put to you as a witness would be whether or not you believe that it is more likely than not that smoke either contributed towards or caused Sharon's asthmatic attack.

If you are able to assist me, I would be appreciative if you could give some consideration as to how you would charge for your time. As an attorney, I certainly believe in compensating expert witnesses to the extent required. However, as a plaintiff and single parent that may well be ultimately responsible for funding litigation that could be quite costly, I would be appreciative of any consideration you could provide in donating some of your time or in providing assistance at a reduced rate, in the event there is no recovery. Certainly, if a recovery is obtained, it would be my desire to compensate all individuals at their accustomed rate.

I would like to thank you again for the consideration that you will give to these requests. I look forward to hearing from you at your earliest convenience.

Sincerely,


PAUL WILLIAM VOGEL

PWV/drr
enclosures

Fields of Fire

In the West, the time-honored tradition of field burning is now raising a host of major health concerns after a controversial death



Smoke from field burning ascends in the Idaho sky.

By DAVID WHITMAN

COEUR D'ALENE, IDAHO—Dr. Robert West wasn't looking to make history when a local deputy phoned last September to tell him Marsha Mason had died. In fact, it didn't take the Kootenai County coroner long at all to figure out that his former patient had died from a severe asthma attack—the deputy had found Mason's electric inhaler still running next to her slumped body. Yet West was certain there was more to the story. Lots more.

Just a year earlier, he had performed a mastectomy on Mason, a 49-year-old waitress, and she had progressed nicely, returning to her job at Granny's Pantry in nearby Rathdrum. Though she continued to battle asthma, including a flare-up that landed her in the hospital in early August, Mason "was not an asthma patient who was hooked up to her nebulizer 24 hours a day," West says. "You had to be impressed by the fact that this lady who was previously well was now dead."

What changed? West believes that the sooty billows of smoke generated the day before by agricultural field burning triggered the fatal attack. It wasn't a claim he made easily, either. West supported farmers' rights to burn their fields when the winds transported smoke away from cities and towns. He had spent his childhood on a wheat farm in North Dakota, where he had seen firsthand the regenerative powers of fire on cropland. Still, West understood that soot particles posed a health threat, and the afternoon of September 13 was one of the haziest, soupiest days he had seen in his 31 years in Coeur d'Alene.

He also understood that if he were to label field burning a culprit in Mason's death he would "have people down my neck." Nonetheless, he listed two causes on the death certificate: an acute asthma attack and "severe air pollution" caused by field burning. "VICTIM WITH KNOWN ASTHMA SUBJECTED TO INTENSE AIR POLLUTION FROM WHEAT FIELD BURNING," he wrote. The finding may well mark the first time that a coroner in this country has directly linked a death to air pollution in more than 40 years.

Now, almost a year later, field-burning season has started again in Idaho and eastern Washington, a practice time-honored at least since the days of Lewis and Clark. Torched fields send forth huge plumes of smoke that often resemble a looming tornado or a mushroom cloud from a bomb. Like its incendiary cousin the wildfire, field burning is a familiar rural ritual. But growing scientific and medical evidence that field burning poses serious health hazards for people with respiratory problems is fueling opposition to the practice. "She didn't

have to die, and I don't want anyone else to become a statistic," says Diana Ahern, Mason's older sister. "They are burning, and it's killing people, and it's wrong."

Polluted air can and does kill. In 1952, the infamous Great London Smog was blamed for the deaths of more than 3,000 people. Earlier this month, a Carnegie Mellon University study estimated that more people are killed by air pollution from traffic than by traffic crashes.

Ordinarily, however, epidemiologists merely infer that air pollution kills Americans. That is one reason Mason's death—and the place it occurred—is a shock. Her home near the northern tip of Idaho, a conservative corner of a most conservative state, is a place where agriculture and timber interests have long held sway. West, a Republican who was first elected coroner in 1984, says, "I absolutely knew I'd be challenged if I put down air pollution on the death certificate."

Out, damned soot

Farmers today torch sugar-cane fields in Florida, Louisiana, and Texas, rice straw in California, Arkansas, and Missouri, and grass fields in the Pacific Northwest. And ranchers burn millions of acres of grazing pasture in Kansas. Farming by fire reduces the erosion of topsoil and controls dust by eliminating the need for tilling operations to clear residue and plant new seed. On the prairie, fire boosts grass yields for cattle and reduces the need for chemicals to con-



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cities ever have during the year.

State officials said afterward that readings above the 100-microgram level essentially meant “people are going to be choking,” but Mason doesn’t appear to have started suffocating until some time after 4:45 a.m. Her husband, a logger working the “hoot owl” shift, had taken off shortly after 2 a.m., leaving Marsha alone. Marsha had told him she was feeling better and would get up to take her medication. But when she tried breathing in the medicine through the nebulizer mouthpiece, something was terribly wrong. The medicinal mist was not loosening the bronchial spasm shutting down her mucus-filled lungs.

It’s hard to convey the terror that asthmatics feel when they start to suffocate. Asthma sufferers have struggled so mightily to breathe that they have broken ribs or blood vessels in their eyes. Unable to loosen the bronchial muscles that control the opening to the airways, acute asthma victims cannot expel the air already in their lungs to draw a fresh breath.

Once her nebulizer failed to help, Mason knew she needed emergency help. At 4:51 a.m. she called 911, managing to gasp between wheezes: “I’m having an asthma attack . . . Help!” The dispatcher got Mason’s address, but he apparently failed to hear her complaint of an asthma attack. As a result, he dispatched the Kootenai County sheriff’s department rather than an ambulance, and the sheriffs did not enter Mason’s house until 20 minutes later.

In the midst of the 911 call, Mason dropped the receiver. She somehow managed to open the front door before sitting on the window seat next to the entrance. Her legs dangled as close to the door as possible, presumably awaiting an ambulance. And then Mason, atop the bay window bench she treasured, died, waiting to exhale.

The farmer

Wayne Meyer, a bluegrass grower and state legislator, knows field burning is controversial. For 30 years, Meyer burned his bluegrass fields and, like other growers, had responded to public complaints. In the outcry after Mason’s death, the grass growers repeatedly denied responsibility. Tribal officials insisted that smoke from the reservation had not reached the town of Rathdrum.

Meyer, who did not burn on September 13, noted that there was no air-quality meter in Rathdrum, so one couldn’t know that high particulate levels recorded out on the prairie actually hit the town.

The North Idaho Farmers Association, whom Meyer represents on the local citizen-farmer smoke management advisory board, soon seized on a story in the *Coeur d’Alene Press* that said Pat Mason had been shocked to see news reports blaming Marsha’s death on grass smoke and that he believed Marsha had died from an adverse reaction to medication. In two interviews with *U.S. News*, Mason said he no longer believed Marsha had an adverse reaction and that grass smoke might have

late pollution for only a couple of hours at a time—so the 24-hour averages always fall within federal limits.

At the state level, both the Coeur d’Alene Tribe and growers on the Rathdrum Prairie run smoke management programs that rely on specially staffed local weather stations and other pollution monitors that can alert growers to the days best suited for burning. Last month, new Idaho Department of Agriculture field-burning rules went into effect for the first time for counties without a smoke management program.

Some bluegrass growers have experimented with no-burn alternatives with limited success, but most farmers still find that burning crop residue is cheaper and stimulates higher yields in later years. “I wish we didn’t have to burn, but it’s an economic necessity,” contends Meyer.

The aftermath

In the end, Mason’s death helped prompt a single change in field-burning regulations. To take account of short-lived air pollution spikes, the state Department of Environmental Quality will institute a burn ban when an hourly PM2.5 reading reaches 100 micrograms per cubic meter.

Still, Mason’s death hasn’t been forgotten. She grew up in a tight-knit family of 14 siblings. Her funeral was so packed that onlookers even stood in

the basement of the funeral parlor to watch the service on closed-circuit television. Marsha was the first of the 14 children to die, and when her sister Diana Ahern delivered the eulogy, she looked out to see the quivering lip of their 72-year-old mother, and tears streaming down the faces of eight of her brothers, four of them former marines.

They didn’t deliver antiburning speeches at the funeral or at the cemetery later that day, but Mason’s siblings and two daughters have quietly retained an attorney, asking him both to investigate the circumstances of Marsha’s death and to advise them what to do to prevent subsequent field-burning-related fatalities.

At a recent visit to Marsha’s grave in Rathdrum, as the wind soughed through the towering pines nearby, Marsha’s brother Pat Griffus left a silk bluebird by her headstone to honor her love of the outdoors. “We’re not just going to say ‘my sister passed away’ and leave it at that,” he vowed. “We will not let Marsha’s death be for naught.” ●



Carol Abelhanz gardens as wind-driven smoke moves toward her home.
● Field burning can be harmful to people with respiratory ailments.

helped trigger her asthma attack.

NIFA, however, asserted in a statement that “Members of [Marsha’s] family accept that her death was largely due to lifestyle choices Marsha had made.” Family and friends, NIFA reported, said that Marsha “smoked most of her life, worked in a smoky environment, had asthma and breast cancer and was likely diabetic.” Bill Dole, a bluegrass grower who did burn on September 13, says: “Marsha was a neat lady who served me many a cup of coffee at Granny’s. But she was a very sick lady who could barely walk to the restaurant.”

Dole points out that field burning in Idaho has never generated enough pollution to violate federal or state air quality standards. But this safety record obscures the fact that the Environmental Protection Agency does not regulate emissions from agricultural burning unless they violate federal air quality standards, which are based on 24-hour averages. Field burning generates tremendous peaks of particu-