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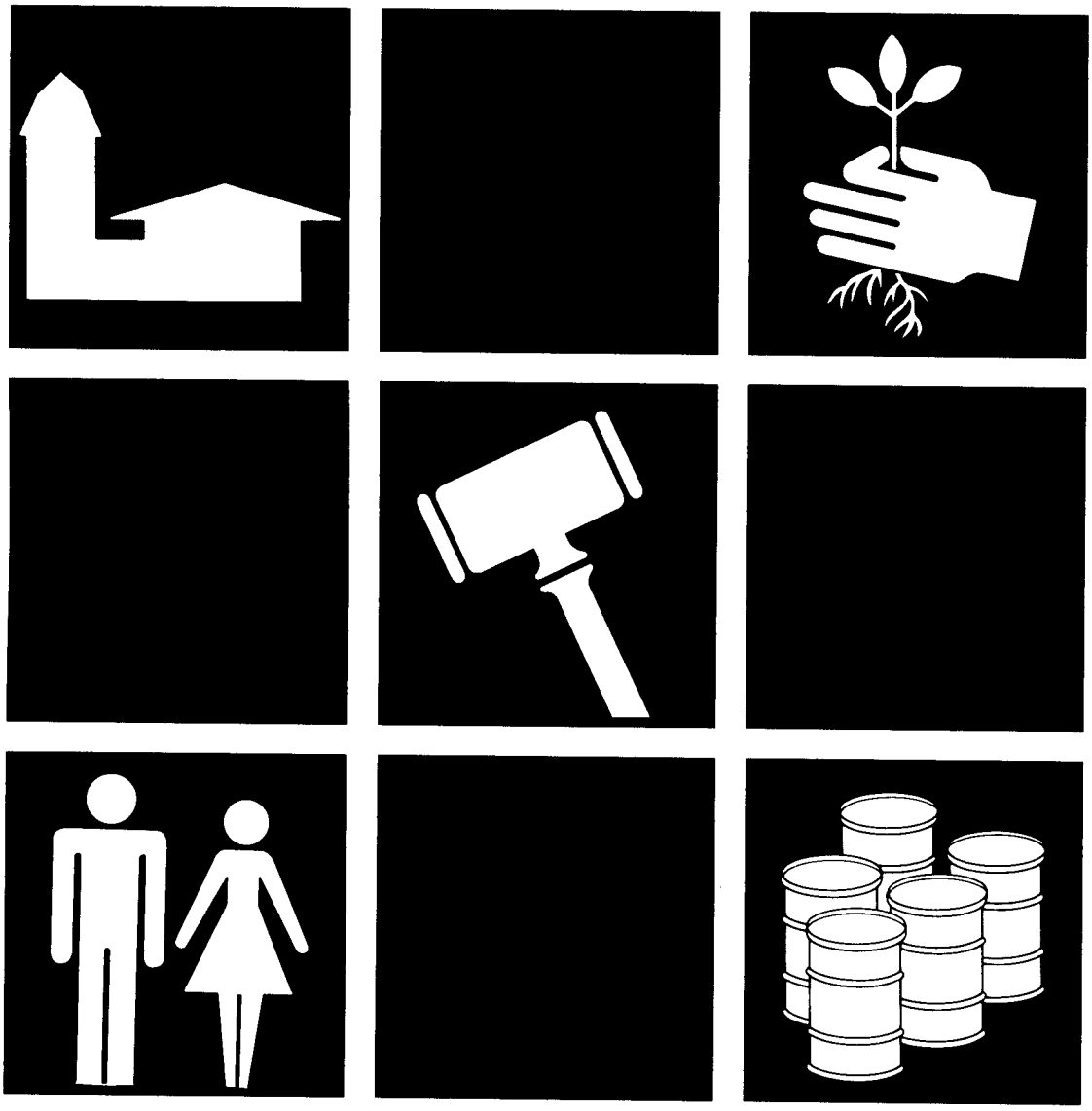

Department of Agricultural Economics and Rural Sociology

LIABILITY OF AGRICULTURAL CHEMICAL USERS--
SELECTED GUIDELINES FOR MINIMIZING RISK

A Research Report

by

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INTRODUCTION

In recent years the American people have become increasingly concerned about the potentially harmful affects of agricultural chemicals. This increased concern has roughly paralleled rapid growth in the agricultural chemical industry. Today, there is hardly a sector of American agriculture that does not use significant amounts of chemical fertilizers, plant growth regulators and pesticides to produce agricultural commodities of higher yield and quality. This intensification of agricultural chemical use in the production of food and fiber is considered an economic necessity by many agriculturalists. In some areas, such as parts of Western Tennessee, where soil erosion is a serious problem and where minimum tillage practices have been introduced as a means of erosion control, increased chemical use is becoming popular.[1] In other areas of the state and across the nation where truck cropping places agricultural workers in direct contact with insecticides during harvest operations, the potential for harm to farm employees is magnified.

With increasing use of agricultural chemicals and increased social concern about potential harmful effects, information on potential dangers and associated risks has not been readily available. Often the dangers that may result from chemical use show up many years after application of

a chemical has ceased.[2] To further compound the risks faced by agricultural chemical users, American society is becoming more litigious and damage awards of precedent setting size are being awarded by the courts.[3] These conditions, when juxtaposed upon a legal system composed of many state and federal statutes and a rather complicated set of common-law legal theories, present the user of agricultural chemicals with risks that are difficult to quantify. This report outlines the problem areas facing users of agricultural chemicals and the legal sanctions that may be involved.

PROBLEM AREAS

Problems may arise in several ways from the use of agricultural chemicals and may be categorized into four groups. These include ground and surface water contamination, damage to nearby property, harm to agricultural workers and adulteration of feed and foodstuffs.

Water contamination problems can arise in several ways. Surface water can be polluted and cause fish to be killed or cause economic damage to crops or livestock downstream. This type of pollution may come as runoff from treated crops but is often the result of improper cleaning of spraying equipment, improper disposal of unused chemicals, or from spraying of vegetation along road banks and streams. Groundwater contamination from nitrates and pesticides appears to be more prevalent in recent years.[4] In the past a common belief was that the soil is an adequate filter to break down most pesticides before they enter groundwater supplies. While this belief has some merit, recent incidents of groundwater contamination indicate that the soil is not an adequate

filter to protect groundwater from contamination.[5] With corporate disposal of chemicals in improper, make-shift dumps and with increased use of agricultural pesticides, the potential for and incidence of polluted water wells is alarming. A 1985 survey by the California Department of Health showed that about 15% of tested water wells were polluted.[6]

Chemical drift causing damage to nearby property is not uncommon in farming communities, especially with volatile products applied on warm windy days. The problem can be magnified with crop or livestock damage several miles from the point of application when pesticides are applied from the air. The application of chemicals from the air is a potentially significant source of liability for farmers in areas where aerial application is popular.

Harm to agricultural workers is another major source of potential liability to agricultural chemical users. Workers who apply chemicals or those who harvest farm products and may come into direct contact with treated crops are particularly vulnerable. The effect of direct contact with pesticides over a long period of time is not fully known, but many agricultural chemicals are thought to be carcinogenic (cancer causing).

Food and feed adulteration from agricultural chemicals has long been recognized as a source of liability and economic loss to the farming sector. Nationwide attention has recently been focused on chemical adulteration of food and feedstuffs by a few scattered incidents where agricultural chemicals were improperly used. Perhaps the most alarming situation involved use of a chemical on California produced watermelons

which was not certified for use on that crop. As a result, many people who ate the fruit became ill and required medical treatment. Farmers involved were unable to harvest and sell their remaining crops and suffered considerable economic loss. In addition they faced civil and criminal liability. Another incident creating considerable alarm and economic loss occurred in Missouri. There, by-products from chemically treated surplus corn and grain sorghum seed sold for use only to produce alcohol was used for livestock feed. The feed was fed to dairy cows and the chemical polluted the milk produced. The cows could no longer be used for milking and had to be disposed of or quarantined for indefinite periods at considerable economic loss to dairy farmers.

LEGAL CONSIDERATIONS

Liability may be charged against the user of agricultural chemicals for harm arising in any of the four broad categories outlined above. Even in the absence of harm to the property or person of others, statutory penalties may apply. The statutory scheme through which federal, state and local governments become involved in the registration and marketing of pesticides and the control of their application is beyond the scope of this report. Therefore, only selected statutory provisions that may place civil or criminal liability on agricultural chemical users and the common law bases for attaching civil responsibility will be addressed in the following sections of this report.

STATUTORY REGULATIONS

The United States Congress has recognized the need to protect citizens from exposure to pesticides in a series of protective statutes.

These statutes are designed to protect the public during pesticide application and from food, drugs, and cosmetics which contain pesticide contaminants. Before chemical use gained widespread popularity in agriculture, Congress passed the Insecticide Act of 1910.[9] This Act was designed to prevent the manufacture, sale, and shipment of any adulterated chemical. While useful at the time, the 1910 Act was soon obsolete and has been significantly altered over time. Under current law, both civil and criminal liability may be assessed against agricultural chemicals users. These penalties originate under authority of statutes and related administrative regulations which may be grouped into two basic divisions, those addressing chemical application and those regulating marketing of foodstuffs containing agricultural chemicals. In addition to statutes addressing chemical application and foodstuff contamination directly, the Clean Water Act of 1977 is a potential source of liability that may affect agricultural chemical users . However, control of non-point sources of chemical pollution under this act are left to the states and will not be further addressed in this report.[8]

Application Based Statutes

Regulation of pesticide application by the Federal government is controlled by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) of 1947 with extensive amendments to it including the Federal Environmental Pesticide Control Act (FEPCA) of 1972 and the Federal Pesticide Act of 1978.[9] These acts are designed to prevent pesticide misuse and were passed as a result of increasing chemical use in production agriculture. Under the mandates of these acts, the term "pesticide"

is defined broadly enough to include any substance intended to eliminate destructive insect, animal, or plant pests. The term also includes any substance intended for use as a plant regulator, defoliant, or desiccant. Thus the term pesticide generally includes insecticides, fungicides, nematocides, plant regulators, and herbicides.[10]

The dictates of FEPCA that most directly affect liability of agricultural applicators address the application and labeling of chemicals. These provisions are established by Congressional mandate in statutory form and are generally administered by the states.[11] In Tennessee, these provisions are administered under the authority of the "Tennessee Application of Pesticide Act of 1978."[12] This act authorizes a seven-member "pesticide control board" to oversee the statutory mandates as well as the regulations formulated pursuant to these statutes.[13]

The regulations formulated by the Pesticide Control Board address many facets of pesticide application including the application of restricted use pesticides. The regulations also address several categories of applicators. The three basic categories of applicators enumerated are private applicators, commercial applicators, and commercial operators. Certification procedures for the different categories vary but are generally more stringent for commercial applicators and commercial operators who are required to successfully demonstrate their competence and qualifications by completing an examination. Private applicators are simply required to complete a training program administered by the

Agricultural Extension Service. Penalties for violation of these regulations include revocation of certification for private applicators. Commercial applicators and operators may have their certification revoked and in addition they may be subjected to civil and criminal penalties.[14]

The provisions of FEPCA that prohibit use of a pesticide in a manner inconsistent with its labeling should be of considerable concern to Tennessee farmers and chemical applicators.[15] Labeling provisions require that all pesticide labels contain significant information about the chemical and its area of use. Labeling requirements as authorized by FEPCA and formulated by the Environmental Protection Agency (E.P.A.) include a listing of the crops on which the chemical is certified for use.[16] Use of a chemical on a crop that is not included on the label will subject the applicator to potentially severe civil and criminal penalties.[17] For example, a farmer who knowingly applies a chemical certified only for use on tobacco on a sorghum crop could be subjected to a fine of up to $1,000, 30 days in jail, or both. A commercial applicator committing a similar act could be fined up to $25,000, be imprisoned for up to one year, or be subjected to both penalties.

Marketing Based Statutes

Just as the federal government regulates pesticide misuse through FIFRA and FEPCA, the use of pesticides on certain crops is controlled by portions of the Federal Food, Drug, and Cosmetic Act of 1938 and amendments thereto.[18] This Act, among many other purposes, authorizes the director of the E.P.A. to set levels of residue tolerance for each pesticide on specific raw farm commodities. A tolerance for a

particular chemical residue on a specific agricultural commodity indicates the chemical is safe for use on that specific commodity within the set tolerance. Such a tolerance is set by the director of the E.P.A. if the chemical is deemed safe at a given level of concentration and is necessary in the production of the agricultural-commodity.[19] If no tolerance is established for a specific chemical on a given crop and the crop is found to contain traces of that chemical, it will be deemed adulterated.[20] Delivery of such an adulterated commodity to market is prohibited by the Food, Drug, and Cosmetic Act. Therefore, using a chemical that has no established tolerance for a particular crop is a violation of this act. Punishment for such violations may be by injunction, which prevents the farmer from selling his product.[21] Such a violation also leads to penalties of up to $1,000 or one year imprisonment, or both, for the first offense and $10,000 or three years imprisonment or both, for the second offense.[22]

COMMON LAW BASES OF LIABILITY

Under the common law as developed in England and adopted and modified in most states, there are several bases or legal theories under which agricultural chemical users can be held liable for damages to others from their chemical applications. These legal theories fall under a broad division in the law known as civil law. Civil law deals with conflicts between and among individuals in contrast to criminal law which deals with those who violate criminal statutes. When civil conflicts are based in the common law and involve harm to the person or property of another, they fall in a subclass of civil law known as tort law. Where

torts are not intentional, there are four recognized theories under which a person applying agricultural chemicals may be held responsible for damages that may result. These theories include negligence, strict liability, trespass and nuisance. In a given situation more than one legal theory may apply. Furthermore, common law bases of liability are separate and apart from statutory provisions which may apply.

Negligence

The most commonly used theory for recovery of damages resulting from pesticide use is ordinary negligence. Negligence may be defined as breach of a duty to use reasonable care under a given set of circumstances which results in harm to some person or their property. Since circumstances vary from situation to situation and because what is considered reasonable under a particular set of circumstances may also vary from person to person, the concept of negligence is somewhat elusive to many people. Negligence involves either a failure to do some act that a person of ordinary prudence would have done or the doing of some act that a person of ordinary prudence would not have done under the same or similar circumstances.[23] Thus, fault is involved in all negligence actions. A negligence action is appropriate where a person has used a chemical in the absence of due care and injury to someone's person or property results. For example, suppose a farmer applied brush killer to fence rows and ditch banks and then dumped the unused portion of the chemical into a ditch that runs into a neighbor's private lake, killing valuable fish. The neighbor should be able to recover for the damage done in a lawsuit based on negligence.

Strict Liability

Strict liability or liability without fault is a doctrine developed in relatively recent times affording legal redress in the absence of negligence. This legal doctrine is based on the premise that a person who causes harm to others should compensate them for resultant loss without regard to fault. In the farm setting, liability without fault has generally been limited to situations involving dangerous activities or uses of land that are abnormal or unnatural.[24] Strict liability is widely used where products are sold in a defective condition or where they are unreasonably dangerous and harm results to a consumer.[25] The strict liability theory has long been applied where damage is done by wild animals kept in captivity and where ultra hazardous activities such as blasting with dynamite causes harm to neighboring property. Although Tennessee cases have not been located where liability without fault was used in legal actions involving agricultural chemicals, such application has been made in other states. The first such application occurred in Louisiana in 1957 in a case involving crop damage resulting from herbicide drift. Although the custom applicator used caution and ceased spraying when the winds approached the speed where aerial application of chemicals were prohibited, the defendants were held responsible for the resultant crop damage. The court adopted the following ruling from an earlier decision:

> We are unwilling to follow any rule which rejects the doctrine of absolute liability in cases of this nature [ultra-hazardous activities] and prefer to base our holding on the doctrine that

> negligence or fault, in these instances, is not a requisite to liability, irrespective of the fact that the activities resulting in damages are conducted with assumed reasonable care and in accordance with modern and accepted methods.[26]

More recently, a Washington State case held a chemical applicator and its employer strictly liable where chemical drift could be detected in organically grown produce on a nearby farm.[27] In that case the producer had contracted to grow and sell products free from chemical contamination for the organic food market. After the crops were contaminated, the farmer destroyed them because he believed that his marketing contract prohibited their sale.

Strict liability has also been applied to groundwater contamination in Connecticut.[28] In that state, farmers who had used chemicals without impropriety in any way were forced to provide bottled water to persons whose wells were contaminated by soil fumigants. Use of the fumigants on tobacco fields had allegedly been discontinued for about 15 years when the contaminated wells were discovered. Nevertheless, where the source of contamination of a given well could be traced to chemical application on a particular farm, the owner of the farm was required to supply bottled water at great economic hardship. In this situation, the liability arose partially as a result of two Connecticut statutes which hold local landowners strictly liable for contamination of underlying groundwater and provided for supplying of bottled water to those whose wells were affected.[29] This result would have been very unlikely in the absence of the Connecticut potable water statutes.

In recent action by the Superior Court of Washington indicates that application of strict liability in the absence of a similar statue may be

inappropriate.[30] Inthe Washington case, the plaintiff attempted to hold the defendant farmer and others liable for contamination of underlying groundwater. This contamination occurred after soil fumigation by the neighboring defendant farmer. The court indicated in dismissing the action that soil fumigation is not abnormally dangerous, and that product characteristics should be considered the cause of contamination of the plaintiff's groundwater. The reasoning followed by the Washington court seems well founded. If followed, it may tend to reduce the likelihood of strict liability being applied to groundwater contamination in the absence of statutes similar to those used in Connecticut. However, given the trend toward use of strict liability, Tennessee farmers should be aware of the potential for increased liability in this direction.

Trespass and Nuisance

Trespass and nuisance are two separate common law theories imposing legal responsibility by which agricultural chemical users might be held responsible for damages. Both theories are viable today and might be used under appropriate circumstances.[31] Often these theories overlap ordinary negligence. Circumstances may be such that an action may be prosecuted in trespass, nuisance, and negligence. In such a situation, negligence likely would be the theory applied.

In the context of agricultural chemical usage, trespass refers to any interference with the exclusive possession of farmers or homeowners in the use of their land. No cases have been found where Tennessee courts have based responsibility in agricultural chemical damage suits solely on trespass, however a few other states have.[32]

Under nuisance law, relief can be granted where one person unlawfully or unreasonably uses property in such a way as to invade the property rights of another person or of the public. Nuisance can arise as a result of intentional conduct, negligent conduct, or where the offender is not at fault but is nevertheless held by law strictly liable for the results of the nuisance. Where the interference involves the interest of the community or the comfort and convenience of the public in general, the interference is termed a public nuisance. On the other hand, a private nuisance involves an interference with the property rights of one person or a few people. Such nuisance may occur when one's property is used in an unlawful manner or an unreasonable manner. The court defines an unreasonable use as one in which the benefits accruing to the offending party are of less value than the benefits given up by the aggrieved party. An agricultural chemical usage might be considered a nuisance, for example, if it caused well or spring pollution resulting in a neighbor's loss of a source of drinking water or family health problems. Similarly, chemical usage that caused a lake to be polluted so it could not be used to water livestock and produce fish might be declared a nuisance by the courts. Relief in such cases can be granted in the form of an injunction, or an award of damages, or both. An injunction would be in the nature of an order to the offending party to cease the activity causing the nuisance while a damage award would be an attempt to pay the aggrieved party for the resultant loss.

A Final Word on Common-Law Liability

Where an employee is involved in chemical application, the employer may be held responsible for harm that is caused by the employee.

Employers are generally held responsible for such damages when the employee is acting within the scope of employment. The employer is directly responsible when the employee is following instructions and causes harm. If the employee's own negligence causes harm, the employer is held vicariously responsible under a legal doctrine known in the law as Respondeat Superior. Respondeat Superior is a Latin phrase that simply means "let the master answer."

As a general rule, employers are not held vicariously liable for the negligent acts of independent contractors.[33] Several exceptions to this rule exist, however. One such exception to the general rule, and one that is important in chemical application situations, involves inherently dangerous activities. While "inherently dangerous" is not well defined in the law, it appears to be broad enough to include activities which are associated with a high degree of risk under the particular circumstance. Crop dusting and aerial spraying of pesticides have been held to fit the ultrahazardous or inherently dangerous activity category in several states.[34]

Practices That May Reduce Liability

Farmers as users of pesticides and other agricultural chemicals are likely to be involved in situations where chemical use results in damage to the person or property of others. These risks cannot be eliminated completely but several steps can be taken to reduce the likelihood of large damage judgments. First, it is imperative those who use chemicals become familiar with how they work and with proper techniques for application. An applicator should also be familiar with proper methods of

equipment cleaning and proper techniques for disposal of unused materials. These skills may be obtained through training required for applicators of restricted-use pesticides. Additional information may be gained by reading and following product label directions. Farmer applicators should keep currently informed by examining pertinent journal and magazine articles, by using information provided by chemical manufacturers, and by attending workshops dealing with chemical application. Farmers should not apply any new chemical with which they are unfamiliar or any unlabeled chemical.

A second precaution that can help reduce the likelihood of large judgments is use of care. Utmost care should be taken to minimize human health risks and harm to neighboring property. The results of long-term exposure of workers to many chemicals is unknown. Therefore, extra caution should be applied where workers are in contact with farm products that have been sprayed with pesticides. Where neighbors get their drinking water or source of livestock water from wells, springs or lakes an extra-cautious approach may also be wise. Where there is any doubt that chemical pollution may become a problem, water should be tested periodically. In addition, caution must be taken to notify neighboring beekeepers when crops are to be sprayed. Crops growing in the vicinity must be considered, as well as wind velocity, temperature and other conditions that may enhance the volatility of chemicals which tend to vaporize and drift onto neighboring property. These and other common-sense precautions need to be strictly adhered to and even surpassed if problems are to be minimized.

Finally, some risk will remain even after exertion of diligence to understand applicable legal constraints and the basics of chemical reactions, and even after measures have been taken to assure due care standards are met. At least two viable alternatives remain. These include the use of liability insurance and incorporation of the business for the purpose of limiting liability. Liability insurance can be helpful and should be considered. Most farmers and other chemical applicators carry general liability insurance policies. However, general liability insurance may or may not cover the kinds of risks a particular chemical user may face. Therefore, the coverage and limits of the policy should be reviewed periodically to assure continued adequate protection of risks associated with chemical application.

Structuring the business as a corporation can be effective in limiting liability for chemical damage in some situations. Where state laws regarding business incorporation and operation are followed carefully, liability of an incorporated business can be limited to the assets owned by the business. However, if the negligence of an employee of the corporation (who may also own most or all of the corporation's stock) is the cause of the damage from chemical use, the employee might be held personally liable.

Recent Action

Prior law may be affected by recent legislation introduced in the United States Congress. The bill, HR-2482, may stir considerable interest among farm chemical applicators. The intended purpose of this legislation was to amend the Federal Insecticide, Fungicide and Rodenticide Act.

Among many other changes to earlier FIFRA laws, an important limit on farmer-applicator liability was presented in this legislation. The bill would prohibit imposition of liability upon an agricultural producer unless that producer acted in a negligent, reckless, or intentional manner in applying the chemicals which later resulted in damage of some type.[35] Furthermore, if the farmer followed the label directions, HR-2482 creates a rebuttable presumption that the applicator was not negligent. Provisions of this legislation further indicate the importance of farmer-applicators using due care in chemical application and following the label directions because if these two factors are not met, liability is not precluded.

The bill was presented in the second Session of the 99th Congress but did not pass the Senate after passage in the House. However, the language does indicate the present attitude of Congress toward farmer liability from chemical use. The bill should be reintroduced in the 100th Congress in identical or similar form and will likely meet with strong Congressional support.

SUMMARY

The application of pesticides and other agricultural chemicals entails risks that are hard to evaluate. This is true because federal and state statutes and administrative regulations, when combined with common law principles, provide a maze of legal theories under which liability might attach. The absence of concrete data on the long-term use of many chemicals further muddles the picture. Human health problems and some types of property damage that result from chemical buildup

in the soil, in the food chain, or in the human body merit considerable study before they can be fully evaluated. In the meantime farmers, among others who must use pesticides and other agricultural chemicals, are well advised to utilize all available means to minimize potential risks. While such risks can never be eliminated, they can be reduced through: 1) better understanding pesticide law and how chemicals work, 2) maintaining standards of due care, 3) securing liability insurance, and 4) structuring the business to limit liability.

FOOTNOTES

[1]Underlying the largest portion of this agricultural land are the Alluvial and Tertiary Sand aquifers. Nearly all public, industrial, and rural water supplies in West Tennessee, and the entire city of Memphis are supplied by the aquifer.; See e.g., National Groundwater Summary—Tennessee, U.S. Geological Survey Water-Supply Paper 2275 (1982); See also R. Robinson and G. Reed, Purgeable Organics in Tennessee Groundwater: A Problem Assessment, Tennessee Water Resources Research Center Research Report No. 99 (Dec. 1983).

[2]See J. Porterfield, Connecticut Case Raises Questions About Farmer's Liability for Contamination, 64 Farm Bureau News, p. 2, col. 1-2 (Feb. 18, 1985).

[3]See, e.g., Sterling v. Velsicol Chemical Corp., No. 78-1100 (W.D. Tenn. 1986).

[4]See Harris v. Shell Oil, No. 84-2-00279-7 (Super. Ct. Skagit County, Wash. August 2, 1985) (order granting motion to dismiss).

[5]Torts in the Well Water, 5 Cal. Lawyer 45-49, Dec. 1985.

[6]Id. at 45.

[7]Act of April 26, 1910, Ch. 191, 36 Stat.335, repealed by Federal Insecticide, Fungicide, and Rodenticide Act of 1947, Ch. 125, § 16, 61 Stat 172.

[8]7 United States Code Annotated (hereafter U.S.C.A.) §136 et. seq. (1980).

[9]Federal Insecticide, Fungicide and Rodenticide Acts of June 25, 1945, Chapter 125, 61 Stat. 163; Federal Environmental Pesticides Control Act, Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973; Federal Pesticide Act of 1978; Pub. L. 95-396, 92 Stat 819. (Current versions of these statutes may be found in 7 U.S.C.A. § 136 et. seq.).

[10]U.S.C.A. § 136 (a) (1980).

[11]7 U.S.C.A. § 136b (a)(1) (1980). A program administered by the state must have requirements at least as stringent as federal standards. If a state plan is not accepted, the federal government will administer the provision until an acceptable state plan is desired.

[12]See Tennesee Code Annotated (hereafter T.C.A.) § 62-21-101 (1986).

[13]T.C.A. § 62-21-104, 105; see also: Laws and Regulations Governing Pest Control Operators and Applicators of Restricted-Use Pesticides, Tennessee Department of Agriculture (Spring 1984); This publication contains the pertinent Tennessee statutes and regulations governing commercial and private applicators and is available from the Tennessee Department of Agriculture Plant Industries Division.

[14]See T.C.A. § 62-21-119, 120 (1986).

[15]7 U.S.C.A. § 136j (1)(G) (1980).

[16]40 Code of Federal Regulations (C.F.R) § 162.10 (i)(2)(iii) (1980).

[17]See 7 U.S.C.A. § 1361 (1980); Civil penalties under this section are $500 for the first offense and not more than $1,000 for subsequent offenses for private applicators and $5,000 for each offense for commercial applicators. Criminal penalties under this section are a maximum fine of $25,000 and/or a maximum of 1 year in prison for commercial applicators and a maximum $1,000 fine and/or 30 days in prison for private applicators, per offense.

[18]Federal Food Drug and Cosmetic Act of 1938, Ch. 675, 52 Stat 1040 (Current version of this statute as amended can be found at 21 U.S.C.A. 321 seq.).

[19]21 U.S.C.A. § 346 (1976).

[20]21 U.S.C.A. § 342(a)(2)(A) (1976).

[21]21 U.S.C.A. § 332 (1972).

[22]21 U.S.C.A. § 333 (1972).

[23]W.Prosser, Law of Torts. p. 143 (4th ed. 1971).

[24]Id. at 512.

[25]Smith v. Detroit Marine Engineering Corp., 712 S.W.2d 472, 475 (Tenn. App. 1985).

[26]Gotreaux v. Gary, 94 So.2d 293, 295 (La. 1957).

[27]Langan v. Valicopters Inc., 567 P.2d 218, 223 (Wash. 1977).

[28]See Porterfield, Connecticut Case Raises Questions About Farmers Liability for Contamination, 64 Farm Bureau News 2 (Feb. 18, 1985).

[29]See Connecticut General Statutes § 221-471 (1985).

[30]Harris v. Shell Oil, No. 84-2-00279-7 (Super. Ct. Wash., Skagit Co., Aug. 2, 1985) (order granting Sakuma Bros. Farms Inc. motion for directed verdict/dismissal).

[31]2. Harl, Agricultural Law 15.01 [3][a] (1986).

[32]See. e.g. Schrank V. Gilliam, 380 S.W.2d 743 (Tex. Civil App. 1964), Hall v. Pioneer Crop Care Inc., 512 P.2d 491 (Kan. 1973).

[33]An independent contractor is one who uses his own tools and methods or means to complete a contracted job and who is not subject to the control of the job except as to the final result or product of his work.; See International Harvester v. Sartain, 32 Tenn. App. 425, 222 S.W. 2d 854 (1949); Often courts hold that the status of an independent contractor changes to that of employee when the employer controls the manner in which the work is accomplished. In such circumstances the liability that would have been upon the independent contractor may be charged to the employer.; See Bush Bros. & Co. v. Hickey, 223 F.2d 425 (Tenn. 1955).

[34]See e.g., S. A. Gerrard Co. v. Fricker, 42 Ariz. 503, 27 P.2d 678 (1973); Alexander v. Seaboard Airline R. Co., 221 S.C. 471, 71 S.E. 2d 299 (1952); Pendergrass V. Lovelace. 57 W.M. 661, 262 p.2d 231 (1953); Miles v. A. Arena & Co., 23 Cal. App. 2d 680, 73 P.2d 1260 (1938); Southwestern Bell v. Smith, 220 Ark. 223, 247 S.W. 2d 16 (1952).

[35]HR-5440, 99th Congress, 2d Sess. § 821 (1986).