

Training is best way to reduce liability risk

by Jim Leatzow

A great deal of confusion exists concerning possible insurance implications from using chemicals and even fertilizers. Essentially, three separate potential exposures are created by applying chemicals.

The first exposure is one that requires you to be covered by profes-

sional liability insurance. If plant material dies or is damaged after an employee sprays it, the only insurance available to pay for such a loss would be professional liability. However, since such coverage is generally not available, we can say with certainty that you virtually

have no protection whatsoever.

Certain safeguards need to be in place in your operations to make sure this kind of uninsured claim never occurs. Probably the largest exposure exists from combining chemicals in tanks that haven't been thoroughly washed and rinsed. The combined effects of multiple chemicals can result in a potentially harmful product that may injure plant material.

Also, segregate chemicals to eliminate confusion about which is to be used. Both measures will help reduce the chances of a mistake being made in your shop.

Have written procedures

It is very important for your operation to have written procedures that are known by your employees. The procedures should always include the routine maintenance plans to be performed on your tanks and storage units to prevent the unintended chemical mixing.

The next area of concern involves spray drift. This could occur if you're using a systemic, broad-spectrum herbicide that drifts and damages or kills plants that are not the object of your work. Coverage for this exposure can be obtained, but it often requires a special endorsement that broadens the "property damage liability" portion of your general liability insurance.

Because this specific area has the potential for sizable claims, some insurance companies are reluctant to provide this broadened protection. It is imperative for you to talk with your insurance broker directly in order to help him or her understand your concerns and find a way of alleviating such risks. If your broker is not knowledgeable about your industry and your specific insurance needs, it might be prudent to obtain some competitive quotations at your next policy anniversary.

Claiming pollution

The third potential area of insurance exposure involves pollution. The courts continue to broaden their position on pollution liability, which often results in ridiculous awards. The insurance industry has responded by dramatically restricting the coverages available that fall under the loose heading of "pollution."

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policies available today basically exclude all pollution, regardless of the source. In our current competitive marketplace, some companies have begun to broaden their definitions ever so slightly, but the real impact is that insurance companies are not interested in providing exclusive pollution coverage. The financial risk is simply too great.

There are several insurance companies available that write these difficult classes of business on a specialty basis, but they involve very significant minimum premiums (possibly \$25,000) which make them far too expensive for the average small business.

The largest litigation calamity that appears to be brewing concerns groundwater contamination. This falls under the pollution heading and is seen in the insurance industry as a potential disaster. While more attention is being focused on the millions of tons of toxic waste that has been buried or merely discarded by errant parties across the United States, legal challenges are also being mounted against sprayers and applicators. These challenges are an attempt to prove that the products being applied in the green industry are the real

culprits in tainting groundwater.

Setting up defense

The bottom line is that you can be assured of no protection, and the best way to keep yourself out of trouble is to have frequent dialogue and written communication with the Environmental Protection Agency at the state and federal level. Make sure the EPA has approved all products used by your firm.

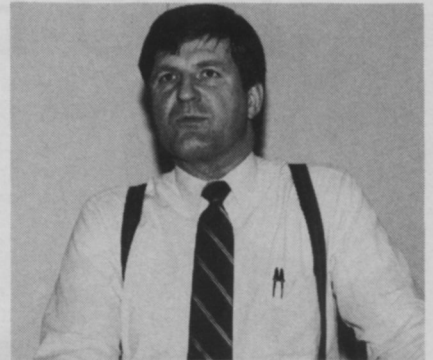
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Be sure to document your attempts to prove that the products you are using are safe and are being applied safely. By not doing so you may be leaving your company wide open to a claim that can ultimately bankrupt it.

Since two out of three insurance exposures discussed above are virtually uninsurable, it is imperative that you

continually update your in-house safety and documentation procedures. You cannot increase the awareness of your staff enough, since a mistake could lead to a large, uninsured claim. For those areas covered by insurance, you need to align yourself with a knowledgeable insurance broker familiar with the green industry.

There is no substitute for these precautions. Unfortunately, many people don't realize that until a large claim has occurred. By examining your needs now, you take a major step toward avoiding these kinds of costly problems. **LM**



James Leatzow is president of Leatzow & Associates, Glen Ellyn, Ill. He specializes in green industry matters.



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