

# Chapter XXIV Liability

## *2005 Pesticide Certification Workshop*



UNIVERSITY of NEW HAMPSHIRE  
**Cooperative Extension**

# Chapter XXIV Liability

*Almost all pesticides are considered hazardous.*

- Even the most careful applicators sometimes have damage claims brought against them.
- The usual claims are for nonperformance, misapplication, crop injury, property damage, and/or contamination of non-target areas.
- It is important for all certified applicators to be informed of the most common claims which could be brought against them.

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## *Drift*

- Drifting pesticides are a major cause of environmental contamination and damage to non-target areas.

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## *Target Site*

- Claims of injury to the target site (crop, turf, shrub, etc.) that was treated or claims that the pesticide had not performed as expected involve the dealer, the manufacturer, and the applicator

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## *Personal Injury*

- The application of pesticides is considered an especially dangerous or, in legal terms, an "ultra-hazardous" activity.
- As a result, the pesticide applicator is liable for any injury to a person from the pesticide.

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## *Wrong Site*

- If the pesticide is applied on a field, crop, or area other than the one it was intended for, serious problems can result.
- In the event that damage or over-tolerance occurs or that the owner just didn't want the area treated, the applicator may be charged with negligent application

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## *Bees*

- Honeybees are very important to the farmer and often he has his own colonies or hives.
- However, bees are insects and are very susceptible to many pesticides.
- If the bees in hives are killed as the result of drift from nearby application sites, the applicator can be held legally responsible and must pay for damage

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## *Attractive Nuisance*

- The rulings on "attractive nuisance" usually involve cases where children are attracted to ground equipment or aircraft and injure themselves.
- The owner and/or applicator are held liable for injuries caused to children, even if they are trespassing, when the landowner fails to take reasonable precautions to prevent injuries from dangerous equipment which can be attractive to children.

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## Noise

- Recently claims have been brought against applicators for noise damage.
- Home owners, as well as others, have claimed damage or loss of property value caused by noise of aircraft and ground equipment operating above or near their property.
- They must prove direct loss of property due to noise from machinery operated carelessly or negligently.

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## *Cross Contamination*

- Every year there are cases of pesticide cross contamination reported which may damage the sites being treated. There are three ways that this may occur:
  - The applicator may make an error in mixing or filling in the spray tank..
  - Open containers of herbicides such as 2,4-D can vaporize (become a gas) and penetrate other pesticides which are stored nearby. When other pesticides are applied, a 2,4-D contamination can seriously injure the site.
  - The manufacturer may make a mistake in labeling, formulating, or refilling a container.

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## *Public Relations*

- It is always important to maintain a good public image as a pesticide applicator. Here are some things to consider:
  - Always be courteous. First impressions can often be long lasting. Calm words help to open future discussion.
  - Listen to the question. Let the person know that you understand the basis for his or her concern.
  - Be prepared. Applicators should know what materials are being applied, why they are being applied, and what its basic characteristics are. Keep accurate records.

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## *Public Relations*

- It is always important to maintain a good public image as a pesticide applicator. Here are some things to consider:
  - Have an answer. Be as informed as possible and do not give information you are not sure of.
  - Take information. Include name, location, date, time and details of the situation and request for information.
  - Be prompt. Problems may come up during the busiest times, but dealing with them as quickly as possible may make the difference between an easy solution or a complicated expensive one.
  - Keep good records. A simple file that includes inquiries and course of action taken may prove to be important documentation.