

SO YOU THINK YOU HAVE A CROP LOSS

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Each year here in the Columbia Basin we have an increasing number of crop losses due to actions of others. We are not unique in this factor as such losses are increasing in all areas. The causes for these increases are due to our changes in agriculture. Farmers are farming large acreages nowadays and are dependent upon the renting of land, custom application of fertilizers and chemicals, the need to rely on hired help and a greater use of chemicals for pest control and the use of custom operators for harvests and other operation. Another factor creeping into the picture is the Environmental Protection Agency which is now establishing perimeters in which you must operate. This means that there will be more basis under the law for damages. So what I would like to do today is give you some guidelines as to how best to protect yourself in case you feel that you do have a crop loss.

1. Determining the exact nature of the problem--was it a single cause or a combination of things.

Possible causes:

Physical causes:

Lack of water - power failure - faulty pumps - irrigation equipment - ditch break.

Trespass - soil erosion - water damage - stock.

Poor Seed - Poor germination - chemical injury - ring rot to potatoes - disease - viruses.

Lack of Performance - Failure to fulfill contract such as providing equipment - plowing - harvesting, etc.

Misrepresentation - land, weeds, nematodes, chemical residues.

Chemical losses:

1. Direct spray in error
2. Drift - vapor or particulate
3. Dust carried chemical
4. Carrier burn - solvents
5. Adverse synergistic reactions
6. Carry over in the soil - previous years
7. Contaminated equipment
8. Contaminated products
9. No adverse effects - residue problem
10. Lack of performance
11. Misapplication - fertilizers

2. Steps to Follow

1. Note the date symptoms first observed and make a written detailed report of symptoms observed by yourself.
2. Get a third disinterested party such as a County Agent, trained agronomist - fieldman to observe.
3. Have him write a detailed report of what he saw.
4. Preserve evidence with photos. Engage a professional photographer or newspaperman to take photos if necessary--close up photos almost a must.
5. Document photos by an identifying number and name and date. Have a written legend for each photo number, date, area of field, who took it.

6. If a chemical problem exists, determine the precise source together with date of application, who made the application, who called for the application, who made the recommendation, the rate of application, who's land the application was made on, if commercially applied, was the applicator licensed, what piece of equipment was used, any similar applications made in the same area within a few days either way when suspect application was made, the weather conditions at the time and for the time following for the first week. In case of an aerial application, make sure that their insurance company is notified.
7. Get a copy of a label of the material used.
8. Take photos at appropriate intervals throughout the growing season of the same areas and again identify photos by numbers and make out appropriate legend for each photo.
9. Take appropriate soil samples or tissue analysis. In some cases bio assays should be made of soils.
10. Put any and all persons, firms and manufacturers who may be involved on notice in writing by registered mail as soon as symptoms are observed. At this time you may wish to contact an attorney, not with the idea of a suit but with the idea of getting a preserving evidence such as persons who had knowledge of this situation and might not be available later.
11. Carry on all farming practices necessary to take the crop through the season unless damages are so severe that the crop is wiped out. In this case don't abandon the crop unless an agreement has been worked out in writing with the party responsible.
12. Be sure to get accurate measurements of damaged area. It may be necessary to segregate the areas as to severity of damage. Be absolutely certain to segregate the harvest so as to be absolutely certain of the yields of the damaged area and nondamaged area. Take into account any other factors that may also be involved. Be honest in this determination.
13. It may be necessary to use other fields as referee fields in case the total field is damaged. It may also be necessary to compare against neighbors fields, area average or your past average yields over a number of years. If this is the case, get this information early.

At this time let me emphasize that you are not doing this with the idea of a law suit, but that you are simply taking steps to preserve the evidence and to establish basis for determining losses. If these steps have been taken, then you are speaking from a position of strength and chances are excellent that a settlement can be worked out to everyone's satisfaction. I would also say that suing is used only as a last resort. I have seen many cases where if a grower had been reasonable, would have been able to have negotiated a settlement which was much better than what the courts settled on, and he would not have had to pay an attorney their take.

In conclusion I will say that if evidence is properly gathered and preserved and witnessed by an expert, it would be almost impossible not to recover your losses. It is only when a grower decides after harvest that the damages that he saw added up to a distinct loss, that it is almost impossible to put together a case that the offending party will buy or a court will rule in favor of you. Remember in this day of high costs and high returns, that even a 10% loss may amount to thousands of dollars.