

Legal Education and Environmental Regulations

Custom Operator Indemnification

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NOTE: This resource is for educational purposes. It is not meant to replace professional legal counsel for your specific situation.

Introduction

Vermont Required Agricultural Practices (RAP's) went into law in December 2016. Farm owners, operators, land owners and custom operators have expressed questions and concerns about their legal risks. Each party wants to manage the legal and regulatory risk they each face as they partner together to support active farming operations. A common solution to eliminate the uncertainty of who will bear legal liability for an unforeseen event is the use of written leases or agreements that include "indemnification provisions". An indemnification provision can provide:

- a) description of each parties specific responsibilities
- b) details that explain an expected process to handle the relationship. This often includes what information needs to be communicated and how it will be done.
- c) A "hold harmless" clause to release certain or all parties from liability.

Manure Application and Land Rental Liability

The dilemma is clear. Who will bear the liability if a violation occurs during manure spreading? RAP's are intended to target the "actors" and ensure that those actively engaged in farming activities are following best practices for water quality protection. In the case of custom manure application both the custom operator and the overseeing farmer have responsibilities to uphold. Farmers and custom applicators will need to clearly communicate and agree on appropriate manure spreading practices that reflect the farms adherence to farm certification criteria and the certification of the custom operator under the new Custom Manure Applicator Certification.

Custom Operator / Landowner: Sample Indemnification Provisions

This section provides a series of indemnification provisions related to the farmer/manure applicator relationship. Farmers and applicators will need to consider which provisions are the best for reducing the legal uncertainty for their specific relationship.

1. Operator has been certified by the Vermont Secretary of Agriculture Food and Markets (Agency) and Operator services shall comply with all applicable requirements of the Required Agricultural Practices Rule.
2. Operator has trained his employees in methods or techniques to minimize runoff to surface water, identification of weather or soil conditions that may increase the risk of runoff, and the Required Agricultural Practices Rule.

3. Operator activities on the farm shall conform to the field by field nutrient management plan of landowner, which shall be supplied to the Operator.
4. Operator shall indemnify, hold harmless and defend landowner from any loss, liability, damages, administrative or civil penalties, claims, or suits, arising from Operator’s failure to comply with the Required Agricultural Practices Rule or the farm’s nutrient management plan.
5. Landowner is a Small Farm Certified by the Vermont Agency of Agriculture Food and Markets (VAAFM.) Or, Landowner is a Medium Farm Operation permitted by the Vermont Agency of Food and Markets. Landowner was last inspected by VAAFM on _____. The inspection report is attached hereto.
6. Landowner has provided to Operator a written “scope of work” which is attached hereto and incorporated herein by reference and Operator activities on the farm shall conform and be limited to the written scope of work.
7. To the extent that Landowner’s scope of work deviates from the Vermont Required Agricultural Practices or the Landowner’s nutrient management plan, Landowner shall provide written evidence of VAAFM authorization of such practice.
8. Landowner shall indemnify, hold harmless and defend Operator from any loss, liability, damages, administrative or civil penalties, claims, or suits, arising from Landowner’s misrepresentation of any VAAFM exemption from the Required Agricultural Practices or the content of the farm’s nutrient management plan.

Scope of Work

A written scope of work provided by the landowner is one mechanism to communicate details from the nutrient management plan and other important RAP’s issues.

Date to be applied: (window of time): _____ Fields to be treated: _____

1. Description of field and rate and method of application. Note if frequently flooded soil/and field slope.
2. Description of field and rate and method of application. Note if frequently flooded soil/ and field slope.
3. Description of field and rate and method of application. Note if frequently flooded soil/ and field slope.

Note locations of:

- Wells
- Wetlands
- Watercourses

Questions? Contact Us:

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