Environmental Policy And Corporate Responsibility (or Liability!)

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will result in more ground cover and less erosion, to invest interraces or plant buffer strips, and to even change crop rotations to include more conserving crops such as forages and small grains as an alternative to row crops. Providing the information on these more environmentally desirable options and the incentive to adopt them is difficult. In some cases, regulations have been implemented or proposed to accelerate the rate of adoption, but monitoring compliance is a costly and complex task for regulatory agencies.

Alternative mechanisms are available and being used to encourage and facilitate the adoption of environmentally friendly (or at least benign) production practices by agricultural producers. One such approach is for input manufacturers and suppliers to view the provision of environmentally safe products as part of their corporate social responsibility (CSR), much in the same fashion as they might view non-discriminatory employment practices or concerns about the physical and mental health and safety of their employees. This viewpoint may, in fact, be encouraged or facilitated by environmental liability law (possibly in combination with product liability law) and, in particular, the risk of costly third party damages that can result from liability for environmental degradation. Similarly, lenders would be and are expected to monitor the environmental compliance of their borrowers. Based on these arguments, the responsibility for adoption of environmentally safe agricultural production practices is borne in part by the input manufacturer and supplier and/or lender as well as the end user--the agricultural producer. This broadening of responsibility for the adoption of environmentally safe production practices, enforced

by liability law, may be one of the more effective ways to encourage and monitor compliance. In essence, this approach encourages the private sector to become environmental watchdogs!

Corporate Social Responsibility (CSR)

The issue of whether or not business firms have social responsibilities beyond those that they exercise in the marketplace has been the focus of serious debate, particularly since Friedman's arguments in 1962 and 1970 that "the overriding obligation of corporate managers is to maximize corporate profits within the constraints imposed by the laws and customary moral rules governing business activities." (Rodewald, p. 443) Rodewald has characterized this viewpoint as the manager as an agent of capital perspective where the manager has a legal obligation as well as a moral responsibility to protect and promote the interests of corporate investors only, and that behaving in such a fashion will result in the greatest good for the greatest number of people or socially optimum resource use and output.

In stark contrast, Stone and others have argued that beyond "profit making obligations, corporate managers should have social responsibilities to avoid significant human and environmental harm and help solve some of our persistent societal problems." (Rodewald, p. 444) Rodeward refers to this viewpoint as the manager as an agent of society perspective; the essential argument is that markets do not always function properly and may be influenced by relative political/ economic power in such a fashion that exclusive reliance on them for a socially optimum resource use and

output is foolhardy. Thus, the corporate manager is responsible to use resources and produce products in such a fashion as to at least not harm individuals or society (including the environment), even if profits must be sacrificed.

Although the debate between the agent of capital and agent of society viewpoints continues today, with specific reference to environmental/ecology issues, the agent of society perspective is receiving increasing support. Concerns about externalities, market failures, the exploitation of the commons and corporate governance combined with growing evidence of global environmental damage from unfettered functioning of a market that does not place a cost on environmental degradation or value environmental benefits has lead to calls for increasing environmental vigilance on the part of the private sector as well as increasing regulation by the public sector. A McKinsey survey of business executives found that:

- 56 percent agreed that consumers will increasingly ask "How green is your company?" before buying a product.
- 68 percent agreed that organizations with a poor environmental record will find it increasingly difficult to recruit and retain high-caliber staff.
- 72 percent agreed that environmental legislation has become a decisive factor in plant location.
- 49 percent agreed that government regulation supporting a 50 percent reduction [in environmental pollution] is likely by the year 2000.

(Winsemius and Guntram, p. 13)

Further evidence of corporate social responsibility concerning environmental issues (if not the commitment to responsiveness) is the development of the Valdez Principles by the Coalition for Environmentally Responsible Economics (CERE), the Charter for Sustainable Development at the Second World Industry Conference on Environmental Management, the development of environmental policy statements by individual companies such as Du Pont, Dow, Shell, and others, and the role of the business community in facilitating and participating in the United Nations Conference on Environment and Development in Rio de Janeiro in June 1992.

Environmental Liability

The Institutional Structure

In the U.S., three federal statutes--the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (commonly known as "Superfund") as amended by the Superfund Amendments and Reauthorization Act (SARA), and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)--provide the core of environmental regulation related to agriculture and establish the basis for responsibility and/or liability for environmental damage. These laws, combined with Environmental Protection Agency rules and principles of liability as developed and honed in case law, define the exposure of farm and agribusiness firms to environmental liability.

Although various theories of liability including negligence, trespass, nuisance and violation of statute may provide a cause for action because of environmental

damage, strict liability may be the most attractive and commonly used theory. Strict liability imposes the highest standard of care, holding persons responsible for the damages resulting from their actions without proof of fault. As indicated by Johnson and Ware, "In the states in which it has been adopted it has become the most important theory of recovery in most product injury cases, and there is no reason to believe that it will not be the most important theory in cases of toxic injury." (p. 3-6)

According to Olexa:

> Courts of most states will apply strict liability if the activity being conducted by the defendant is "abnormally dangerous" or "ultra-hazardous." The most widely accepted definition of an "abnormally dangerous" activity is that of the American Law Institute's Restatement of the Law of Torts, 2d. The Restatement sets forth a multi-factor test for courts to apply:
>
> In determining whether an activity is abnormally dangerous, the following factors are to be considered:
>
> (a) existence of a high degree of risk of some harm to the person, land, or chattels of others;
>
> (b) likelihood that the harm that results from it will be great;
>
> (c) inability to eliminate the risk by the exercise of reasonable care;
>
> (d) extent to which the activity is not a matter of common usage;
>
> (e) inappropriateness of the activity to the place where it is carried on; and
>
> (f) extent to which its value to the community is outweighed by its dangerous attributes.[1]
>
> (Olexa, p. 45)

The issue of who is responsible for environmental damages under liability rules has also been addressed by legal scholars and the courts. Thus:

> Because water, especially groundwater, has many sources and may be vulnerable to contamination at many points, it may be difficult or impossible for a plaintiff to determine the origin of pollutants and, consequently, difficult to determine in what degree each of several defendants is responsible for the harm resulting from these pollutants.[2] If the court applies the principle of joint and several liability, however, each defendant may be held responsible for the entire damage if the plaintiff can show that defendant's activities were a "substantial factor" in the creation of the condition that caused injury to the plaintiff . . . .
>
> In pollution action, then, the plaintiff might recover simply by showing that a defendant contributed to the contamination, as illustrated by D. & W. Jones v. Collier.[3] In this case, the defendants had sprayed their crops with a pesticide which had poisoned the plaintiff's fish ponds, killing the fish. The court states the general rule:
>
> > Where the separate and independent acts of several tortfeasors . . . combine to produce a single injury, each is responsible for the entire result, even though his act alone, without the concurrence of the other tort, would not have caused the injury; and it is not necessary that they be acting together or in concert if their concurring torts occasioned the injury . . . Each tortfeasor is responsible for the entire injury . . .[4]
>
> If the court finds more than one defendant jointly and severally liable for the plaintiff's injury, the plaintiff may recover from one or all of them. If one of the defendants pays more than his rightful share of the damages, he is entitled to contribution from the other defendants.
>
> (Olexa, pp. 61-62)

Damages recoverable under liability law are generally equal to the actual damages suffered due to a defendant's actions. Furthermore:

> Several courts have allowed the recovery of punitive damage against defendants who knowingly committed harmful pollution or whose conduct otherwise showed a blatant disregard for the rights of others and the consequences of the pollution.[5] In Miller v. Cudahy Company, Inc.,[6] involving extensive pollution of an aquifer, the court imposed an award of over $4 million in actual damages and $10 million in punitive damages. The court gave the defendant the option to either clean the pollution or pay the punitive damage award.[7] Traditionally, the rule has been that defendants cannot force their insurance companies to pay punitive damages and, therefore, must bear the burden themselves.
>
> (Olexa, p.63)

Some states (Georgia, Iowa, Minnesota, Vermont) have enacted legislation to protect producers from the strict liability standard for contamination from pesticide use. But they

> . . . do not preclude litigation nor liability so that an allegation that groundwater contamination was caused by improper usage, negligent washing of equipment or unacceptable disposal of materials is not to be affected by this legislation. In addition, causes of action in nuisance are presumably permitted. At most, the groundwater exception legislation offers limited protection by precluding successful actions in strict lability.
>
> (Centner, p. 600)

Special rules apply to the environmental liability of lenders. In essence, the rules indicate that a lender has the potential to be liable for environmental damages if: (1) they acquire indicia of ownership through foreclosure or some other procedure, or (2) they become sufficiently involved in management of the property so as to exercise control. The key defenses against environmental liability for lenders are (1) the lender has a security interest only in the property (no indicia of ownership or management control), and (2) the lender is an innocent property owner who did not know of the environmental problem, had no reason to know of the problem, and exercised "due diligence" in investigating the property and its history to ascertain whether environmental problems existed.

The courts have provided confusing evidence as to the boundaries of lender liability for environmental problems. In U.S. v. Fleet Factors, 901 F. 2d 1550 (11th Cir., 1990), the courts said, "a secured creditor will be liable if its involvement with the management of the facility is sufficiently broad to support the inference that it could affect hazardous waste disposal decisions if it so chose. Generally, the lenders'

capacity to influence a debtor facility's treatment of hazardous wastes will be inferred from the extent of its involvement in the facility's financial management." Some analysts have interpreted this court as using the test of what the lender could do, rather than what it actually did in establishing the standard for liability. However, recent Environmental Protection Agency (EPA) regulations challenge and clarify this interpretation.

In Bergsoe Metal Corp. 910 F. 2d 668 (9th Cir., 1990), the court held that "a creditor must, as a threshold matter, exercise actual management authority before it can be held liable for action or inaction which results in the discharge of hazardous waste. Merely having the power to get involved in management, but failing to exercise it, is not enough." Thus, this court held that the standard for liability is clearly what the lender did, not what it could have done.

The Environmental Protection Agency (EPA) recently clarified the issues of what are security interest only indicia of ownership, what activities will not be interpreted as participating in management and what must be done with property obtained through foreclosure to maintain an exemption from liability. (Environmental Protection Agency, pp. 18344-18385) Most progressive lenders are adopting a proactive stance including environmental audits prior to loan approval, monitoring for environmental compliance during the period of the loan and obtaining a second environmental audit prior to foreclosure to reduce the risk of environmental liability.

The Economic Impact

According to the Coase Theorem, under certain ideal conditions (zero transaction costs; fully defined, privately held property rights, etc.), resource allocation and economic choice generally are unaffected by liability rules. But

> In reality, of course, transaction costs are positive, thereby reducing the gains from trade. Moreover, property rights may not be fully defined, allocated, or privately held, thereby limiting the extent to which individuals bear the value consequences of their decisions, increasing their incentive to shirk, and inhibiting the extent to which resources flow to their highest-valued use.[8]
>
> (Alessi and Staaf, p. 5)

Thus, liability rules do have an impact on resource allocation and economic choice.

Much of the discussion of liability law as related to business transactions focuses on product liability or the liability that a manufacturer, supplier or distributor has for any damages resulting from the use of a product (or possibly a service). One of the key dimensions of this discussion has been that of determining the reach of liability, which has significant implications for the way business is organized and the incentives or disincentives to integrate.

Specifically:

> Within the framework of the modern analysis of the firm, agency law and the doctrine of *respondeat superior* can be interpreted as simply placing liability on those individuals who monitor and control a joint or team production process . . . .
>
> The principles established under *caveat emptor* parallel those under agency law. The negligence standard instituted by *MacPherson* and its progeny, however, extended the concept of jointness in the production process. Buick was held liable for failure to monitor (inspect) the output, not the input, of an independent contractor who might have been negligent. As a result, *MacPherson* created the added incentive to integrate vertically as long as the costs of joining and monitoring the separable stages of production were less than the costs of monitoring the outputs of independent contractors . . . .

> Strict liability further extended the concept of jointness. Under this rule, firms in the same manufacturing--distribution chain may be held jointly and severally liable for any injury resulting from a product defect at any stage of the chain, even in the absence of negligence . . . .
>
> Strict liability also created additional rights that expand the meaning of shirking . . . . much of what is meant by shirking may take the form of reduced quality control. Under strict liability . . . a firm may be liable even though the expected benefits of quality improvements are less than the expected costs.
>
> (Alessi and Staaf, p. 15-16)

Although these economic arguments are developed in the context of product liability law, a parallel and legally consistent argument can be made with respect to environmental liability.

In summary, the legal and economic arguments as to the implications of environmental liability suggest that it will have an impact on firm behavior and organization/coordination of economic activity via the nature of linkages between the stages of production. Furthermore, with respect to many agricultural production practices, particularly the application and use of pesticides and other chemicals, strict liability rules will likely apply which increases the chances of proving responsibility for damages in a liability case. (Nolan and Ursin, p. 65) And the damages, particularly third party damages from degradation of underground or surface water supplies used by the public, are substantial. Although the courts have yet to make an explicit linkage, the dominant direction of environmental legislation and litigation that any and all parties associated with or potentially responsible for environmental damages are subject to litigation, combined with concepts of strict liability, corporate social responsibility and the "deep pockets" theory of the highest payoff parties to target in liability litigation, suggests that agricultural input manufacturers and

suppliers as well as lenders are highly likely to be parties to environmental litigation related to the use of agricultural inputs.

Environmental Policy for Agribusinesses

Development of a corporate policy concerning agriculture and the environment is not an easy task, particularly if that policy may be in conflict with overall corporate financial performance. The policy as to the manufacturing and distribution of specific inputs or products should be clear-cut--these processes will be accomplished in strict compliance with environmental laws as to pollution emissions, waste disposal, effluent discharge, etc. The more difficult policy issue is the environmental compliance and consequences of those who use the product, and even possibly those from whom raw materials or inputs are purchased.

Undoubtedly, an environmentally responsible corporate policy (ERCP) is not fully determined by social, ethical, moral or altruistic motives; profitability and survivability as influenced by image and public perception are also important. Concerns about corporate responsibility and the environment peaked with the Valdez incident, and resulted in the development of the Valdez Principles which are summarized in Figure 1. Although on the surface these principles would appear to impose major new responsibilities on the private sector, many of these principles are already part of standard business practice and/or covered by current law or regulation as summarized in Figure 2.

1. *Protection of the biosphere*

   We will minimize and strive to eliminate the release of any pollutant that may cause environmental damage to the air, water, or earth or its inhabitants. We wills safeguard habitats in rivers, lakes, wetlands, coastal zones and oceans and will minimize contributing to the greenhouse effect, depletion of the ozone layer, acid rain, or smog.

2. *Sustainable use of natural resources*

   We will make sustainable use of renewable natural resources, such as water, soils and forests. We will conserve nonrenewable natural resources through efficient use and careful planning. We will protect wildlife habitat, open spaces and wilderness, while preserving biodiversity.

3. *Reduction and disposal of waste*

   We will minimize the creation of waste, especially hazardous waste, and whenever possible recycle materials. We will dispose of all wastes through safe and responsible methods.

4. *Wise use of energy*

   We will make every effort to use environmentally safe and sustainable energy sources to meet our needs. We will invest in improved energy efficiency and conservation in our operations. We will maximize the energy efficiency of products we produce and sell.

5. *Risk reduction*

   We will minimize the environmental, health and safety risks to our employees and the communities in which we operate by employing safe technologies and operating procedures and by being constantly prepared for emergencies.

6. *Marketing of safe products and services*

   We will sell products or services that minimize adverse environmental impacts and that are safe as consumers commonly use them. We will inform consumers of the environmental impacts of our products or services.

7. *Damage compensation*

   We will take responsibility for any harm we cause to the environment by making every effort to fully restore the environment and to compensate those persons who are adversely affected.

8. *Disclosure*

   We will disclose to our employees and to the public incidents relating to our operations that cause environmental harm or pose health or safety hazards. We will disclose potential environmental, health or safety hazards posed by our operations, and will not take any action against employees who report any condition that creates a danger to the environment or poses health and safety hazards.

9. *Environmental directors and managers*

   We will commit management resources to implement the Valdez Principles, to monitor and report upon our implementation efforts, and to sustain a process to ensure that the Board of Directors and Chief Executive Officer are kept informed of and are fully responsible for all environmental matters. We will establish a Committee of the Board of Directors with responsibility for environmental affairs. At least one member of the Board of Directors will be a person qualified to represent environmental interests to come before the company.

10. *Assessment and annual audit*

    We will conduct and make public an annual self-evaluation of our progress in implementing these Principles and in complying with all applicable laws and regulations throughout our worldwide operations. We will work toward the timely creation of independent environmental audit procedures which we will complete annually and make available to the public.

Figure 1. The Valdez Principles

Source: Rajib N. Sanyal and Joao S. Neves, "The Valdez Principles: Implications for Corporate Social Responsibility," Journal of Business Ethics Vol. 10 (1991).

Dimensions	Coverage
Protection of the Biosphere	Environmental Protection Act; Clean Air Act
Sustainable Natural Resources Use	Current business practices
Reduction/Disposal of Waste	Environmental Protection Act; business practices
Wise use of energy	Energy costs
Risk Reduction	Occupational Safety & Health Act; Metal and Nonmetallic Mine Safety Act; Federal Coal Mine Health & Safety Act
Marketing Safe Products	Product liability laws; Food & Drug Administration
Damage compensation	Superfund; workers' compensation laws; private lawsuits and jury awards
Disclosure	State right-to-know laws
Environmental Directors/Managers	Current business practices
Assessment and Annual Audit	Reports required by regulatory agencies

Figure 2. Existing Coverage of the Valdez Principles
(The list of coverage is only illustrative, not exhaustive.)

Source: Rajib N. Sanyal and Joao S. Neves, "The Valdez Principles: Implications for Corporate Social Responsibility," Journal of Business Ethics Vol. 10 (1991).

Many companies have or are developing an environmental policy statement such as that shown in Figure 3 by PSI (Public Service of Indiana--a major utility in the state of Indiana) and in Figure 4 by Philip Morris Companies, Inc. Du Pont, 3M, Nissan, Sony, and Shell are often quoted as leaders in the development of environmentally responsible business practices and policies. Agribusiness firms do not appear to be in the forefront in the development of socially responsive environmental policies.

As noted earlier, most corporate policy statements concerning the environment focus on internal operations--manufacturing processes, waste operation and disposal, etc. But PSI's statement recognizes linkages with other firms as well--"consider and compare the environmental consequences of choosing certain suppliers and contractors when purchasing supplies or services." This is a critically important issue for agricultural input manufacturers/suppliers--what will be their environmental stance concerning those from whom they acquire inputs and those to whom they sell? This is particularly the case for cooperatives that by the nature of their ownership may have a unique nexes of corporate social responsibility and jointness under strict liability laws with respect to environmentally safe agricultural production practices.

If one is serious about an environmentally responsible corporate policy, (ERCP), it will impact more than just the operations/manufacturing side of the business. Specifically, concrete answers to the following questions must be obtained:

1. Incorporate environmental considerations into our planning process.

2. Consider and compare the environmental consequences of choosing certain suppliers and contractors when purchasing supplies or services.

3. Maintain and enhance internal procedures for handling environmental emergencies and meeting other environmental requirements; periodically conduct formal reviews of our activities to assure compliance with environmental regulations and internal procedures, and report results to the board of directors.

4. Educate all employees on the importance of their corporate conduct in protecting our environment, as well as their own health and safety.

5. Make environmental responsibility and innovation a guideline for measuring employee performance.

6. Make available to employees, customers, and the community all relevant information on emissions, waste products, and PSI Energy activities which may affect their health and safety.

7. Seek and implement cost-effective technologies and practices to minimize emissions, and reduce or safely dispose of waste products in our operations.

8. Pursue methods to present pollution and conserve raw materials, including recycling waste and promoting the efficient use of energy by our customers through all cost-effective means.

9. Promote sound environmental practices within our industry, including the sharing of experience with others and the continued support of research and development in environmental improvement.

10. Develop and maintain open and constructive relationships with environmental groups, regulatory agencies, public officials, business and residential customers, employees, and concerned citizens.

Figure 3. PSI Resources Environmental Charter

Source: James E. Rogers, Jr., "Adopting and Implementing A Corporate Environmental Charter," Business Horizons, March-April 1992.

STATEMENT OF ENVIRONMENTAL PRINCIPLES

Philip Morris Companies Inc. is committed to reducing the environmental impact of its activities, while continuing to provide quality products that meet the needs of our consumers. We affirm our commitments:

- To conduct operations in accordance with all applicable laws and regulations. To anticipate environmental issues when appropriate, and to take voluntary initiatives to improve environmental performance.
- To reduce, in order to minimize wherever practicable, the generation of waste and the environmental impact of operations on the land, air, water, and other natural resources in the communities where we have facilities.
- To reduce, in order to minimize wherever practicable, the environmental impact of our product packaging while maintaining the safety and quality of our products.
- To conduct research and development in order to devise innovative technologies that foster longer-term solutions to environmental issues.
- To provide employees with information about the environment and to encourage their individual environmental responsibility at work, home, and in their communities.
- To work with others in industry, and representatives of government and public interest groups, to develop sound policy on the environment, and to lend our expertise to such efforts.
- To provide consumers with information about municipal solid waste and the role of consumers, communities, and business in becoming part of the solution.
- To ensure that operating procedures and practices are in place to implement these principles.
- To continually reevaluate these principles to ensure that they remain consistent with our policy of minimizing the environmental impact of our activities.

The Statement of Environmental Principles was developed with the help of Philip Morris Companies Inc. subsidiaries: Philip Morris Incorporated ("PM USA"), Philip Morris International Inc., Kraft General Foods, Inc. ("KGF"), Miller Brewing Company ("Miller"), Mission Viejo Company, and their affiliates.

Figure 4. Philip Morris Companies Inc. Statement of Environmental Principles

Source: Philip Morris Companies Inc.

(1) How will an ERCP impact sales and market share?

(2) How will an ERCP impact financial performance?

(3) How will an ERCP impact manufacturing and distribution practices?

(4) How will an ERCP impact how and from whom raw materials are acquired?

(5) How will an ERCP impact technical skills of sales/distribution/service personnel?

(6) How will an ERCP impact corporate image and industry leadership position?

(7) How will an ERCP impact opportunities to provide new products or services?

(8) How will an ERCP impact research and development activities?

Thus, an environmentally responsible corporate policy (ERCP) must be developed with care if it is to be more than a public relations gimmick.

For production agriculture and agribusiness firms, an environmental responsible corporate policy (ERCP) would guide the discussion and debate to provide environmentally sensitive answers to the following questions. Clearly, answers to some of these questions are the focal point of corporate business strategy and/or new business ventures for some agribusiness firms; for others (particularly cooperatives), the questions and socially responsible answers may result in opportunities and/or responsibilities that are larger and more profound than has been previously anticipated.

(1) What are the environmental consequences of the development of herbicide resistant seed varieties?

(2) What techniques are available for agribusiness to provide information to producers on the environmental consequences of various production practices?

(3) How can application rates for chemicals (including fertilizer) be lowered to reduce residues and yet maintain effectiveness?

(4) What can be done to develop and increase the use of more chemicals that are biodegradable?

(5) What can be done to develop and increase the use of less toxic chemicals (herbicides, insecticides, etc.) in agricultural production?

(6) What would be the potential and the environmental impact of considering nitrogen use/efficiency as a selection criteria in plant breeding programs?

(7) Can or should suppliers/distributors monitor chemical use for label violations and misapplication or misuse of chemicals?

(8) What technology can be developed to be more precise and timely in application and use of chemicals to reduce the potential for drift and leaching?

(9) What techniques can be developed to monitor chemical and fertilizer needs during the growing season and apply appropriate amounts when needed to increase utilization and decrease residues?

(10) What are the environmental implications of maximum yield contests (which usually require maximum chemical inputs) and the corporate responsibility of those who sponsor them? Should yield be the only criteria for evaluation in such contests and on-farm variety or chemical comparisons?

(11) What are the opportunities to develop electronic and mechanical devices to prepare the soil, monitor plant growth and environmental conditions and dispense appropriate amounts of chemicals and other inputs to maximize plant growth and minimize environmental damage?

(12) How can fertilizers and chemicals be stored, transported, and distributed to minimize the potential of environmental spill and residues from contaminated transportation, storage and distribution equipment and facilities?

(13) Should seed corn companies with understandable economic reasons to contract seed production on irrigated acreage be responsible for monitoring and controlling fertilizer and chemical use on these typically more coarse and environmentally sensitive soils?

(14) If producers apply fertilizer and chemicals in excessive amounts to "insure" their effectiveness, how might they be indemnified by a public/private consortium for any yield losses resulting from lower, more environmentally benign application rates?

Conclusion

The concepts of corporate social responsibility (CSR) and environmental and product liability suggest that agribusiness firms have a duty and are responsible not only for the environmental impacts of their production and distribution operations, but for environmental practices and impacts of those who use their products and from whom they acquire raw materials as well. Environmental concerns are not just the responsibility of operations personnel; they impact marketing/sales, purchasing, finance and research and development activities as well. Environmental responsiveness concerning agricultural inputs, products, and production practices will be a particularly difficult and controversial issue for agricultural input supply and product merchandising cooperatives that are owned by producers and, thus, have more authority/responsibility for jointness under strict liability rules.

Most of this discussion has been developed with specific reference to U.S. environmental and liability law and litigation. But concerns about and regulations

responding to the circle of poison combined with the increased internationalization of operations and ownership of agribusiness firms and similar environmental concerns and regulation in other countries suggests that the arguments presented are applicable throughout the world.

For some agribusiness firms, the development of environmental responsive products and services may result in a profit center; for others it may be necessary to maintain market share in an increasingly environmentally aware market. For some, environmental responsiveness may be a defensive move to mitigate potential damages under liability law, while for others it will be based on concepts of corporate social responsibility and sincere concern about the global commons. Whatever the motivation, more and more agribusiness firms are expected to develop environmentally responsible corporate policies (ERCP) that are substantiative in nature rather than simply public relations gestures.

Endnotes

1. Olexa is citing "American Law Institute, Restatement of Torts, 2d."

2. Olexa notes "Often the source of contamination is obvious. For example, if an oil company injects salt brine into an exploratory oil well in order to bring oil to the surface, and the farmer who lives downhill from the company's salt water holding ponds discovers that his well has been contaminated by salt water, the easy assumption is that the oil company is responsible for the pollution, and this is easily proven. See Branch v. Western Petroleum, 657 F. 2d 267, (Utah 1982), and City Services Oil Company v. Merritt 332 P. 2d 677 (Oklahoma, 1958). Most reported lawsuits for groundwater pollution are of this type, where the source of pollution is clear. But see Magnolia Petroleum Co. v. Williams, 76 So. 2d 365 (Mississippi, 1954), where several possible polluters were located in the area and the court ruled that causation was not proven with sufficient definiteness."

3. Olexa is citing "372 So. 2d 288 (Miss. 1979)."

4. Olexa is citing "See also 86 C.J.S. TORTS §85, adopted by the court."

5. Olexa notes "See City Services Oil Company v. Merritt, 332 P. 2d 677 (Oklahoma, 1958), and Branch v. Western Petroleum, Id. at 2."

6. Olexa is citing "592 F. Supp 976 (D. Kan., 1984)."

7. Olexa is citing "592 F. Supp 976 (D. Kan., 1984)."

8. Alessi and Staaf note "For a review of the literature, *see* L. de Alessi, "The Economics of Property Rights: A Review of the Evidence," (1980) 2 Res. Law and Econ. 1."

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