

Proactive compliance plan is good business

Russ Wilson for *Progressive Dairyman*

Producers often think of themselves, with considerable justification, as stewards of the land and the environment. With that responsibility comes the task of balancing business goals with regulatory compliance. Ideally, the ultimate goal should be to maintain a perpetual state of proactive compliance. Though it is almost always less costly over time to prevent an environmental problem than to fix it, producers can run afoul of regulations. Chemicals and nutrients, which producers work with regularly, can pollute. Potential victims of pollution include the people who live and/or work on the farm, neighbors, firefighters, livestock, game fish or other plant and animal species.

The regulatory landscape in dairy farming is highly variable. In any

given state a dairy operation might be regulated by a variety of agencies (including a variety of programs within an agency) at the federal, state and/or local government levels. In some instances, the rules apply in order to receive benefits, such as cost-sharing, technical services or tax minimization. In other instances, the regulations that pertain to air and water pollution, wetlands protection and hazardous chemicals are enforceable by civil penalty actions and even criminal prosecutions.

Complex land use rules

Complex land use rules might govern farm expansion plans. In that instance, it might be necessary to apply for a water pollution permit that contains strict requirements for liquid manure management, nutrient management, land

spreading, sampling, reporting and record-keeping. A public hearing might be necessary. Some public cost-sharing funds might be available to help offset some of the capital expenditure. Such grant programs, however, might come with their own sets of technical requirements that must be met in order to secure funding.

Understanding the players

Regulation is a fact of business. The last thing a producer needs is to be on hostile terms with regulators. Rather, the producer should work hard to cultivate a respectful, even cordial, relationship with regulators. The producer must have a crystal-clear understanding of the people who hold power of the purse and of enforcement.

Creating charts to identify which federal, state and local agencies and programs are relevant to your operation provide an accurate visual tool. Charts can also identify who the agency personnel are, where they are located, what their contact information is and how their programs might be interrelated.

'Don't ignore the letter'

Bad things generally happen

when letters from regulatory agencies are ignored. That letter "asking" you to attend a meeting on a certain date and time may be important. Prompt telephone contact followed by written confirmation is the best approach. Regulators will commonly adjust the date and time of the meeting, possibly even the location, in order to accommodate your schedule, if you promptly and appropriately respond.

'Act like a diplomat'

Spouting emotionally charged language is seldom a good way to talk to the regulator who might refer your matter to a prosecutor. Bear in mind that your e-mails, letters and voice messages may be public records maintained in the agency file. Filtering out emotion and relying on civility can go a long way. Does the diplomatic approach allow you to disagree with the government's analysis? Absolutely.

Compliance plan: It's not 'just a piece of paper'

Your compliance plan is a working document. Failure to attend to your compliance plan is a surefire way to incriminate your operation, including individuals, in future enforcement. An owner must take

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charge of maintaining regulatory compliance and fostering a culture of compliance. A well-organized, three-ring binder containing all the compliance plan elements should be kept within easy reach. An easily understandable calendar or chart showing compliance due dates and reminders should be regularly consulted and updated.

You must be able to demonstrate compliance. All entries should be legible; merely extending a line down a column to show continuation is not good practice. Rather, each entry should be separately and clearly recorded.

You should know whether your operation is subject to unannounced inspection, including the right to take photographs, collect samples and interview your employees at reasonable times and upon presentation of authority. You should escort the inspector without hindering or obstructing the inspection.

Common mistakes, followed by a description of their solutions, include:

- Incomplete record of purchased and in-use chemicals: Keep a clear and complete record of the chemicals you purchase and use. Preserve labeling information clean and intact on the container. Maintain material safety data sheets in a well-organized, readily available, hole-punched binder. Firefighters need to know what chemicals might be in the smoke, how much water might be enough or too much and where chemicals are stored. Your chemicals should not be applied to fields that you do not control. Likewise, no other person's chemicals should be applied to fields for which you are responsible.

- Issues with chemicals (transporting, mixing and applying): Transporting an unsecured full container of mixed chemicals on public roads should be avoided because spills in those areas can quickly get into ditches, culverts and waterways. Mixing chemicals at the storage site can allow small repetitive spills to accumulate. Mixing in the field is better. Do not mix near wells. Do not fill from a well or pond. Instead, fill a water tank, then fill the application tank from the water tank. Back-siphoning can contaminate your well.

Try to prepare just enough solution so as to avoid an overapplication. Do not drain any excess chemical or nutrient in one spot on the field or dump the excess off the field. Maintain your pesticide spraying equipment in good working condition, bearing in mind that it gets used rarely throughout the course of a year. During field mixing and



Russ Wilson

Attorney
Ruder Ware

rwilson@ruderware.com

www.progressivedairy.com

application, you should assume that neighbors, members of public interest groups, wardens and other regulatory permitting and enforcement staff are watching, photographing and recording from afar.

Always follow the label instructions. If you decide to discontinue using a particular pesticide and you have an unused portion, dispose of it properly through a "Clean Sweep" program or through a licensed hazardous waste hauler.

- Contamination of waterways and groundwater: Follow best management practices so that manure and runoff from production areas do not contaminate waterways or groundwater. Abandon wells properly; otherwise old wells can serve as conduits for pollution to contaminate the groundwater.

- Waste storage and burning: Do not burn or store waste. Apart from the air pollution, burn-pile residue can be poisonous to livestock and wildlife. Dispose of waste properly.

Use technical consultants and lawyers wisely to help you perpetuate a proactive state of compliance. With due diligence, organization, attention and commitment you can build a culture of compliance that will help prevent environmental problems from occurring or minimize them if they do occur. **PD**

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