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**Manure Transport: Liability and Rules of the Road**

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**Manure and Legal Liability:  
Whose Problem Is It?**

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- Hog Farm creates the manure
- Crop Farmer wants the manure on leased land belonging to Land Owner
- Manure Applicator has employee transport manure from Hog Farm for Crop Farm and apply manure to Land Owner's leased land

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**Manure and Legal Liability:  
Whose Problem Is It?**

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- The livestock operator?
- The custom applicator?
- The landowner?
- The tenant farmer?
- The employee?

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**Manure and Liability:  
Important Questions**

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- What law applies?
- Who are you working with/for?

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**Manure Liability:  
What Law Applies?**

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- **Statutes and regulations (Ohio)**
  - Livestock Environmental Permitting Program (LEPP) and National Pollutant Discharge Elimination System (NPDES)
  - Water Pollution Control and Clean Water Acts
  - Ohio Agricultural Pollution Abatement Act
  - Other Ohio laws on pollution, wildlife, highway
- **Each state has unique statutes and regulations**

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**Manure Liability:  
What Law Applies?**

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- **Negligence**
  - The failure to exercise the required duty of care that a reasonably prudent person would exercise in a similar situation.
  - Failure of the duty of care + injury = liability
  - When might be applicable? Roadway accident, damage to neighboring properties

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**Allocating Liability:  
Who are You Working With?**

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- Goal is to fairly allocate liability between the parties, where applicable:
  - Livestock operator
  - Landowner
  - Tenant farmer
  - Custom applicator
- Best mechanism for allocating liability:
  - Written contract
- Common strategy:
  - Allocate liability to the party with control over the manure.

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**Liability Allocation in Written Contracts**

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- “The applicator shall be liable for all regulatory violations.”
- “The applicator shall apply manure in compliance with the manure management plan.”
- “Operator shall not be liable after purchaser takes possession of manure.”
- “Operator shall not be liable after delivery of manure.”
- “The applicator agrees to indemnify landowner and hold harmless from any and all criminal or civil penalties...or civil complaints...”

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**Manure Contracts**

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- The written contract should:
  - Clarify the nature of each party.
    - Who’s doing what?
    - Who is and is not an employee?
  - Clarify when liability shifts from one party to another.
    - Important issue: point of transfer of manure.

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**Manure Contracts**

- What about hold harmless/indemnification provisions?
  - When should one party agree to hold the other party harmless or defend the other party if there is a manure incident?
    - Who has control over the manure?
    - Manure content issues?
    - “Unique” characteristics of property?
    - Nuisance?

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**Manure Contracts**

- Address manure handling responsibilities.
  - Include permit requirements
    - Distribution and utilization information
  - Refer to and attach manure management plan
  - Require use of best management practices
  - Require use of generally accepted agricultural practices
  - Address any other high risk factors that could lead to spills, discharges, misapplications.
  - Include maps of properties, waterways and unique characteristics of land

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**High Risk Factors**

- Soil needs
- Location of tiles, plugging of tiles
- Setback needs
- Location of waterways
- Areas prone to flooding
- Condition of manure
- Equipment
- Field conditions
- Weather conditions

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**Other Important Terms that can Affect Liability**

- Land identification
  - Where to apply the manure?
- Assignability
  - Can applicator assign the contract to another applicator?

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**What if there's no written contract?**

- Liability allocation can be difficult:
  - What did the parties say to one another?
  - What has been the typical course of dealing between the two parties?
  - What is the generally accepted custom or practice for this type of situation?
  - Was there negligence by one party?

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**Other Liability Management Tools**

- Recordkeeping
- Insurance
  - Pollution exclusions and riders
- Legal defenses
  - Ohio Agricultural District Program nuisance defense
- Employee training
- Proper lighting and signage on equipment on road

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