

# Who pays the bill when custom sprays fail?

**BY CURT HARLER**  
**NEWVILLE** — When Cumberland County farmer Dan Martin, Jr. walked his corn fields this fall it was obvious there was little corn worth harvesting. It was a bitter pill for a

first year farmer. ASCS officials looked at his 85 acres of corn and estimated a yield of 48 bushels per acre—hardly enough to fill two 20 by 70 silos for feeding 85 cows. Martin, who had tried a no-

till planting, placed the blame on a lack of weed control.

No one seems to dispute his analysis. Cumberland County Ag Agent Don Overdorff says weed control could have been a lot better. Fields were streaky, although not all fields had poor control.

Where the questions begin is when Martin blames the custom applicator for the poor weed control. Martin said he feels the custom sprayer should take steps to make up at least part of the crop loss.

Jack Anderson of Andgrow, which did the custom work, agreed the weed control was poor.

Anderson said his representative, Ed Pallman, a man with 19 year's field experience, put the blame on the lack of rain after the

Princip, atrazine, and paraquat were applied. Overdorff tended to agree that the dry conditions hurt weed control.

For one thing, Martin's corn was planted late. It was put in the ground between June 15 and 18 and was sprayed on June 20. The late planting date was one reason Martin chose to go the no-till route.

Those corn plants which could fight off the weeds grew to maturity. But the weeds took their toll.

So the situation stands this week: farmer Martin has half a crop of corn. Who's responsible?

In the first place, it should be noted that any responsibility for crop failure due to chemicals applied by a custom applicator can be divided into two categories. The first class would be

misapplication by the custom applicator. This would include using the wrong material on a crop, the wrong formulation, or improper spraying of the material onto the crop.

The second class would be failure of a properly formulated, properly applied material to work.

According to Pennsylvania Department of Agriculture's David Thompson, the Department sees itself as a regulatory agency, not as a consumer advocate.

"If a product is not labeled, or is not used as directed on the label, then we will get involved," Thompson said.

But unless there is a violation of the pesticide laws the Department does not have responsibility, he said.

He pointed out the Department does not want to be referee in situations where the weed control does not look like the picture in an advertisement and the farmer is upset.

Cases falling into the first category—improper application—do occur. An Armstrong County farmer had several acres of alfalfa sprayed by a custom applicator, by accident, with a corn herbicide. Needless to say, the stand of alfalfa died.

But the sprayer made good on the field, including replanting costs.

As Anderson said, "If we kill the crop we have insurance to cover it." That is true of almost all reputable custom applicators.

In the case where nozzles clog on a custom applicator's rig, most applicators will either respray the missed area for free, apply a post-emergence material if the crop and weeds are at the proper height, or make a settlement.

But Dan Martin, Jr.'s case most likely is in the second category. The materials specified by the farmer were appropriate and were applied to the right fields. They simply did not do the job.

"I wouldn't feel so bad if they at least had come out, looked at it, made some kind of an offer," Martin said. "He didn't have to hang up the phone on me."

Anderson said Ed Pallman, his area representative has all authority to do whatever is needed to take care of any case. Pallman had offered to apply Evik post-emergence to the corn. This may have beaten back the weeds.

Representatives from both Chevron, sellers of paraquat, and from Ciba-Geigy, the Princep and AAtrex suppliers, were out to Martin's farm.

But chemical companies only guarantee their bottle contains the chemical stated on the label. They do not guarantee the materials will work under all weather conditions.

Anderson said his firm would have given Martin the materials needed to catch up with the weeds at cost or perhaps for free depending on the situation.

"I tried to explain that if the chemical company will not guarantee the materials to us there is no way we can guarantee the spray to the farmer," Anderson said.

"I farm 900 acres of corn myself and I have failures," he continued.

"We offered Martin no settlement. If we had to offer a rebate every time a material failed to work we may as well go out of business," he said.

"I don't mind being fair, but after half an hour of going in circles I did hang up," Anderson said.

Anderson said another problem, in addition to the weather, was the ground the no-till corn was planted in.

He pointed out the field was an old field, one which may not have been farmed with top management practices for a while.

When Martin took over and started with no-till he may not have had the pH he needed to get optimum weed control with triazine herbicides. Triazines work best with pH levels over 6.0. If the pH is low, the triazines almost could be expected not to work.

County Agent Overdorff said cases such as Martin's point out the need for farmers to own a sprayer. Even if a custom applicator does the bulk of the work, a sprayer can pay for itself in a single timely application that prevents a weed disaster.

For Jack Anderson—or any other custom applicator—such a case is painful because he is likely to lose a customer but has neither legal obligation to pay for the farmer's loss nor can afford he to make payments every time a material he applies happens to fail.

For a farmer just starting out, or any farmer who has a banker to face at the end of the season, it's a disaster.

If neglect or misapplication can be proved, the farmer has financial recourse and the applicator has insurance.

But if Mother Nature does not cooperate with the farmer, sprayer, or material sprayed, there is no legal remedy, only another chapter to be written in the book of experience.

Concluded Anderson, "It happens in farming."

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