



**MARTIN LAW OFFICE**  
AGRICULTURE LAW & COMPLEX LITIGATION

**PRACTICAL TIPS FOR  
INVESTIGATING PLANT INJURY**

When faced with plant injury that is not as a result of an obvious natural cause, such as freeze or hail, certain steps need to be taken by you, whether the injury is to fruit bearing plants, crops, or pastureland.

**PRELIMINARY STEPS**

1. For each growing season, maintain legible copies of purchases of all chemicals.
2. Retain purchase records of chemicals for at least three years - five would be better.
3. Maintain brochures, articles, bulletins, or anything else you have received in writing which discusses chemicals applied by you to your plants.
4. Maintain any correspondence received by you relative to any chemical used from any retailer, consultant or county agent.
5. Maintain at least one clean copy of the label on any product purchased which is attached to the box, bag, or plastic jug.
6. Actually read the label instructions each year when applying products to see whether or not mixing instructions have been changed.
7. Maintain adequate spray records, designating the applicator, crop, and pesticides used, as well as any other instructions given to you or your employees in any certified applicator course.
8. Avoid, if at all possible, spraying herbicides from tanks which will be subsequently used for the application of fungicides, insecticides or miticides. (Even if you carefully wash out the tank, this fact will be used against you.)
9. Maintain yearly records of acreage planted, by variety, and record yield from crops produced, be it in pounds solid, bins, or boxes.
10. Maintain purchase records of seeds, plants, replants, or any other information that will in your opinion help establish yields in years prior to plant injury.
11. Maintain records reflecting cost of harvesting, picking, hauling, packing, and any commissions, if applicable to your plants.
12. Maintain records relating to soil tests, water tests, pH, or any other testing for disease or insects during any given plant year.
13. If you employ a grove service, scout or any other commercial applicator, maintain any invoices received and require they inform you of the chemicals and fertilizers used, and whether they are being applied within the limits recommended by the manufacturer's label.

## ESTABLISHING CAUSE OF PLANT INJURY

Upon viewing plant injury which is not from a known natural cause, take the following steps:

1. Walk the entire area you believe reflects plant injury.
2. Videotape the entire area by walking its perimeter so the true extent of injury can be ascertained. (*Photographing a small space won't work; you have to document the entire area.*)
3. If herbicide injury is suspected, check to see what other foliage has been damaged and where the path leads.
4. Calculate the age and variety of affected plants and check to see if there is any difference in injury based upon varietal variance.
5. If pesticide injury is suspected and you have some idea what it is, have plant samples taken immediately and have a certified laboratory check for the chemical you believe caused harm.
6. Have your plants checked for evidence of other cause, such as insects or disease and have plants tested to rule out other causes.
7. Check immediately with neighboring growers or, if not comfortable discussing injury to your plants, drive by neighboring fields or groves to ascertain if others have similar injuries.
8. Call your local county agent and ask he or she to evaluate plant injury. Unless damage is readily apparent, follow up promptly by having the nearest representative of IFAS come by your field to ascertain the problem.
9. Save any remaining chemicals in your possession and do not return product, even if recalled, until retailer or manufacturer acknowledges responsibility in writing.
10. If plant samples are to be taken, remember to pull out the entire plant, if possible, and make sure your scientist checks root systems as well as stems, leaves and fruit.
11. Be forewarned that your husbandry practices will be made an issue. If you haven't done so already, save product, spray records, purchase orders, and brochures, if still available.
12. If injury is substantial, consider employing an outside consultant immediately for the reason many times retailers are caught in a box between the manufacturer and the grower and find it impossible to serve two masters.
13. If you suffer lost yield as a result of chemical injury, document yield of same varieties planted by you in other fields or, if not available, neighboring fields beginning with the closest planted in point of time or by variety.
14. Even if crop is a total loss, ascertain market price for your crop on daily basis, and if quality of fruit is affected, difference between what crop brings and what it would have brought had quality been as predicted.
15. If you have an attorney, ask him to visit your field. If plant injury litigation is not his forte, ask him to contact someone experienced in that area and get them to take a look immediately.

16. Notify your C.P.A., packing house, or anyone responsible for ascertaining the yield of your crop to segregate the harvest from the affected field so it may be compared to an unaffected field of yours, or an unaffected field of someone else.
  17. If you suspect a particular chemical, seed or any other responsible party, notify the retailer and manufacturer or suspect entity *immediately* if you are concerned something they sold to you or did may be causing plant injury or loss of crop yield. (There are statutes regarding notice which should be complied with promptly.)
  18. Compare chemicals applied by you in season or year plants were damaged with chemicals used in prior years. (*Are you using the same chemicals or did you introduce a different one into your pesticide program?*)
  19. If you have used the same chemicals each year, check to see whether or not the formulation of one of them has been changed from a wettable powder to dry flowable or emulsifiable concentrate.
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