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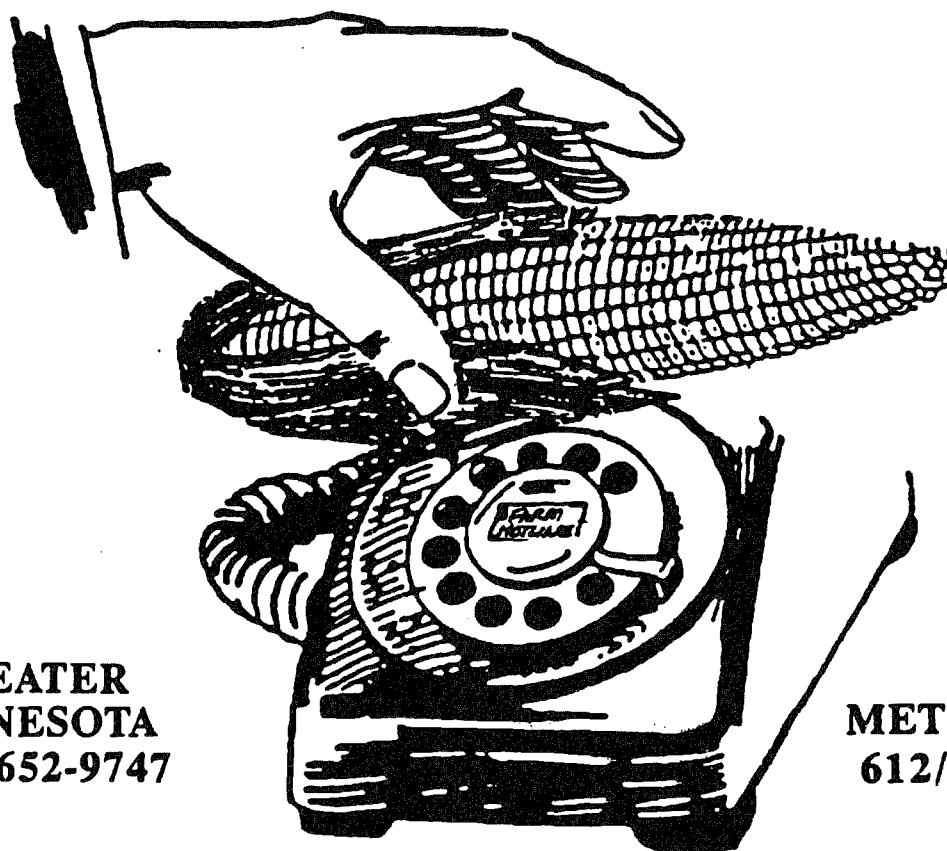
OFFICE OF THE ATTORNEY GENERAL
HUBERT H. HUMPHREY III

910690

FARM INFORMATION BOOKLET

PREPARED BY

THE ATTORNEY GENERAL'S FARM AND HOME PRESERVATION HOTLINE



**GREATER
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612/297-4111**

"WE'LL LEND AN EAR"

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Agriculture Division
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RESOURCES FOR MINNESOTANS - WHO'RE YOU GOING TO CALL?

In our increasingly complex society farmers face increasingly difficult problems. Farmers have traditionally gone it alone, and have prided themselves on their independence. That approach doesn't work any more. These are difficult times for rural America, and many farm families face the same problems you do. Someone is there to help if you are having trouble dealing with the bank, putting food on the table, paying last winter's fuel bills or if you just need someone to talk to. Learn who can help you today. Following are some names and guidelines to help you learn.

DON'T DISQUALIFY YOURSELF

This brochure lists several programs to assist your family with food, medical care, fuel and shelter, emergency cash assistance, legal advice, and counseling. The purpose is to inform you of what is available and give general eligibility requirements. However, program rules are very complex, especially when dealing with farm families. You should apply for the programs you need even if you don't think you qualify. Until the proper agency has all the facts about your situation, a final decision cannot be made about your eligibility. Even if a particular agency cannot help you, they may be able to point you in the right direction.

FOOD

Food assistance is available through both government and private agencies. Income-producing property is not considered an asset for either Food Stamps or WIC (Women, Infants, and Children), which makes it easier for farm families to qualify.

Food Stamps are coupons issued monthly that are used to buy food by families with limited incomes. Apply at your county welfare or human services

department. Questions? Call 1-800-652-9747, toll free, and ask for the Food Stamp Hot Line.

WIC provides coupons to buy food for pregnant women, infants, and children under five. Paperwork is minimal and many farm families may qualify. Apply at your County Health Department. Appeals for WIC are filed through the local agency. For assistance call the Minnesota Department of Health at (612) 623-5115.

Food Shelves can supply non-perishable foods to families experiencing hardships. Food shelves are not centrally organized, so check with your local church, social services agency, for food shelf locations.

Government Surplus Commodities are available at times in limited amounts. Contact your local social or human services agency.

ENERGY ASSISTANCE

Energy Assistance Program provides financial assistance with past due and current heating bills for farm families with limited income and assets. Applications are taken from October 1st through May 31st. To find out where to apply in your area call 1-800-652-9747, toll free, and ask for Energy Assistance. Appeals for Energy Assistance are made through the

local agency. If you are still not satisfied with the results, further appeal information is available by calling the toll free number listed above.

MEDICAL & DENTAL

There are several programs available to provide you and your children with medical care and assistance with past due bills. Information on health care is available from your county health department or public health nurse and your county welfare or social services agency.

Medical Assistance is primarily for children and pregnant women. The value of your farm machinery and supplies may have to be waived by your county board in order for you to become eligible for this assistance. Apply at your county welfare or social services agency.

General Assistance Medical Care is available for low income adults. Eligibility requirements are similar to those for Medical Assistance. Applications for both programs are taken jointly.

Services for Children with Handicaps provides medical and dental diagnostic services for children based on a sliding fee. Children need not be handicapped. For information call 1-800-652-9747, toll free, and ask for the Department of Health. Appeals for services for children with handicaps should be made in writing directly to the Department of Health. Send to:

Minnesota Department of Health
Box 9441
717 Delaware Street S.E.
Minneapolis, MN 55440

Hill-Burton Program is hospital care available in over 75 hospitals and other medical-care facilities in Minnesota that are required to provide free or low cost

services to low income families. Call your local hospital business office to find out if they are covered by Hill-Burton. If not, call 1-800-638-0742 to find the nearest Hill-Burton Hospital.

University of Minnesota Hospital also provides major medical care for low-income people throughout Minnesota. Payment for services is arranged between the patient, their county board and the hospital. To find out what the University Hospital can provide for you call 1-800-688-5252, toll free, and ask for Patient Accounting.

Minnesota Childrens Health Plan is an insurance program available for children up to 18 years of age. For more information call (612) 297-3862 or 1-800-657-3672, toll free.

CASH ASSISTANCE

Cash assistance for food, utilities, mortgage payments or emergency situations may be available to you through a number of programs. To apply for any of the programs listed below, go to your county welfare or human services agency.

AFDC is monthly cash assistance available for some farm families with very limited equity and income who have children.

General Assistance is monthly cash assistance for families with limited incomes. In order for most farm families to qualify the county must waive limits on property, machinery and livestock.

AFDC Emergency Assistance is a one-time cash payment to families with children to meet emergency needs for food, medical care, mortgage payments or other necessities.

Emergency General Assistance provides one-time cash assistance for food, fuel, shelter or medical care in emergency situations.

There are no income or asset limits once available resources have been exhausted on either AFDC Emergency Assistance or Emergency General Assistance. Available resources include savings, insurance policies, grain reserves, readily disposable livestock and items not necessary for future farming.

If your county will not make allowable property limit waivers for General Assistance you have the right to appeal.

APPEALS

This appeals process applies to **Food Stamps, Medical Assistance, General Assistance Medical** and all cash assistance programs listed in this brochure.

If you apply for social or financial assistance from your county welfare office and you are not satisfied with the decision, you may ask for an explanation. If you still are not satisfied, you may have your case heard by an appeals referee. The welfare office can help you with the appeal process. Appeals must be made within 30 days of receiving written notice of the action or decision.

If you feel that the county cannot or will not fairly help you with your appeal you may appeal directly to the state. Write to:

Minnesota Department of Human Services Appeals
2nd Floor, Human Services Bldg.
444 Lafayette Road
St. Paul, MN 55155

For appeal information call:
(612) 296-5764

MENTAL HEALTH COUNSELING

Stress. You can't see it, but you can feel it. It's real and dangerous. Your stress can be harmful not only to your, but to those around you. When change happens in your life, change beyond your control, you can be left feeling guilty and angry. You may do things you normally would not do.

CRISIS INTERVENTION

If you feel angry or depressed, talk to someone now. If you think you might hurt yourself or someone else, call one of the numbers below. Someone will be available 24 hours a day, seven days a week.

Southwestern Minnesota

Western Human Development Center
(Marshall) (507) 532-3236

Crisis Line
(Worthington) 1-800-642-1525, toll free

Eclipse (Mankato) (507) 388-9321

Southeastern Minnesota

First Call for Help
(LaCrosse, WI)
1-800-356-9588, toll free

Contact
(Owatonna) (507) 451-9100

Zumbro Valley Mental Health
Center (Rochester) Crisis
Unit/Counseling
(507) 281-6248

Central Minnesota

West Central Community Services
Center (Willmar) 1-800-992-1716, toll free

Central Minnesota Mental Health Center
(St. Cloud) (612) 253-5555

Listening Ear Crisis Center (Alexandria)
(612) 763-6638

Five County Mental Health Center
(Braham) (612) 396-3333
(Lindstrom) (612) 257-6262

Northern Minnesota Hotline

(Fargo/Moorhead)
(701) 235-7335

Northwest Center: Day/Night Unit

(Thief River Falls)
(218) 681-4240, ext. 349 or 350

First Call for Help

Information Referral
(Grand Rapids) Call Collect:
(218) 326-8565
1-800-442-8565, toll free

Crisis Line

(Bemidji)
(218) 751-4333

In addition to these resources, friends, neighbors, and clergy can help—just call. The county sheriff is also available anytime.

PHYSICAL ABUSE

If you are the victim of physical abuse, there is a safe place to go. To find the location of the women's shelter nearest to you call (612) 646-0994, 24 hours a day--7 days a week.

COUNSELING

Non-emergency counseling is also available from a number of sources. Contact your community mental health center, county welfare or social services agency. Many of the referral numbers listed in the front of this brochure or those listed under crisis intervention can also help you find agencies that provide free or low cost counseling. Help is available for depression, marriage and family problems, or other problems that stress and uncertainty may cause.

FINANCIAL & LEGAL COUNSELING

There are resources available to help you understand your financial options and work with your bank, FmHA or other lender.

The Minnesota Family Farm Law Project is available to provide information on farm credit law, referrals, and for appropriate cases, legal representation. For information call their hotline number, 1-800-233-4534.

The Farm Advocate Program of the Minnesota Department of Agriculture is a network of farmers helping farmers. An advocate can help you get a clear picture of your financial situation and help you work with your lender to get operating loans necessary to keep farming. To find an advocate in your area call 1-800-652-9747, toll free and ask for the Farm and Home Preservation Hotline.

Farm Resource Centers can assist in providing services such as farm and business management, career counseling, food and fuel assistance, mental health counseling, job training, community education and legal assistance. In addition, farm resource

centers provide a linkage among loan officers, FmHA personnel, county agents, clergy, local attorneys and community professionals.

Farmers throughout the state looking for information about debt restructuring, new programs and laws for farmers can contact one of the following farm resource centers for a free, confidential appointment:

Granite Falls	(612) 564-4808
Pine City	(612) 629-3780
St. Charles	(507) 932-5203
Thief River Falls	(218) 681-6236
Wadena	(218) 631-1048

Farm Mediation Hotline, part of the University's Agricultural Extension Service, has been designed to help farm families with financial planning, stress management, and support during tough financial times. For more information call your county extension office, or call 1-800-843-4334, toll free.

Farm Crisis Hotline provides financial counseling, assistance with loan procedures and referrals. Call:

(612) 243-3184 or
(612) 394-2111

Legal Aid Society attorneys (sometimes called Legal Services) will provide legal advice to low-income people at no charge. The Minnesota Volunteer Attorney Program is also available to provide legal assistance to some farm families.

To find the nearest Legal Aid office look under Legal Aid in the white pages or call the State-Wide Lawyer Referral Service of the Minnesota Bar Association at 1-800-292-4152, toll free.

Hiring an attorney. If you are not eligible for legal assistance, or if you simply want to hire a private attorney, how do you go about it?

Deciding whether one should hire an attorney, let alone looking for one, is for many folks, a harrowing ordeal. But it really shouldn't be.

When you hire an attorney, you are simply employing an expert to use skills you do not have. The following hints can help you get the most for your money.

1. **Knowing when you need an attorney.** Sometimes it's obvious when you've got a legal problem which requires the services of a lawyer -- such as when you're being threatened with a lawsuit. But lawyers can be very valuable in avoiding problems too. If you are about to spend or invest a lot of money, having a lawyer review your plans in advance could save you a lot of trouble.

2. **Finding a good attorney.** Finding a good attorney, like finding a good doctor or car mechanic, is often achieved by word of mouth. Ask your friends and acquaintances for the names of attorneys they have used, or contact any of the state's law schools. Even better, call the Minnesota Bar Association's lawyer referral service. For Ramsey County call 224-1775. For Hennepin County, call 339-8777. For other locations, call toll free 1-800-292-4152.

3. **What about attorneys who advertise low costs?** To judge a lawyer's services from his or her advertisement you should use the same caution you would use to judge any advertisement. First, you'll want to know just what an advertised fee buys. And you'll want to know what the payment terms are and how good the quality of service is. Some law offices manage to offer low prices for proceedings such as bankruptcy or uncontested divorces by handling large volumes of cases. So often a low price will mean that the firm's attorney's are not able to spend a great deal of time with their clients. Also, it is wise to remember that advertised fees usually apply to a simple legal procedure. If a fight develops, the fee may go up.

4. **Meet your prospects.** Be prepared to shop around. Only after you've sat down and spoken with an attorney will you know whether you've come to the right place.

5. **Finding out whether an attorney is right for you.** Call for an appointment, briefly describe your problem and ask whether the attorney handles that area of the law. If the attorney does, ask if you can come in and discuss the problem in more detail. Ask whether there will be a charge for the first visit. Such a charge is not uncommon.

When you come to that first meeting, be prepared to both give information and to ask questions. Be able to summarize your situation as quickly as possible. If you have any important papers relevant to your problem, be sure to bring them along. Be honest and open. What you tell your attorney is confidential. If you don't give your attorney all the facts, he or she won't be able to do a good job for you.

6. **Signing a retainer agreement.** A retainer agreement is a written contract between you and the attorney which explains what kind of work the attorney will do for you and what the attorney will charge you for the work. It is a very good idea to insist upon a retainer agreement. Remember, this is a business relationship. And in any good business relationship, both sides know in advance what they are promising to do and how much they are promising to pay.

But before you sign, read the agreement first. Be sure you understand every word. If you don't, don't be afraid to ask the attorney to explain. Ask the attorney to rewrite the agreement in words you can understand.

SMALL BUSINESS

Small businesses can receive free help in looking for assistance with problems regarding sustaining or starting a business. Call:

Small Business Development
Center
(612) 223-8663

COUNSELING & REFERRALS

In addition to the information given in this brochure, the following phone numbers are staffed with people able to offer counseling or referral services to you.

1-800-652-9747 (ask for the Attorney General's Farm and Home Preservation Hotline)

1-800-582-5260 - Lutheran Social Services

(612) 252-4121 - Caritas Family Services:
St. Cloud and Central Minnesota

(507) 454-4643 - Catholic Social Services:
Winona and Southern Minnesota

(218) 281-4224 - Catholic Charities:
Crookston and Northwestern Minnesota

(612) 340-7500 - Catholic Charities: Rural
counties surrounding the Metro Area

RURAL FRAUD: YOU MAY BE THE NEXT VICTIM

Farmers are trusting. Times are hard on the farm. Farmers are looking for solutions to their financial problems. This combination of circumstances has been irresistible to many trying to make a quick buck by peddling various schemes to "help" Minnesota farmers out of their problems. This "help" is illusory at best and may, in fact, cause a farmer to lose everything. Farmers must be careful consumers when approached with offers of help, for a price.

• SEVEN WARNING SIGNS OF FRAUD

1. **Secret meetings.** If someone calls a meeting to sell a solution and places limits on those who may attend, it is a good bet that that person has something to hide. Barring reporters, farm advocates, law enforcement officials or anyone who might be suspicious of what is being sold, is a good sign that the only one who will be helped through the meeting is the person conducting it.

2. **Up-front money.** A promise of huge returns later for a relatively small payment to the scheme promoter now, generally guarantees huge returns only for the promoter who has convinced many other farmers to pay likewise. The jackpot to the farmer never materializes and the promoter leaves town to find another group of pigeons.

3. **Miracle cures.** Anyone who promises a total cure to your problems, will generally provide absolutely no help. If a plan sounds too good to be true, it isn't true.

4. **Legal defenses and claims sold by non-lawyers.** If someone claims that you can take care of all your problems in court, if you just purchase relevant legal pleadings or use a particular theory (available for a price), ask yourself why nobody else is doing it. There is a reason. It doesn't work.

5. **Claims of governmental conspiracy.** While the government has not always been a farmer's best friend, governmental conspiracies against farmers just don't exist. The government may, in fact, be wrong, but if someone is talking about conspiracies and trying to sell you something based upon that theory, the only conspiracy is one to obtain your money.

6. **Foreign connections.** A claim of Arab money, European investors or similar foreign "saviors" should raise immediate red flags. It is convenient to cite such sources, because they can't be checked. The only transfer of money that will occur as a result of such claims is not from foreign sources to Minnesota farmers, but from Minnesota farmers to the con man.

7. **Pressure to sign on the dotted line.** If an offer is valid, it will generally still be there the next day. The only reason for extreme haste is to allow your check to clear the bank before the payee leaves town.

• TYPICAL SCAMS

1. **Pre-packaged lawsuits.** Impressive looking legal papers are sold for substantial sums to farmers. By filing cases against lenders and others, farmers are supposedly going to recover their farms, avoid their debts, or profit substantially. Farmers who have bought these papers have not only lost their cases, but in several decisions have been forced to pay their opponents' substantial attorneys fees. One particular individual who has been pushing these schemes is Roderick "Rick" Elliott, doing business as National Agricultural Party, National Agricultural Press Association or National Agricultural Union. He and his agents have been very active in Minnesota. His activities have been curtailed, however, since his parole officer

in Colorado has forbidden him from doing business in Minnesota. Mr. Elliott was convicted in Colorado for defrauding Colorado farmers. Do not let him do the same here.

2. **Phony unions.** Mr. Elliott, again, has been selling "memberships" in a supposed union for farmers and independent truckers. No such federally registered collective bargaining organization exists, and anyone who has been asked to join is encouraged to think twice before paying any "dues" to an organization until they can see what benefit may arise.

3. **Living trusts.** While certain kinds of trusts have value for a few farmers who have money as an estate planning device, several individuals, including a disbarred attorney, William S. Williams, have been pushing their use for invalid reasons. Some people claim that by transferring all of an individual's assets into a trust, the assets are thus protected from creditors. This is not true. If property is subject to a lien, the lien accompanies the asset into the trust and remains subject to collection activity. Further, transferring of assets into a trust releases control of those assets in many cases and may lead to future difficulties for the farmer, his or her family, and heirs.

4. **Lease-back schemes.** In this scam, a farmer either transfers title to his property to an individual or organization and then leases it back to continue farming, or, as in more recent cases (a scheme also promoted by Mr. Elliott), a farmer about to lose his property through foreclosure has executed a long term lease with Mr. Elliott's organization and then entered into a contract where he is supposedly paid to farm it. The first type of lease-back supposedly cuts off creditors' claims against the farmer. The second is intended to keep the farmer on the land long past expiration of the redemption period and to prevent the foreclosing entity from obtaining possession. None of these schemes

work. The only purpose of the leases is to enrich those who have devised the scheme and receive payments from the farmers.

5. **Land patents.** Some organizations have advised farmers that by obtaining a copy of the original land patent for the farm property, usually for a fee, farmers can avoid all liens that have been filed against that property since the original issue of the land patent. There is no magic to a land patent. Like any other land, patent land is subject to foreclosure. Do not pay any money to an individual offering to sell you a land patent.

6. **Usury.** If an interest rate is too high, it may violate the state or federal usury laws. These laws are extremely complicated, however, and should be interpreted with care. Some people claim that most agricultural loans are usurious and point to a federal statute which appears to support their position. However, that law generally does not apply, and the allowable rate of interest for farm loans is substantially higher. A close analysis by your attorney is required before using usury as an excuse not to make loan payments.

7. **Unconstitutionality of the federal reserve system.** Arguments periodically surface claiming that the federal reserve system is unconstitutional and that paper money is not "real money." These theories are totally unfounded. If anyone talks about the need to have gold and silver as "real money," that person should be avoided. The constitutionality of the federal reserve system has been consistently upheld by all courts which have considered the matter.

8. **Bogus financial instruments.** "Sight drafts," "certified bank drafts," and similarly titled instruments have been given to farmers or issued by farmers in fraudulent ways. Farmers have used such instruments, supposedly backed by their farm land or by their own credit, to try to repay loans. Not only have they not been successful in getting loans paid off, several have been prosecuted and

imprisoned. Make sure that any money you deal with is really money and will be valid, or you could be in trouble.

9. **Loan finders.** A loan finder is someone who promises to find a loan for you for a fee. Some loan brokers are legitimate, but many are not. They will simply take your fee and disappear. After you have paid your money, it may be too late to protect yourself. If you are thinking of entering into a loan-finder arrangement, protect yourself with the following steps:

a. If the loan is to be secured by real estate, check with the Minnesota Department of Commerce, (612) 296-6319, to see whether the loan finder has the required real estate license.

b. Ask the loan finder for names and addresses of other borrowers for whom he has actually obtained money and check those references.

c. Insist on knowing the source of the money and check with the Commerce Department in the state where the supposed lender is located.

d. Insist on a written contract which places the advance fees in an escrow account, returnable to you if the loan does not come through.

- **DON'T BE A VICTIM.** Only you can protect yourself from getting taken to the cleaners by unprincipled con-artists. You can also help protect your neighbors and other farmers by using your common sense and taking some basic steps.

- **CHECK IT OUT.** When someone is trying to get your money, get all the details. Make sure that there are realistic answers given to all your questions.

- **CALL YOUR LAWYER.** If you do not have a lawyer, find one through your neighbors or from other sources whom you can trust. See the section headed "Resources for Minnesotans" in this packet.

- **ASK FOR REFERENCES.** If a person is claiming to have helped farmers, find out who those people are. Call those people and find out what help has been provided. Make sure that they can point to specific concrete results and that they are not just expressing optimism that results will come through in the future.

- **GET IT IN WRITING.** Get a written contract if you are paying money. Make sure that contract covers all your concerns. Make sure that the contract makes someone whom you can contact if things go wrong. Make sure that the address and names given are accurate and will be there tomorrow.

- **CALL LAW ENFORCEMENT AGENCIES.** If you think something is suspicious, let people know so that others are not taken, even if you have said no.

- **CALL US.** The Attorney General's Office has heard about more schemes than we care to think about. If you have any suspicions, call us and we would be glad to look into it or to discuss the matter with you. Our toll-free number for the Attorney General's Office Hotline is 1-800-652-9747.

- **PLAY IT SAFE.**

1990 FARM BILL

Last fall, Congress passed a new five-year farm bill to cover the 1991 through the 1995 growing seasons. Most Minnesota farmers know that an important part of their jobs is to "farm the programs," so it is crucial that the farmers in this state have a good working knowledge of the law that has such a direct effect on their prosperity. The 1990 farm bill, called the Food, Agriculture, Conservation, and Trade Act of 1990, is over one thousand pages long, so all this pamphlet can provide is a broad overview. At the end of this section, however, are some ways that farmers can learn more.

• FARM COMMODITY PROGRAMS

The U.S. Department of Agriculture (USDA) supports the prices of many major farm commodities, including wheat, corn, other feed grains, soybeans, and sugar, through what are called "nonrecourse loans." Under these programs, farmers who enroll have the right to take out loans from USDA, usually at harvest time, and use their crops as collateral. Then, when the loan matures, farmers have two choices. If the market price of the commodity is higher than the loan amount, the farmer pays back the loan. If, however, the market price for the crop under loan is lower than the loan amount, the farmer may keep the loan amount and forfeit the crop to USDA. USDA has no "recourse" but to accept the crop as full repayment. USDA sets the "loan rates" for each commodity according to a formula based on the average market price over the previous five years, excluding the low and high years.

For some crops, "marketing loans" have also been available. Under the marketing loan programs, if the market price for the crop is below the loan rate, farmers have the additional option of repaying the loans, but at that lesser

amount equal to the market price for the crop used as collateral.

In addition, USDA supports farm income through a system of "target prices" set by Congress and "deficiency payments" that cover any gap between the market price and the target price. Under these programs, USDA will give farmers a deficiency payment equal to the target price minus the market price, times the quantity of the covered crop. If the market price is below the loan rate, the farmer's deficiency payment is based on the difference between the target price and the loan rate.

Government price supports do not, however, come without strings attached. Besides subsidizing the income of farmers, two of the key purposes of the farm bill are to manage supplies and to encourage sound environmental and conservation practices.

The central component of the supply management effort is the Acreage Reduction Program (ARP). In exchange for being eligible for price support loans and deficiency payments, farmers must agree to limit the acreage they plant to any program crop. The process is complex, but the basic procedure is as follows. For each program commodity, USDA allocates to each farmer a "base," generally equal to the average number of acres that farmer has planted to that crop during the five preceding crop years. Then, within limits prescribed by Congress, USDA sets acreage reduction requirements for those crops, based on expected demand for the commodity for domestic consumption, exports, and reserves, taking the previous year's carryover and imports into account. Farmers who wish to sign up for price and income supports and other farm program benefits, then, cannot plant more than their base acreage less the acreage reduction requirement for that particular crop. For example, USDA has

announced a five percent acreage reduction requirement for wheat for 1992, which means that farmers can plant wheat on no more than 95 percent of their "wheat base" acreage if they want to be eligible for farm program benefits.

The budgetary pressure facing the federal government was by far the most important issue to Congress as it put together the farm bill in 1990. As a result, most of the programs are less generous than before, and most experts predict that, as a result, farm income will likely drop, and the number of family farmers will continue to decline.

On the specific programs that most affect Minnesota farmers, these are the major changes:

1. Wheat and Feed Grains. All wheat, corn, sorghum, barley, and oats target prices are frozen at 1990 levels through 1995--\$4.00 per bushel for wheat, \$2.75 for corn, \$2.61 for sorghum, \$2.36 for barley, and \$1.45 for oats. Loan rates will be set at 85 percent of average market prices over the last five years, excluding the high and low years, although USDA's ability to reduce loan rates is constrained somewhat under the bill, depending on stocks-to-use ratios.

2. Base and Planting Flexibility. Because of the budgetary pressure, Congress decided to cut out deficiency payments on fifteen (15) percent of each farmer's enrolled "base" acreage. On those "flex" acres, farmers will have the option to plant other crops without jeopardizing their program commodity bases. Farmers also have the option to designate an additional ten (10) percent of their base acreage, called "optional flex" acres, under the same rules: no deficiency payments will be made, but the farmer can plant other crops without jeopardizing program crop base, and can be eligible for support loans. This new flex acre concept was and remains highly controversial. Advocates see it as a first step to getting farmers away from "farming the programs" and back to the real market, and see better conservation

and environmental practices as a positive side effect; detractors see it as nothing more than a poorly disguised cut in government price and income support for farmers, and a real threat to farmer income.

3. Soybeans and Oilseeds. The soybean loan rate is set at \$5.25 for 1991 and 1992, but the USDA may then adjust it each succeeding year by as much as five percent. USDA is also directed to establish a marketing loan program for soybeans, something it has had the authority to do for five years, but has chosen not to implement.

4. Dairy. The minimum dairy support price is frozen at \$10.10 per hundredweight until 1995, and assessments against farmers based on their level of production have increased. Congress also directed USDA to submit recommendations for inventory management programs to reduce the chronic dairy surplus (completed) and to propose an alternative milk pricing system under the federal milk marketing order program (not completed). **This has been an extremely difficult year for dairy farmers in Minnesota, and those involved in dairy might want to look at the separate section on dairy policy in this pamphlet.**

5. Sugar. The sugar loan rate will remain at 18 cents per pound, with adjustments for sugar beet production. Again, the law requires that USDA operate the sugar program at no net cost to the government, which means that USDA must continue to use import quotas and other trade restrictions to keep sugar prices high enough to avoid forfeitures under the nonrecourse loan program. The international General Agreement on Tariffs and Trade (GATT) has ruled that the U.S. sugar import quotas violate international trade law, so there will be continuing pressure to adjust this program.

6. Payment Limitations. Although payment limitations were the subject of extensive Congressional debate (one proposal would have excluded any farmer

with gross incomes over \$100,000 or sales over \$500,000 from any farm program benefits), Congress did not make substantial changes. If you confront payment limitations problems at your ASCS office, you or your counsel may wish to get a copy of a book called A Lawyer's Guide to Payment Limitations, available for \$20, postpaid, from the National Center for Agricultural Law Research and Information, School of Law, University of Arkansas, Fayetteville, AR 72701

• SOIL AND WATER CONSERVATION

1. **Swampbuster.** Under the 1985 Swampbuster provisions, farmers who planted crops on converted wetlands stood to lose eligibility for all farm program benefits--price supports, crop insurance, disaster payments, or loans. The new law contains a number of significant changes:

--The bill clarifies that all three wetland criteria--hydric soil, wetland hydrology, and hydrophytic vegetation--must be present before a parcel will be subject to Swampbuster restrictions. One criterion alone will no longer suffice.

--Mapping and on-site review of wetlands will be required before imposing penalties or in any wetland determination appeals.

--The trigger for Swampbuster violations will change from the time of planting a crop on a drained wetland to the time the wetland is converted for agricultural purposes.

--USDA will have the authority to use graduated sanctions (ranging from \$750 to \$10,000) for inadvertent wetland conversions, and farmers will be allowed to mitigate the conversion of wetlands by returning an equivalent area to wetland status. Under the 1985 act, the only penalty available was the complete termination of all program benefits.

2. **Conservation Reserve Program (CRP).** The bill extends the CRP program

for five years, and authorize the enrollment of up to 45 million acres. The bill targets future enrollments to those lands that cannot be farmed in accordance with approved conservation plans, marginal pastureland, and cropland in environmentally sensitive areas which, if left in production, may pose a threat to water quality. Farmed wetlands, formerly eligible for enrollment in CRP, now would be eligible for the new Wetlands Reserve Program (WRP).

3. **Wetland Preservation Easements.**

The bill creates a Wetland Reserve Program, a voluntary paid, permanent easement program to protect wetlands and other environmentally sensitive lands, similar to the Reinvest in Minnesota (RIM) program. The goal is to enroll up to 2.5 million acres of wetlands in permanent easements.

4. **Water Quality Protection**

Program. USDA will have authority to provide incentive payments and cost-share assistance, to farmers who develop and implement water quality protection plans, concentrating on wetlands and wildlife habitat protection.

5. **Integrated Farm Management**

Flexibility Option. These provisions were pushed by Senator Wyche Fowler (D-Ga.) and Rep. Jim Jontz (D-Ind.). Farmers who implement approved sustainable farm plans designed to protect soil and water and to limit the use of farm chemicals would be permitted to plant conserving crops (such as small grain legume mixtures and green manure crops) on base acres normally planted to program crops, without losing program crop bases, yields, or deficiency payments. USDA will reduce setaside requirements to the extent the sustainable farm plan limits production.

6. Pesticide Recordkeeping.

Farmers will be required to keep specified records on each application of restricted use pesticides for a period of two years. Those records will be available to USDA and to designated state agencies, but will not generally be available. Environmental groups will be pushing this issue in the future.

7. **Pesticide Exports.** Near the end of the process, Congress deleted provisions to prohibit the export of pesticides that EPA has banned or denied registration for use in the U.S. for human health reasons and which do not have established tolerances for residues on food. This provision was designed to break the so-called "circle of poison," where banned pesticides come back to the U.S. through food imports. This may come back when Congress considers reauthorization of the federal pesticide law. The Federal Insecticide, Fungicide and rodenticide Act (FIFRA), later this year.

8. **Office of Environmental Quality.** USDA now has a new office of environmental quality to coordinate all of the agency's environmental and conservation efforts, and its relationships with other government units.

• RESEARCH

Besides authorizing a number of agricultural research programs, the bill contains a number of new research efforts:

1. **Sustainable Agriculture.** The bill authorizes \$40 million annually for sustainable agriculture, defined as practices which, over the long term, will satisfy food and fiber needs, enhance environmental quality and the natural resource base, make the most efficient use of nonrenewable resources, integrate natural biological cycles and controls, where appropriate, sustain the economic vitality of farm operations, and enhance the quality of life for farmers and society. This represents a substantial increase in

sustainable agriculture research funding, and is consistent with the recommendations of the National Academy of Sciences in last year's landmark study, Alternative Agriculture.

2. **Food Safety.** The bill establishes a number of new food safety research programs, with the focus on microbial and chemical contamination of meat, poultry and eggs, aflatoxin, and the use of immunoassay techniques to detect pesticide residues on food.

3. **Water Quality.** The bill directs USDA to complete a variety of research projects relating to water quality. USDA is required to establish state water quality coordination programs in each state and to establish a national data base on farming practices and water quality issues.

• DEALING WITH THE USDA

As virtually every farmer knows, the responsibility for the day-to-day administration of the federal farm programs rests with USDA's Agricultural Stabilization and Conservation Service (ASCS). The ASCS operates through county (COCs) and state committees (STCs), under the supervision of the ASCS Deputy Administrator for State and County Operations (DASCO).

Farmers, of course, typically rely on their local ASCS office for most information and advice on the federal farm programs. The courts, however, have held that farmers are under an obligation to understand the programs themselves; if they are misled by bad advice or information from ASCS, the farmers will bear the cost. If you are not sure about your rights, then, it makes sense to get more information.

First of all, USDA's Economic Research Service does publish a couple of good general overviews of the key farm programs. One is entitled The Basic Mechanisms of U.S. Farm Policy: How They Work, with Examples and

Illustrations, Misc. Pub. No. 1479 (Jan. 1990), which predates the 1990 farm bill but explains a loss of the basic concepts, and another is The 1990 Farm Act and the 1990 Budget Reconciliation Act, Misc. Pub. No. 1489 (Dec. 1990). These publications may be purchased for \$8.00 and \$6.50, respectively, by calling 1-800-999-6779. Any county or state ASCS office will also have "Fact Sheets" and other similar material available for farmers.

ASCS officials themselves rely heavily on a series of loose-leaf volumes, called the ASCS Handbook for State and County Operations, which is prepared by the DASCO's office and distributed to the county and state offices. There are nearly 180 volumes, but only a few of them are really of interest to the typical farmer. Some examples are as follows:

--Common Farm Program Provisions, 2-CM (Rev. 2);

--Acreage Compliance Determinations, 2 & 3-CP (Rev. 13 & 14);

--Appeals, 3-CP (Rev. 2);

--Failure to Fully Comply, 4-CP (Rev. 2);

--Highly Erodible Land Conservation and Wetland Conservation Provisions, 6-CP;

--Conservation Reserve Program, 1-CRP (Rev. 1); and

--Payment Limitations, 1-PL.

The DASCO office also issues "notices" periodically which update the provisions in the Handbook.

Farmers are entitled to review any of the Handbook's provisions at any county or state office, and indeed, they are entitled to a free copy of the volumes relating to the programs in which they are currently participating. Although the Handbook is sometimes not consistent with the statute or the rules, it is nevertheless essential to go there first.

Local ASCS offices also base their decisions on information in their files on each farmer. If you are having difficulty with an ASCS office, you should always review the information in your file to make sure they are not making decisions on bad information.

If you believe an ASCS committee has made an incorrect decision and has denied you program benefits to which you believe you are entitled, you should consider taking an appeal. Some issues (most notably, base acreage and "program payment yield" calculations) are generally not appealable, but most county committee decisions are. The 1990 farm bill made substantial revisions in the old ASCS appeal process, and should make it a fairer process:

A. To appeal a county committee decision, a farmer must request in writing that the county committee "reconsider" its initial decision, and should request an informal hearing. The farmer must make this request within 15 days of being notified of the determination.

B. You may present whatever facts or information you have that are relevant to the committee's determination. The county committee can then affirm, modify, or reverse its initial decision, but, in any case, it will then have the responsibility for preparing a written record of the facts behind its decision.

C. If the farmer is still not satisfied, he or she may appeal to the state committee. Again, that appeal must be made within 15 days of receiving notice of the county committee's decision. It must be in writing, and it must be accompanied by a statement of facts and a specific request for relief. It is also advisable to request an informal hearing at this stage as well, so that you have the opportunity to present additional information if necessary.

D. Then, if the state committee does not respond appropriately, the farmer can appeal to the DASCO office in Washington, D.C. The same 15-day

appeal period applies, and, again, it makes sense to request an informal hearing. If there is a hearing, it will be conducted by a hearing officer who is not under the supervision of DASCO, but is supposed to be independent. It is important for farmers to make sure all of the evidence they believe is relevant gets to the hearing officer; it is not safe to assume that the state committee will automatically send all the relevant information to Washington.

E. At that point, if the farmer is dissatisfied with the DASCO decision, there is a possibility of going to court. At that level, however, a court will affirm the final USDA decision unless you can prove that they were not acting rationally or within their statutory authority. Judicial review is limited.

The more you know, the better you will be able to protect yourself. If you need additional information, call the Attorney General's Farm and Home Preservation Hotline, toll free, at 1-800-652-9747.

DAIRY POLICY: BAD FOR MINNESOTA FARMERS

This year has been a difficult one for Minnesota's dairy producers and for dairy farmers throughout the nation. In just a few months last fall, the market price for milk dropped by almost 30 percent, by about \$4 to its current price of \$10.10 per hundredweight. According to USDA figures, that price (about 87 cents a gallon) is well below the average cost of production. Consumers, of course, well know that they have seen no equivalent drop in the price of milk at the grocery store. At \$10.10 per hundredweight, economists at the University of Wisconsin anticipate the loss of two to three thousand dairy farmers in that state alone, and Minnesota can expect to go through a similar shakeout.

Part of the problem is that the support price is simply too low. Recently, the House Agriculture Committee put together a proposal which would have increased the minimum support price to \$12.60 per hundredweight for two years, and then dropped it back, first to \$12.10 and then to \$11.60. To avoid overproduction, the bill would have required USDA to levy an assessment on dairy farmers to pay for distribution of the surplus at the five billion pound surplus level. If the surplus reached seven billion pounds, then USDA would have imposed a two-tier pricing schedule, guaranteeing the full support price for current levels of production, but then only providing for \$3 - 5 per hundredweight for additional production.

That bill had its flaws, including a provision that would have exempted southeastern states, but now the Bush Administration has made it clear that it will not support any dairy bill that will increase the support price.

Even if the support price were at a fairer level, however, federal dairy policy suffers from more comprehensive structural defects. The dairy industry is tightly regulated by a complicated set of USDA regulations called "milk marketing orders." The USDA's authority to

promulgate marketing orders comes from the Agricultural Marketing Agreement Act of 1937, a Depression-era law designed to boost prices for dairy farmers, to provide for the orderly marketing of milk and other dairy products, and to meet the consumers' need for adequate dairy supplies at stable prices.

Whatever the original intent, however, the current milk marketing order system is contributing to the decline of Minnesota's dairy industry. Problem No. 1 is the system of geographic price differentials for so-called Class I (fluid) milk. The further a dairy farmer is from Eau Claire, Wisconsin, the higher the price he receives will be. For example, a dairy farmer in Florida receives \$4.00 more per hundredweight than a dairy farmer in Minnesota. While that may have made sense in an era when a price differential may have been necessary to assure fresh milk supplies in non-dairy areas like the South, it no longer reflects economic reality and is now just a subsidy for expanded dairy production in other parts of the country.

Problem No. 2 is the application of "down allocation" and "compensatory payment" requirements to the marketing of reconstituted milk. Particularly now with advances in reverse-osmosis technology, Minnesota dairy producers ought to be able to ship their milk with much of the water removed and thereby market their products all over this nation. The current milk marketing order system, however, penalizes the marketing of reconstituted milk by "down allocating" it to lower milk classes, and requiring dairy handlers to make "compensatory payments" on those shipments. The result is that Minnesota's dairy producers face a considerable trade barrier and are denied a truly national market.

In January 1990, the Minnesota Milk Producers Association (MMPA) filed a class action lawsuit against USDA challenging both the geographic price differentials and the treatment of

reconstituted milk. While they were unsuccessful in the lower court, their case is now on appeal. At the same time, USDA conducted a series of administrative hearings last year on the milk marketing order system, and they are obligated to propose amendments within the next few months. If those amendments are unsatisfactory, we anticipate continued litigation in the courts.

Both the attorney general's office and the state department of agriculture continue to explore ways to remedy this situation. If you have suggestions or need additional information, please call the Attorney General's Farm and Home Preservation Hotline, at 1-800-652-9747.

WETLANDS PROTECTION: IMPACT ON MINNESOTA FARMERS

For most of our state's history, wetlands were considered nuisances and barriers to progress. Over one hundred years ago, Minnesota enacted legislation, much of it still on the books in modified form, to promote drainage. Those wanting a ditch may still, by petition, cause a county to acquire a right-of-way, build and maintain a ditch, and assess the cost to those whose land has been drained or made more drainable. For counties and local watershed districts, drainage programs remain a central part of their mission.

Partly as a result of those pro-drainage policies, Minnesota has lost about 80 percent of its wetland acreage. Nationally, half of the U.S.'s 215 million acres of wetlands has been destroyed, and we continue to lose approximately 290,000 acres per year.

In the past few years, however, there has been a heightened awareness that wetlands help to control flooding, that they filter many wastes from our water supplies, that they provide habitat and breeding grounds for fish, birds, and wildlife, and that they provide important recreational opportunities. At the same time, many farmers and urban developers have strongly resisted any additional government efforts to protect our wetland resources, contending that they should have the right to use their land as they please or be compensated for their "loss."

At the federal level, the two most important wetland protection efforts have been section 404 and Swampbuster. Section 404 is part of the Federal Clean Water Act of 1972, which generally prohibits the "discharge of dredged and fill material" into any "public waters" or "wetlands" without a permit from the Army Corps of Engineers. In 1989, four federal agencies--the Environmental Protection Agency (EPA), the U.S. Department of

Agriculture (USDA), the U.S. Department of the Interior, and the Corps--promulgated rules and issued a manual defining "wetlands" as:

--areas with hydric (mucky or peat-based) soils;

--areas with a prevalence of hydrophytic vegetation (specific plants that thrive in moist areas); or

--areas that had water within 18 inches of the surface for at least seven days during a growing season.

That definition potentially encompassed millions of acres of land, and, although many wetland advocates portray section 404 as a paper tiger, those rules proved highly controversial. The Bush Administration has now proposed a new definition. If approved, a "wetland" must have all three of these characteristics:

--soils composed of much or peat or other soils formed from constant soaking;

--the surface must be flooded for fifteen (15) days or saturated for more than twenty-one (21) consecutive days during the growing season or periodically flooded by tides; and

--more than half of all plants growing in the area must be among the 7,000 species common to wetlands.

These rules appear to be equally controversial, and additional refinement of the federal definition of wetland for section 404 purposes can be expected.

Swampbuster, on the other hand, has been part of the federal farm program since the 1985 farm bill, although it was substantially amended in the 1990 farm package. Under the original

Swampbuster program, farmers who planted crops in converted wetlands could be ruled ineligible for most farm program benefits, including price support loans, deficiency payments, federal crop insurance, disaster payments, storage payments, and some Farmers Home Administration (FmHA) loans. The definition was unclear, enforcement was erratic at best, and the only penalty available--total termination of farm program benefits--could not be tailored to fit the severity of the violation.

The 1990 farm bill made several significant changes:

- The definition of "wetland" was amended to clarify that all three wetland characteristics--hydric soil, wetland hydrology, and hydrophytic vegetation--must be present for a parcel to be considered a wetland.

- The bill permits USDA to impose monetary penalties from \$750 to \$10,000 for inadvertent wetland conversions (when the farmer converts the wetland in "good faith" and without intent to violate the law, and has not otherwise violated Swampbuster in the previous ten years). This compares with the "death penalty" requirement (cutoff of all program benefits) in the old law.

- USDA can exempt farmers from a cutoff of benefits for violations caused by third parties beyond their control, and can give farmers the option of "mitigating" wetland conversions by restoring an equivalent area to wetland status.

- Conversion of wetlands for agricultural use, rather than the actual planting of a crop, is now the trigger for Swampbuster violations.

- Prior to cutting off benefits, USDA will be required to map wetlands and perform onsite reviews in wetland determination disputes.

At the state level, legislation to protect wetlands has been equally complicated and reflects a number of difficult

compromises. For over ten years now, state law has generally prohibited the drainage of public waters and wetlands, but that prohibition has been riddled with exceptions. That law, currently administered by the state department of natural resources (DNR), exempts wetlands of less than ten acres in agricultural areas or two and one-half acres in cities. It does not include wetlands flooded in the spring and after heavy rains, but not otherwise (Type 1 wetlands), nor does it include wetlands kept moist by groundwater, swamps, or peat bogs. Moreover, even on those wetlands covered by the law, the DNR was obligated either to buy the land or enroll it in a program called the water bank if it determined that it was a wetland but could be converted into productive cropland.

This past year, the state legislature enacted a new wetlands bill, hailed as "no net loss" legislation. For Minnesota farmers, however, this new bill should pose no great burden (Swampbuster is tougher), and indeed, it may provide an opportunity for farmers to get financial compensation in some cases if they are willing to agree not to drain wetland acres.

Again, this bill reflects a lot of tough compromises:

- If the land has been cropped in six out of the past ten years, it is exempt from the law's requirements.

- If a farmer is participating in a federal farm program, his or her land is exempt.

- Type 1 wetlands (those wet only after heavy rains or during seasonal floods) are exempt.

- Wetlands of two acres or less are exempt.

- Farmers may maintain and preserve existing drainage and ditch systems without penalty.

--\$12 million in bond revenues will be available for the State to purchase easements from landowners who agree not to drain or agree to restore wetlands already altered from their natural condition. For easement purposes, wetlands will be valued at 50 percent of the surrounding agricultural land in the area, wooded land surrounding wetlands at 60 percent, and tillable land at 90 percent.

--If landowners do drain or otherwise damage wetlands, the law may require them to replace or mitigate the lost wetland, or create a new wetland of at least equal value to the public and in the same county or watershed. In agricultural areas, the mitigation ratio will be 1 : 1; in nonagricultural areas, the mitigation ratio will be 2 : 1.

Farmers can expect that wetlands protection will continue to be a difficult issue at all levels of government. Congress has several wetlands protection bills under consideration, the administration has made legislative proposals, and Minnesota's state legislature can be expected to revisit the so-called "no net loss" bill as soon as next session. If you would like more information, contact the state board of water and soil resources at (612)296-3767 or call the Attorney General's Farm and Home Preservation Hotline, at 1-800-652-9747 or 297-4111 in the metro area.

AGRICULTURAL CHEMICALS

• ENVIRONMENTAL REGULATION

Over the past few years the environmental regulation of agricultural chemicals has changed dramatically. This article briefly describes some of the changes that are of special concern to farmers.

The environmental laws primarily attack two pollution problems: (1) INCIDENTS, for example, a spill of agricultural chemicals at a Co-op; and (2) NON-POINT source pollution, for example, the contamination of drinking water in an area due to the normal application of pesticides or fertilizers to crops. The following are some of the programs designed to combat these sources of pollution.

Best Management Practices (BMP'S) are farming methods and technique designed to reduce "non-point source" pollution while maintaining high yields. Farmers in environmentally sensitive areas adopt BMP's voluntarily. The Minnesota Department of Agriculture has developed BMP's to reduce levels of nitrates and atrazine in groundwater. For more information on BMP's contact Jerry Spetzman, (612) 297-7269, at the Department of Agriculture.

Waste Pesticide and Container Collection. The Minnesota Department of Agriculture manages a program to collect old, unusable pesticides and used pesticide containers free-of-charge in counties around the state. For more information, call Larry Palmer, (612) 297-7082, at the Department of Agriculture.

Incident Reporting. Whenever an "incident" occurs, for example, if a tank with liquid fertilizers tips and spills onto the ground, that accident has to be reported. Any person who is "responsible" for that incident or who owns property where the

incident occurs must by law report that incident. To report an incident, call Roger Mackedanz, (612) 649-5451 (metro area) or 1-800-422-0798, toll free.

Liability. If a person is "responsible" for an "incident," that person may have to pay the costs of cleanup of that incident. for example, if a person is driving a tractor and pulling a tank of liquid fertilizer that tips, that person or that person's employer will likely have to help pay for the cleanup. Therefore, it is essential from both an environmental and economic standpoint to store, transport, and apply agricultural chemicals cautiously!

Agriculture Chemical Response and Reimbursement Account (ACCRA). A "responsible party" or an owner of land may be able to get reimbursement for the cost of cleaning up an agricultural chemical incident. For more information on the reimbursement program, call Sharon Huber, (612) 297-3490, at the Department of Agriculture.

Other aspects of pesticide regulation have not changed as much over the years, but are still important in protecting the environment.

Label Instructions. All pesticides are accompanied by a label that instructs the user how to apply the pesticide. A failure to follow the instructions is a violation of federal and state law, and can subject the violator to substantial civil or administrative penalties and even criminal prosecution.

Licensing and Certification. Pesticides identified on the label as restricted use pesticides can only be applied by a licensed or certified applicator. For example, if a farmer intends to use restricted use pesticides, that farmer must take an open-book test and pay a small fee to become certified.

- **PESTICIDES CAN CAUSE CROP DAMAGE**

In the spring of each year, pesticide advertisements blitz the state's airwaves. The ads talk about "no carryover," "reachback," and other advantages of using pesticides (i.e., herbicides, insecticides, and fungicides). But, these ads say very little about the potential for crop damage when one product is mixed with another, or when bad weather follows the application.

In many cases, even if the label directions are followed carefully, a farmer may experience crop failure. And, if a farmer hires someone else to apply the pesticide, the farmer may never see the label warning him or her of the potential for crop loss.

State law mandates that consumers have the right to know how the products they buy will perform, and what conditions will hamper the performance. For instance, farmers have the right to know the risks of tank mixing two products. Farmers also have a right to know that certain weather conditions may cause pesticides to harm a crop.

If a pesticide harms a crop, and a farmer was not properly informed of that risk, the farmer may have the right to recover damages from the manufacturer of the product.

To protect a claim of crop injury, consider taking the following steps:

1. Keep the label directions, any advertising materials on the product, and sales receipts.
2. Record when the spraying occurred and the amount of the chemical used.
3. Take photographs of the damaged and undamaged areas periodically throughout the growing season. Mark the photographs with dates and location.

4. Take samples of the affected plants and have them examined by an expert, such as a representative of the local extension service.

To avoid damage to crops, read the label of the pesticide and consult an expert from the local extension service about using a particular product. If such precautions fail, you may have a legal right to compensation.

For more information, contact the Attorney General's Farm and Home Hotline at 1-800-652-9747, the University of Minnesota Extension Service at (612) 625-8700, or the Department of Agriculture at (612) 297-5732.

PRODUCER PROTECTIONS AGAINST NONPAYMENT

Recently, a group of Minnesota farmers received several hundred thousand dollars through the Minnesota Department of Agriculture when the company that had contracted to buy their poultry went broke. Other Minnesota farmers received substantial amounts from a grain buyers bond when a grain elevator failed to pay them for their grain.

These farmers almost lost their rights to obtain this money because they waited too long to file their claims with the Department. Many other farmers who might have been eligible to receive payment received nothing because they either did not know of the bonding protection available, or waited too long before putting in a claim.

The Minnesota legislature has recognized the unique hazards faced by farmers in the sale of their farm goods and has instituted several programs to protect their interests. Most of those who buy grain, livestock, and produce (including perishable produce, milk and dairy products, and poultry and poultry products) from Minnesota farmers must be licensed by the Minnesota or United States Departments of Agriculture. As a condition for licensing, those who purchase such products from Minnesota farmers must be bonded to assure that payment will be made. When buyers of those products default, farmers can apply to the licensing agency and receive at least partial payment through distribution of the bond proceeds.

The first step that a farmer should take is to assure that the person to whom the farmer sells is either licensed or does not need to be licensed. Most individuals or organizations who buy from farmers require a license. A license generally should be posted in a prominent place at the buyer's place of business, and, if it is not, the buyer should be asked about licensing. If the buyer is not licensed and can present no reasonable explanation

why he or she is not, the farmer should take his or her business elsewhere. The farmer should also report the dealer to the licensing agency since doing business without a license is illegal. Unlicensed dealers not only pose big risks to farmers, but unfairly compete with those dealers who go through the trouble and expense of being licensed and bonded.

• WHEN SHOULD I CALL?

1. **Slow pay.** If payment for your farm products is not coming as quickly as you expect, or if you are receiving partial payment with the promise of more later, call the regulators. Do not hesitate. If you wait too long to file a claim, you may lose your rights to payment. If you wait, and your buyer is truly in trouble, other farmers will get hurt as well. If too many people lose money before the buyer stops doing business, not only will more people lose money, but those who file claims will receive a smaller portion of their claims from the limited bond proceeds.

2. **Bouncing checks.** Even if your buyer promises to make the check good, and even if a later check clears, more trouble is probably forthcoming. Further, issuance of a bad check violates all of the producer protection laws.

3. **Change in buyers' business practices.** If you are normally paid immediately and payments now come later, if you normally sell for cash and are encouraged to sell on a price later basis, if you are asked to sign a voluntary extension of credit, or if something just doesn't feel right about the transaction, call and file a claim. If, in fact, everything is okay, you will have lost nothing and you will not have harmed your buyer. If, in fact, something is wrong, you will have protected yourself.

• **WHO SHOULD I CALL?**

1. **Livestock problems.** Call the Minnesota Department of Agriculture's Livestock Division:

(612) 296-2292; or

the United States Department of Agriculture's Packers and Stockyards Administration:

(612) 290-3876

These agencies should be able to tell you whether an individual or business is licensed and bonded or if they do not need to be licensed. Further, they will provide information on how to file a claim and may provide some help in investigating the solvency or business practices of a livestock buyer.

2. **Grain elevators and buyers.** Call the Minnesota Department of Agriculture's Grain Licensing & Auditing Division:

(612) 341-7537

This division audits certain grain buyers and warehouses and is in charge of licensing and bonding grain dealers. They can inform you about the applicable law and give you information about licensing and bonding of particular businesses. They can also tell you how to file a claim and provide necessary forms.

3. **Wholesale producer dealers (milk, perishable fresh fruits and vegetables, and poultry and poultry products).** Call the Minnesota Department of Agriculture's Wholesale Produce Section:

(612) 296-8620

They can tell you who is licensed and bonded and provide necessary information about making a claim. They can also inform you about various other protections provided for farmers by the Minnesota Legislature. These other protections include:

- mediation for contract disputes,
- protections to those who contract for sale of their produce, and
- procedures for collecting under the wholesale producer dealers trust, wherein sellers have first right to proceeds resulting from the dealers' sales of their produce.

• **WHAT CAN THEY DO FOR ME?**

The above resources can let you know if help is available and can assist you in receiving that help. They can also investigate problems which occur and take action to ensure that problems do not occur.

• **WHAT CAN I DO?**

1. **Act now.** Do not sit on your rights. If you delay too long, your remedy will likely be lessened or eliminated. Acting quickly works to the benefit of all concerned. It prevents dealers from getting into too much trouble. It helps you maintain your farming operation. It prevents other farmers from being victimized by insolvent or untrustworthy dealers.

2. **Keep good records.** If a claim needs to be made, you must support your claim with documents and other evidence to show the amount which you are owed.

3. **Don't give in to your dealer.** Some transactions are not protected by the laws. If you grant a voluntary extension of credit or give your buyer too much time, you may lose your rights to collect under a bond. While you may wish to enter into an unprotected transaction, make sure that you are doing so voluntarily rather than being pressured into doing it.

- **ANY QUESTIONS?**

If you have any questions about the various protections provided or the laws governing the transactions, call one of the above numbers. Otherwise, call the Minnesota Attorney General's Hotline at 1-800-652-9747.

FARMER-LENDER MEDIATION

Minnesota farmers got a helping hand from the 1986 legislature when it passed the landmark Farmer-Lender Mediation Act requiring farmers and their creditors to mediate their differences before any legal action can be taken by creditors. The legislature has now extended the program until July 1, 1993, although funding cutbacks are necessitating the imposition of user fees.

If farmers decide to exercise their right to mediation, they can help their cases by going into the mediation well prepared. That means bringing to the meeting all of the documents the mediator will need. The following list includes most of what will probably be wanted.

1. Bring a list of farm assets including automobiles, machinery, equipment, tools and the like, whether or not they are mortgaged or used as collateral on a loan. In addition, bring any appraisal or loan inventory forms on such property.

2. Bring a legal description of any real property in which you have an interest--for instance your homestead. You can get this information by reviewing your mortgages.

3. Bring documents showing your income for the past three years. Include any income you have received outside of farming. Check your tax forms for this information.

4. If you operate as an entity other than as a family farm, or have been part of a corporation or partnership within the past six years, bring with you: a) the corporation's or partnership's name and address, b) the date you started doing business and, if you ceased doing business, that date as well, c) names and addresses of the corporate officers, stockholders or partners,. If there is a corporate book or partnership agreement, bring it. If you paid salaries and have state and federal identification numbers, list them as well.

5. In addition, note the names and addresses of people who owe you money. List the amounts and how long they have had the credit and why. Moreover, list everyone, including relatives and friends, to whom you owe money and include any collection agencies collecting for a creditor.

6. Bring copies of the following: a) financing statements from your county recorder, b) security agreements and mortgages from your lender, c) contracts, and d) leases signed with creditors and financial statements provided within the past two years.

7. Finally, bring copies of legal papers served on you, for example, summons and complaints, notices of mortgage foreclosures, or notices of garnishment. If you have been divorced, bring a copy of the judgment.

Local county Agricultural Extension Service offices have computers which can be programmed to prepare financial plans for farmers called "Fin-Pacs." Farmers going into mediation would be wise to take advantage of this program. If farmers are working with the Farmers Home Administration (FmHA), Extension may also be able to help with DALR\$ or other FmHA financial analyses.

Mediators have been trained to assist farmers and lenders in resolving farm credit problems. Farmers and lenders can locate a mediator to mediate their farm credit problems by contacting their local county agriculture extension office for a list of mediators in their area.

If farmers or lenders have questions about preparing the information for a mediator, they can contact the local county agriculture extension office. Additional information is available to farmers or lenders from the Attorney General's Farm and Home Preservation Hotline: 1-800-652-9747.

CHAPTER 12: BANKRUPTCY LAW FOR FARMERS

Since 1986, financially strapped Minnesota farmers have been able to take advantage of what is known as Chapter 12 of the bankruptcy code. That law was designed solely for the use of struggling family farmers who need to reorganize their debt to give them a chance to repay those debts based upon current appraised values of farm assets rather than the face values of the debts.

Previously existing bankruptcy reorganization options often could not help family farmers. Chapter 13, the wage earner plan, has debt limits which are set too low for most farmers and is unavailable to family farm corporations. Chapter 11, designed for large corporations, is extremely complex and costly, and creditors can veto reorganization plans.

Chapter 12 can be used by farmers who derive at least 50% of their gross income from farming and whose debt load is no more than \$1,500,000, at least 80% of which (excluding the debt for a residence) must arise from the farming operation. Within ninety days of filing a case under Chapter 12, the debtor must file a plan with the Bankruptcy Court which will generally provide for payments to creditors over a period of three to five years from the debtors' disposable income (defined as total income less living and operating expenses). Creditors can object to the plan, but the court can approve the plan if the requirements of the law are met. If the plan is approved by the Court, and the debtor complies with the requirements of the plan, at the end of the plan period, the debtor will receive a discharge from all unsecured debts and from the undersecured portion of secured debts.

The major benefit to debtors lies in the treatment of secured creditors. Guaranteed repayment to them is based upon the value of the collateral, rather

than the amount of the debt. This is especially important where the value of the collateral has greatly declined since the loan was made, as is often the case with farmland. The secured debt remains secured only to the extent of the security's appraised value. The remainder of the secured claim is then treated as an unsecured claim. These and other unsecured claims need only receive as much under the plan as they would receive if the debtor were to be liquidated under Chapter 7 of the Bankruptcy code, which is generally not much. Also, while the plan is in effect, payments on secured debts need only be at the rental value of land or, for other assets, just enough to protect the value of the property subject to the security interest. If the plan does not provide for payment of secured debt in full during the plan period or the surrender of secured property to the creditors, the still secured portion of the debt will continue. The remainder will be discharged with other unsecured debts.

Successful completion of a plan will require sacrifice, hard work and extensive planning. The streamlined process and short deadlines demands fast action by debtors, attorneys financial advisors and the courts. Individual plans and the law as a whole will probably face strong opposition from creditors. A debtor who completes a plan, however, can get a fresh start.

Of course, the decision to seek help from the bankruptcy courts is very difficult and the issues are complex. If you think bankruptcy is an option you need to explore, you need to talk with an attorney. Check the Resource section of this booklet for ideas on how to get the attorney that is right for you.

MINNESOTA'S BAN ON CORPORATE AND ALIEN FARMING AND FARM OWNERSHIP

Minnesota family farmers often hear rumors about big corporations and limited partnerships purchasing Minnesota farm land or starting factory farm operations. In the past few years, stories have also spread about foreigners buying up huge quantities of Minnesota farm land. Some of these rumors have proven true, while others have been groundless.

Minnesota's legislature has acted to control such operations and to encourage family farming. As a general rule, all non-resident foreign citizens are prohibited from directly or indirectly obtaining any interest in Minnesota farm land. Further, corporations and limited partnerships face significant restrictions upon their ability to buy agricultural land or to engage in farming.

The restrictions on corporations and limited partnerships are based upon a common characteristic of these forms of businesses. Investors in both have limited liability for debts incurred by the business operations. The Legislature felt that this characteristic gives corporations and limited partnerships an unfair advantage over individual farmers who must risk everything on their farming operation. This advantage, it was feared, would allow outside investors to artificially inflate farm land values, drive out traditional family farmers and threaten rural communities and sound farming practices if any corporation or limited partnership could engage in farming.

Because it is limited liability and not just bigness that is addressed by the law, general partnerships are not regulated. A general partnership is an organization where the individual partners have the same level of liability as they would if they undertook the farming operation individually. Therefore, general partnerships are not regulated like limited partnerships or corporations and may operate like an individual farmer.

While the prohibition against alien land ownership is almost total, there are significant exceptions to the ban on farming by corporations and limited partnerships. Perhaps the largest exception is that which allows family farm and authorized farm corporations and limited partnerships to engage in farming. This allows related family members to incorporate existing operations or to start operations, and lets certain small (five or less members) limited partnerships and corporations, realize the benefits of these forms of organizations.

Perhaps the most visible of the other exceptions to the general limitation, at the current time, is the exception that allows any corporation or limited partnership to produce breeding livestock for resale to other farmers. Under this exception, numerous hog operations have recently been started, which are intended to sell gilts and boars to partnership or corporation shareholders. A further major exception allows any corporation or limited partnership to raise poultry or poultry products.

All corporations and limited partnerships, are required to file annual reports with the Minnesota Department of Agriculture. The Department prepares an annual report of corporate, limited partnership and alien land holdings. You can obtain information by calling the Department of Agriculture at 296-8435.

Those who buy farmland in violation of the law will be sued by the attorney general and can be forced to sell the land and pay substantial penalties, including criminal sanctions. Those who fail to file required reports or file them late must also pay a \$500 civil penalty.

The attorney general's office is responsible for enforcing the corporate and alien farm laws. The law is complicated and, in addition to the exceptions discussed above, there are numerous exceptions to the general rule. If you have questions or if you have reason to believe that a corporation, limited partnership, foreign national, or pension or investment fund is violating this statute, contact the Attorney General's Farm and Home Preservation Hotline at (612) 297-4111 or toll free 1-800-652-9747.