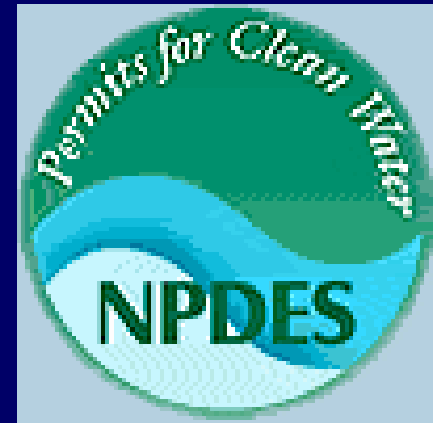


# Planner Liability When Writing Comprehensive Nutrient Management Plans



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## Things to do:

- What does your client expect?
- Interpreting gray areas
- Minimizing your liability exposure as a planner
- What happens if you go to court?



## General Sources of Liability Exposure:

- Neglectful misconduct
- Fiduciary Responsibility
- Property and/or Personal Injury
- Malpractice?



## The Permit Process and Liability:

- Ultimate Liability in the Hands of the Farmer
  - Phases:
    - CNMP
    - Implementation
    - Evaluation and Records
  - The Permit is a *protection* mechanism for the Farmer
    - Clean Water Act (CWA) limitations only
    - The Permit is/was primarily established to prevent concentrated source discharge
  - The CNMP is a Component of the Permit
    - PNP (permit nutrient plan)



## The Nutrient Management Plan:

- Certification of the “Plan” is agency-driven
  - Ultimately, USEPA, State En Con Agencies
- Third Party Certification:
  - Certifies the Planner, not the Plan
  - The Planner still must adhere to agency standards
  - Expect stringent third-party requirements
    - At least what is expected of the authorized agency
- The farmer is the true ‘planner’, the Certified Planner is his technical resource

# The Nutrient Management Plan:



## Agencies Engaged at Varying Levels at this Point

USEPA

USDA-NRCS

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State En  
Con  
Agency

State  
NRCS  
Agency

Land Grant  
Universities

State Depts of  
Agriculture

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Local Soil and  
Water  
Conservation  
Districts

Local Extension  
Services

## Challenges to the CCA wanting to be engaged:



- Become informed on Standards, Specifications, Requirements for Comprehensive Nutrient Management Plans in an ongoing manner
- Resource others that can help you with the areas that may be included in your state's "Plan":
  - Feed Management
  - Manure and Concentrated Source Handling and Storage
  - Land Application of Manure
  - Land Management
  - **Record Keeping**
  - Other Utilization Options

# Steps to Minimizing Your Liability

## Exposure:



### •Expectations:

- Your client (you are not selling insurance)
  - You expect your client to follow your plan or document where they don't
- You
  - Don't claim to provide something you can't or don't do
- Your resources
  - Sign on as many resources as you need to get the job done and hold them accountable for their portion of it

# Steps to Minimizing Your Liability

## Exposure:



- Expectations (cont’):
  - Agency Representatives:
    - Know if and what they can provide you, and vice-versa
    - If you are signing onto their Plan, ask to see the entire plan so it ties together to your recommendations
    - Ask to be updated on regulatory changes, especially on the local level
    - COMMUNICATE

# Steps to Minimizing Your Liability

## Exposure:



- Expectations (cont’):

- ALWAYS position yourself as an advocate of the CLIENT:

- You represent the client, not the government

- You must adhere to ethics based on that

- Client Confidentiality

- Fiduciary Responsibility

- Due Diligence

# Steps to Minimizing Your Liability Exposure:



- The Engagement Letter or Contract:
  - Sign-off two-way liability relating to:
    - Premises entry
    - Recommendations
      - like noses, everybody has one but they're rarely exactly the same
    - Workers Comp, Business Liability, Taxes, etc.
  - Payment terms and conditions:
    - Always leave yourself an out

# Steps to Minimizing Your Liability

## Exposure:



- The Engagement Letter or Contract:
  - Terms of Initiation
  - Terms of Severance:
    - with cause (immediately upon writing)
    - without cause (30-day in writing)
  - Keep what you will deliver general if you are the main Planner:
    - “assist in facilitating the development of...”
  - Keep what you will deliver very specific if you are not the main Planner

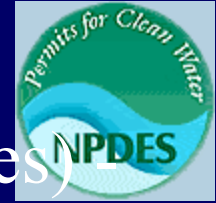
# Steps to Minimizing Your Liability

## Exposure:



- The Engagement Letter or Contract:
  - Arbitration - usually your local court/jurisdiction has an arbitration board
  - Signatures:
    - You or your representative
    - The client
    - A witness
- Draft your Contract and have an attorney who is familiar with Agriculture review it

# Steps to Minimizing Your Liability Exposure:



Logged visits (time in, time out, what was done, notes)  
record all visits relating to that client

Record keeping for the farmer (keep as much of it in their hands as possible, and get a copy)

The CNMP as a shelf document AND a working document

- design your program to be both

**ALWAYS BE THE ADVOCATE OF THE CLIENT**

- the first line of exposure is the client, not you
- the client is responsible for implementation, not you
- have the client sign off on every aspect of your plan

# Steps to Minimizing Your Liability Exposure:



## Insurance:

- Business Liability
- Errs and Omissions
- Workers Compensation
- FICA and Med
- Malpractice?
- Environmental?

## Due Diligence:

- Certification maintenance and professional improvement
- Make recommendations you can defend and document
- STAY in touch with your client on a regular basis

# Steps to Minimizing Your Liability Exposure:



Wrap up Questions:

Does the Permit protect the consultant or create a liability exposure?

Should every consultant have these bases covered?

Should the potential for liability exposure preclude your desire to be a consultant?

Are there ways to avoid being the main “planner”? Does that minimize your exposure?

## Things to do:

- What does your client expect?
- Interpreting gray areas
- Minimizing your liability exposure as a planner
- What happens if you go to court?