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Opinion No. 3

AGRICULTURE — Pesticide Applicators

LICENSES — Commercial Pesticide Applicators

DEPARTMENT OF AGRICULTURE — Powers, Pesticide Applicators

FARMING — Pesticide Applicators

Sections 27-213 through 27-245, R.C.M. 1947

HELD: 1. A private canal and ditch company which applies pesticides only to property owned and operated by that company is classified as a "farm applicator" within the terms of the Montana

Pesticides Act and is consequently not required to license one of its employees as a "commercial applicator."

2. A private canal and ditch company which applies pesticides only to its own property and to the property of adjoining landowners is not classified as a "commercial applicator" under the Montana Pesticides Act so long as the company does not receive any compensation or consideration for the application of pesticides to property not its own.

March 14, 1975

Mr. George Lackman, Commissioner
Department of Agriculture
Capitol Annex Building
Helena, Montana 59601

Dear Mr. Lackman:

You have requested my opinion on the following questions:

1. Is a private ditch and canal company required by the Montana Pesticides Act to license one of its employees as a "commercial applicator" in order to apply pesticides only to ditch banks and canals owned and managed by the ditch and canal company itself, or is such a company classified as a "farm applicator" within the terms of the act?
2. Is a private ditch and canal company classified as a "commercial applicator" under the Montana Pesticides Act if it applies pesticides on property adjacent to its own property?

Question No. 1: In 1971, the Montana Legislature enacted the Montana Pesticides Act, which is codified in the Revised Codes of Montana, 1947, sections 27-213 through 27-245. Section 27-221 provides that it is unlawful for any person "to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the Department of Agriculture." Section 27-216 (5) defines the term "commercial applicator" as "a person who by contract or for hire applies aerial, ground, or hand equipment pesticides to land, seed, animals, waters, structures, or vehicles." Section 27-216 (7) defines the term "farm applicator" as "a person applying pesticides to his own crops or land." Thus, the distinguishing characteristic of a commercial applicator is the nature of the agreement pursuant to which he applies pesticides. A "person" (a term which includes a company, according to section 27-216 (29)) is required to obtain a commercial applicator's license if he "engages in the business of buying pesticides for another." Although the terms are not contained in section 27-221, section 27-216 (5), in defining the term "commercial applicator" it must certainly be inferred that the term "engaged in the business of" is to mean application of pesticides "by contract or for hire." I therefore conclude that a private ditch and canal company which applies pesticides only to property owned and controlled by itself, and not by contract or for hire, is neither a "commercial applicator" nor engaging "in the business of applying pesticides for another."

Consequently, such a company is not required to obtain a commercial applicator's license. Instead, it comes within the definition of a "farm applicator."

Question No. 2: It should be noted however, that the terms "engage in the business of" and "by contract or for hire," combined with the word "commercial" implies something more than application of pesticides for neighboring farmers and ranchers on a free gratis basis. Although each situation must be considered on its own facts, it is my conclusion that a ditch and canal company which applies pesticides for neighboring farmers without receiving some sort of consideration or compensation from these land owners is not a "commercial applicator" and not required to obtain a license under the Pesticides Act. If, however, the company does obtain some sort of compensation or consideration, it is considered a "commercial applicator" and must obtain a commercial applicator's license.

THEREFORE, IT IS MY OPINION:

1. A private canal and ditch company which applies pesticides only to property owned and operated by that company is classified as a "farm applicator" within the terms of the Montana Pesticides Act and is consequently not required to license one of its employees as a "commercial applicator."
2. A private canal and ditch company which applies pesticides only to its own property and to the property of adjoining landowners is not classified as a "commercial applicator" under the Montana Pesticides Act so long as the company does not receive any compensation or consideration for the application of pesticides to property not its own.

Very truly yours,

ROBERT L. WOODAHL
Attorney General