

FEDERAL AND STATE REGULATIONS

Virginia court rules pesticide manufacturer must warn of unusual hazards

A recent decision in the appeals court of Virginia has focused renewed attention on the question of labeling requirements. As a result of the court action, California Spray Chemicals Corp. was directed to pay \$30,000 damages to two apple growers in the state. The money was awarded for damages which resulted following the application of CalSpray's preparation TAG (phenylmercuric acetate), which was applied to curb an apple scab infection in the plaintiffs' orchard. As a result of the injury to the trees the 1949 crop of apples was a commercial failure and the 1950 crop also failed to materialize.

The case was originally tried in the Albermarle County Circuit Court, where the jury returned a verdict for the orchardists. However, the judge set aside that verdict and ruled for the defendant. This verdict was subsequently appealed.

The court of appeals handed down a split decision with three of the justices aligned with two who concurred in ruling for the plaintiffs, opposed by two who dissented. The court ruled that the original jury verdict, in the county court which found CalSpray liable for the damages, was correct.

The plaintiffs acknowledged that they had not followed the directions on the label for use, but contended that there was not sufficient warning that the material would harm the trees.

CalSpray in defense argued that if the orchardists had followed the directions on the label of TAG and sprayed the material as directed there would have been no injury to the trees.

In the majority decision of the court the question considered was: "Do the Virginia Insecticide, Fungicide, and Rodenticide Law and the Federal Insecticide, Fungicide, and Rodenticide Act impose on the defendant or manufacturer of a new economic poison a duty to warn plaintiffs of unusual hazard involved in the use of its poison?" The court ruled that they do. The decision was based in part on the assumption that: "The fact that the directions are overlooked or are not meticulously followed does not relieve the manufacturer of the duty to warn of latent dangers common to a class of articles." The majority also stated: "The manufacturer of TAG was required to include a warning or cautionary statement on the label that TAG might injure apple trees." Thus the majority decision substantiated the plaintiffs' contention that

it is the duty of the economic poison manufacturer "to warn or caution them of unusual hazards or danger which could reasonably be anticipated from the use of TAG."

The dissenting opinion of two judges stated in part: "There is a question of the wisdom and fairness of subjecting the defendant to liability under the circumstances." The writer of the dissent expressed the following interpretation of these circumstances: "In my opinion, the verdict of the jury is contrary to the law and the evidence. I cannot bring myself to assent to a recovery by the plaintiffs where the undisputed evidence shows that they brought the damage upon themselves either through negligence or a willful disobedience of directions and warnings. It having been established that no injury would have been incurred by the plaintiffs had they observed the directions and statements on the label of TAG and the accompanying pamphlet, it must logically follow that their default was a proximate cause of the damage occasioned them." The dissenting opinion concludes: "The majority opinion fashions a broad new law of negligence in conflict with that which we have followed for many years . . . one apt to cause embarrassment in the future."

Florida Proposes Controls and Taxes On Its Phosphate Industry

The Florida legislature has recently considered several bills of interest to phosphate companies in that state. One of these bills, H. 97 has been previously noted (AG & FOOD, April 29, page 275). This bill, which proposes a severance tax of 50 cents per ton on phosphate rock taken from the mines in the state, would net Florida approximately \$4.1 million per year.

A minerals excise tax has been proposed both in the House, H. 209, and in the Senate, S. 212. These identical bills would provide for an excise tax on mineral rights, in the case where the mineral rights have been assigned to someone other than the land owner. The owner of the mineral rights, in this case, is required to pay an annual tax of 15 mills on each dollar value of the rights.

Water pollution bills have also been introduced in both the House and Senate. These bills, H. 395 and 265, are designed to specifically prohibit phosphate processors from dumping waste from the mines or processing operation into the Peace River. Another similar bill introduced in the Senate, S. 279, would make it unlawful for anyone to discharge any industrial waste into any waters of the state of Florida. Mandatory injunctions are provided to force producers to develop waste disposal facilities.

Bills Considered in State Legislatures

Florida S. 471. Proposes a sales tax on fertilizer. Commercial fertilizers are subject to a tax of 25 cents a ton; agricultural minerals, phosphate rock and limestone, are subject to a tax of 10 cents per ton.

Michigan H. 54. A bill for the compulsory enrichment of bread and flour. Requires enrichment standards of the same general level as those recommended by the FDA. The commissioner of agriculture is assigned the responsibility of enforcement.

Oklahoma H. 1140. Another bill for sales tax exemptions of farm supplies. Proposes exemptions from sales taxes for seeds, feeds, and fertilizer.

South Carolina H. 1387. As originally introduced this bill proposed a state economic poisons act patterned generally along the lines of the model state act (AG & Food Apr 29, p. 275). In the closing days of the South Carolina

legislature the bill was amended and passed.

If the bill becomes law, this amendment will mean that liability suits against economic poisons manufacturers will be tried in the local state courts. Previously corporations out of the state when called for liability suits could elect to have the suit tried in the federal district courts.

Representatives of the chemical industry have strenuously objected to these amendments, for they feel that under these conditions the manufacturer is being denied his rights of access to the federal courts, and the local courts seem inclined to rule against the corporations in damage suits.

As yet the bill has not been signed by the Governor of South Carolina and there seems to be a possibility that he may wait till the next session of the legislature so that hearings can be held on the questions.