

Aerial pesticide treatment in Ukraine: legal aspects

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In Ukraine, aerial treatment of agricultural crops with pesticides is a permitted technological procedure in agricultural production. Nonetheless, it is potentially dangerous for the environment and people. Therefore, Ukrainian legislation has established certain rules that agricultural companies must consider. Failure to comply with these rules may lead to lawsuits and administrative or even criminal liability.

1. Requirements for performing aerial treatments

Aerial spraying of fields in Ukraine is subject to the requirements specially established by the state sanitary regulations.

In general, such requirements include the following:

- requirements for the aircraft equipment used in the spraying; rules for notifying residents of the areas near to fields planned for aerial treatment;
- requirements for airfields and heliports where such equipment is based or takes off from; weather restrictions on carrying out such works;
- requirements for the safety of workers involved in the processes; requirements as to the distance from the treatment site to populated areas, water reservoirs, apiaries, etc.);
- requirements concerning conditions for aerial field treatment, in particular:

requirements for cleaning and storage of equipment after aerial application of pesticides.

In addition to the regulations for aerial treatment, the operator must also observe the regulations for the use and storage of pesticides and agrochemicals in general.

2. Liability of the treatment customer

In the vast majority of cases, the person liable for any damage caused by aerial spraying is an operator of the field. Lawsuits are usually filed by owners or users of adjacent plots whose crops were damaged by agrochemicals. Such claims are often followed by inspections by Ukrainian authorities and imposition of administrative fines on the customer.

The court practice shows that in case of damage to crops the basic grounds for imposing liability on the customer of aerial spraying are:

- non-compliance with the requirements of the distance from the treatment site to certain objects;
- non-compliance with rules for notification of the residents about the upcoming aerial treatment of fields;
- non-compliance with weather restrictions for such works.

Certainly, other violations can also be taken into account (e.g. availability of permits for employees to work with pesticides, certification of aircraft and airfields, etc.). In most cases, such violations have no direct link to the harm caused, but they are considered as grounds for imposing administrative liability on the customer. Therefore, in any case, compliance with all the requirements for aerial works must be monitored.

The decision of the authorities regarding a violation of the rules for such works is the basis for determining the unlawfulness of the customer's actions. With such a decision, the owner of the damaged crops has a better chance that the court will satisfy the claim against the

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customer.

Ukrainian agricultural companies should first of all monitor compliance with the requirements established for:

- the treatment site;
- the treatment conditions;
- communication with the residents.

3. Treatment site

The main requirement for the aerial treatment site is to maintain an appropriate distance from the treated areas to the objects defined by the public health regulations.

Such objects include, first of all, populated areas, water bodies, water sources, orchards, vineyards and other areas where ready-to-eat products are grown.

Ukrainian legislation prohibits aerial pesticide treatment of crops, forests and other land located closer than:

- 5 km from permanent apiaries;
- 2 km from fishery reservoirs, open water sources, grazing areas for domestic animals, nature reserves;
- 1 km from populated areas, livestock and poultry farms, crops used for food consumed without thermal treatment as well as orchards and vineyards;
- 1 km from agricultural work sites.

Requirements for distances for aerial application of mineral fertilizers and biopreparations are different: at least 500 m from the cultivated field to populated areas, livestock and poultry farms, water sources.

4. Treatment conditions

While conducting aerial spraying, planes or helicopters must treat the fields from an altitude not exceeding 3 metres above the crops.

The treatment must be carried out in the morning or evening.

In addition, regardless of the time of day, aerial treatments cannot be performed if the air temperature exceeds +22°C and the wind speed exceeds 3-4 m/s (8 m/s for the application of mineral fertilizers and biopreparations).

If, for any reason, the treatment height will exceed 3 metres by a factor of two or more, the distance to the protected objects must also be increased accordingly.

5. Communication with the local residents

The customer of aerial field spraying must notify the residents of the surrounding area three days in advance of such activities.

As the court practice shows, in Ukraine it is enough to publish such a warning in the local press. At the same time it is necessary to adhere to the rules for warning content, which shall include the following:

- location of aerial treatments;
- time of application and total duration of works;
- information on the prohibition to carry out agricultural or other work or livestock grazing closer than 1 km to the aerial treatment site;
- information on the necessity to move apiaries to a distance of more than 5 km from the aerial treatment sites.

It should be understood that it is not only the residents of the nearest settlements that shall be notified, but, first and foremost, the owners of the fields and plots adjacent to the areas to be treated. They do not always live in the surrounding area and may be at risk. Consequently, it allows them to recover compensation from the customer of the aerial work for the damage caused.

In Ukraine, there are direct warning requirements for such cases, namely the requirement to erect special warning safety signs indicating the final waiting period at a distance of 300m from the cultivated areas. Such signs must also be placed on the roads passing through the cultivated areas.

If the warning was not given properly and any of the adjacent farms suffered damage, such damage is likely to be recovered through the court.

6. Compensation for damages

In addition to the risk of liability for damage to adjacent landowners, agri-companies also have the right to claim compensation for damage caused to their crops by other Ukrainian agricultural producers.

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The basic conditions for a successful court action in such cases are the correct determination of the cause of action and the proper documentation of the damage inflicted.

According to the Ukrainian legislation, the damage caused must be reimbursed by the customer of the aerial application.

In order to obtain a compensation, the agricultural company must prove a number of circumstances, in particular:

- the fact of damage caused;
- violation of the established rules by the customer of aerial treatment;
- a causal link between the first and the second circumstance.

Each of these circumstances must be duly substantiated and documented. In addition to preparing to prove the circumstances of the damage, a proper assessment of that damage must also be made.

7. Establishing the fact of damage

When the crop is established to have been damaged in adjacent fields after aerial spraying, it is necessary to take care to record this fact in a proper way.

To do this, a commission shall be set up, which must include representatives of the state authority which at the time of such event is authorized to control compliance with sanitary regulations. The result of the inspection of the damaged crops must be documented in an inspection report.

In addition to drawing up an inspection report, soil, air and crop samples must be taken and handed over for laboratory examination. The result of the laboratory tests must be documented in a protocol.

8. Establishing the fact of a law violation

The next step is to establish the unlawfulness of the behaviour of the customer of the aerial spraying which caused the loss of crops. It is necessary to prove that the pesticide treatment was carried out by the perpetrator in violation of applicable Ukrainian legislation, national sanitary regulations, etc. Proper evidence of this could be a ruling to bring the perpetrator to administrative responsibility or an appropriate order to eliminate violations.

At this stage it is also advisable to take care of collecting witness statements, e.g. to establish compliance with the rule about the presence of signalling devices in the treatment areas.

9. Establishing a causal link between the damage and aerial work

A causal link between aerial treatment and damage can be confirmed, inter alia, by the availability of a laboratory test report.

Such a report indicates the type of chemical used to treat the field where the crop was lost. By comparing this report with the aerial treatment records, it can be established that the damage was caused by the aerial treatment of someone else's field.

10. Assessment of damage caused

In order to assess the damage, the crop condition must be surveyed. For this purpose, a commission (usually consisting of agronomist, engineer, chief accountant, other specialists of a Ukrainian agricultural company) should be formed. The commission evaluates the condition of the crops, determines the size of the lost crops. The result of the commission's work is drawn up by an act and a protocol of inspection.

When determining the damage, it should be noted that the amount of damage may include:

- the cost of the crops, which should include all the costs of seeds, cultivation, fertilisation, etc. incurred by the agricultural company at the time of the loss;
- the cost of reseeded the lost crop, which should include all the costs of pre-sowing, seeding and other works to be done again when the new crop is reseeded.

In general, a systematic approach to controlling aerial treatment of fields and knowledge of its rules will help to avoid risks of causing damage to neighbours and local communities. And the correct and timely implementation of an algorithm to compensate for the damage caused to the agricultural company's crops by other producers will enable the company to successfully recover damages from the offender in court.