

# GROWERTALKS

## Features

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## You Lost It All—Now What?

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After 30-plus years in the greenhouse industry, I can tell you that almost every grower/owner I've known longer than five years has had one or two total crop failures—some big, some small. At the time of discovery, grief, anger and disbelief set in. Scenarios of bankruptcy run through the mind. It's easy to let emotions run your show. However, this is unhelpful. What you do after that initial discovery can make the difference between a quick recovery and three to five more years of misery.

This article is dedicated to what you should and should not do if you have any kind of massive crop loss. There's no legal advice here—I'm not an attorney—but I am a State Extension Specialist in Floriculture with many years advising law firms and researching crop losses. My intent is that this will give you an idea of how things work. At the end of the article, I'll list three things you need to do now to survive most crop failures, but first, let us review:

1. If your crop loss is an act of God (weather, earthquake, etc.)—Take pictures; see the insurance company.
2. If your crop loss is due to vandalism—Take pictures; call the police and your insurance company.
3. If your crop loss cannot be explained by the above, then do the following—Take pictures, samples, then ...

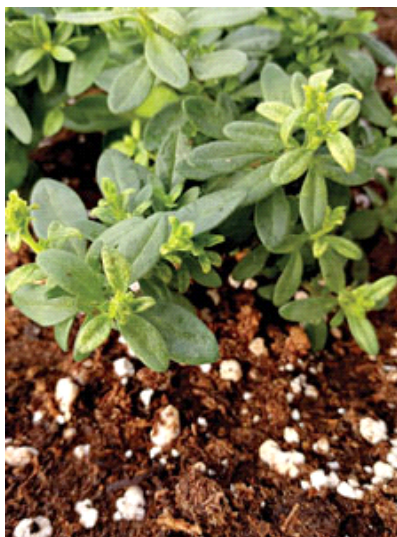
### **Discuss the issue with your grower before taking action**

Discovery of any crop loss can be upsetting and devastating to any business. However, you really don't have any time to process things emotionally. Your best bet is to approach things quietly, carefully and methodically. It's essential you pull your head grower, and any sub section or direct reports to that grower, into a private one-on-one meeting with you and a third person (preferably one without a direct investment in the company). That third person's job is to keep you centered and out of a separate lawsuit for employee abuse.

### **Offer immunity—This is essential to moving forward!**

Everyone makes mistakes; it's likely someone on your staff made a mistake. Things will go better if you take a non-punitive approach. Why? You do this because 90% of all crop "disasters" are mistakes made by employees, not caused by company products. My experience is that about 20% of these employee-caused events still wind up with accusations of some company's product being at fault, threats of lawsuits, product

distributor relations destroyed and sometimes even a real court case you lose at great financial cost above the crop loss itself—all because the grower got scared they'd lose their job and clammed up.



Be calm, and indicate that no action will be taken against the employee so long as whatever happened wasn't intentional (see second rule above). Indicate the scope of issue, but do not assign blame! Offer confidentiality for information sharing and ask non-growing related staff for their opinions on the cause. You may be surprised who knows what.

*Pictured: Mystery symptoms, such as this stunting, can lead to wild speculation.*

Take photos of the crop the day you discover the issue, and then weekly from then until a resolution. Be sure to take a panoramic view of the greenhouse interior and close-ups of not just the damaged parts, but of roots, leaves and flowers. Digital images are free, time stamped and you can store hundreds on a thumb drive.

Go over pesticide and other input records. Look for mistakes. No one is perfect. By doing this, you increase your chances of finding out what really happened and this will speed up your company's recovery tenfold.

Ask employees their opinion as to what might have happened. Take notes. Ask them to think further about it and get back to you. Do this individually for each employee involved in that crop. If the employee knows they made a mistake, they usually come forward within 48 hours.

## **Have the head grower write a narrative**

The second thing you do is have your head grower(s) write a narrative about the history and development of that crop, and the suspected issue that caused its loss, if any. This forces the head grower to work through the entire timeline and perhaps realize things that were not in mind at the onset of the issue. It's important to get this done while the crop is fresh in the mind. Save these narratives.

## **Items to pull together before you contact anyone**

Do not call anyone, including the company reps, until you have in-hand certain items: You're going to need them and making any company or extension person wait around while you do the pulling together of materials isn't going to help your cause. These items include:

- WPS records for the entire operation, including herbicide applications
- Fertility/irrigation records
- Staffing and time clock data
- In-house and external weather data

- New purchases
- Any in-house water/soil pH/EC tests
- Written observations by the growers and if you track this, the data regarding day-to-day shrink
- Electricity bills, water bills and employee time cards, if available, should be set aside covering the duration of the crop up until the issue was discovered.

## Communicate with your customers

Hiding doesn't work; if you have dated contracts or sell through your own or other retail outlets, you better be up front if there's a delay or outright crop loss. Let them know of the shortfall, but do not assign cause, blame or value to anyone at this point. If you have any doubts as to what to say to large, national audiences, consult a media specialist.

## Preserving the evidence

Please note: This is what the majority of failed lawsuits/claims stem from. **DO NOT DUMP YOUR CROP!** Wait until you know what caused the problem. There can be hundreds of causes attributed to crop losses. If you truly feel a product or external supplier's plant product is the cause, quietly begin pulling together the evidence (the materials you have involving that crop). This includes items like limestone that you don't feel is involved. If it goes into the crop, it may wind up being tested. Record product lot numbers, manufacturing dates and your receipts to prove you bought it. Not having proof of purchase was a huge issue in other cases. Never, ever, throw away input product receipts!



*Pictured: Boron, 2, 4-D, PGRs? Herbicides? Testing Required!*

Storing/saving samples of your inputs is essential. Set them aside so they're not used. Keep dry goods cool, dry and not outside in a barn. Make sure the above-mentioned bags/boxes/containers are dated and locked away. Again, unless told to do so by YOUR attorney, do NOT dump your crop. Keep growing it until the insurance company adjuster is done and your lawyer says it's okay to dump.

If you believe the issue is a volatile material, put 10 to 20 damaged plants in original pots each into plastic Ziploc bags. Place that bag in another Ziploc bag and place in a cold refrigerator or freezer. Label the bags. Review what you're providing and taking for samples. Don't forget to test amendments. Please make sure you don't appear to be hiding something by trying to make your greenhouse look good. If the photos look staged or impossibly clean, it's going to be detrimental.

## Who to contact first

In this order: contact your consultant, then your cooperative extension agent and have them review your

materials and grower narratives and then have them tour the greenhouse. They become witnesses to the time and condition at the time of discovery of the issue. Then, and only then, contact the individual product distributor you “feel” is the cause, but DO NOT assign blame to their product or to their company, especially if you have no proof.

Expect disbelief. Just as you were shocked by the issue, so will any company representative called in. They know why they’re there and you must realize they sell and believe in their products. Just let them ask questions, observe and take notes. Let the tests do the convincing.

## **Work with professional testing labs**

It’s essential you have tests performed by independent or state-run/university professional laboratories. Company tests are fine, but independent tests are far better if resolution proves difficult. Work with the best labs and don’t be afraid to spend the money necessary to support your company and your livelihood.

## **Working with product companies**

You’ll likely be visited several times by different company representatives and their technical experts. Share plant and product samples, but don’t give away all of your plants, product or any original paperwork like receipts. Copies only! Once the representative leaves, do as much communicating in writing as possible. Try not to have lengthy phone calls. If the company needs more information, tell them to request it in writing so you can think about your responses. Be calm, professional and straight up. Give them a reasonable time to investigate and respond.

## **Working with your attorneys**

The time to call an attorney is the point where you feel the product distributor or manufacturer isn’t going to properly investigate your claim. Another reason is if the product is clearly proven the cause and if they offer you a “token payment” that doesn’t cover your expenses at a minimum. Just remember, contacting a lawyer is pretty serious business ... and costly. Time is money to an attorney. The initial meeting is usually free of charge, but fees are usually between 25% to 50% of the settlement.

Be sure to ask clear, prepared questions. Remember, they don’t want to hear the drama or your grandfather’s growing philosophy. They want you to provide a summary of why you feel you have an issue with said product, what evidence you have so far and what specifically the manufacturer/distributor has done to address your issue. They will want all of your communications (in writing) with them, all of your images and the rest of the “evidence” or lab tests you pulled together.

If they accept the case, you must be efficient and quick about providing them any further information they ask. DO NOT LIE or HIDE things from your attorney. Your attorney can only help you if you’re honest with him or her. If you “cook the books,” fake your WPS records and have a secondary cash-based business on the side, you probably should tell them. This WILL be found out by the other side and exposed in court.

## **Working with insurance companies**

The role of the product manufacturer’s insurance company is not to pay you; it’s to protect the interests of the company and pay the least amount possible if the claim is proven to be valid. They will be thorough. They will be persistent. They will investigate every corner of your business if it pertains to the claim. This will take time.

You can make things so much better by cooperating, providing timely responses to questions and by being courteous.

You certainly should have your insurance company aware of the events and what's being done by the product's company insurance firm. If you have lawyers, they'll want to be informed and updated. Just a word of caution: Do not play head games with the adjustors! I've been on teams of adjustors and seen about every dumb move someone can make. They have seen it all and they know their stuff, and they understand nurseries and greenhouses. Assume they're knowledgeable, professional and have sufficient insight to see into your business operations. They'll work quickly, but your cooperation will speed things up.

## **Crop value and loss of business**

At some point, if things do go your way, the insurance company may ask you for a reasonable determination of the value of the loss. Don't do this yourself. Hire a certified public accountant at the barest minimum. Have them determine the direct inventory loss values, present value of the crop and "loss of business" issues. Again, I worked on the other side helping insurance companies come up with their own internal estimate of the above.

The two estimates will have to be reconciled. One item that catches most business owners flat footed is when the lawyers or insurance companies ask for the sales and inventory figures for the last few years.

Example: You claim you've experienced a million dollars in lost sales from this crop. They'll likely review your past five year's sales. The sales had better be close to a million dollars each year or you better have a good reason why this crop was different. Most importantly, you'll also likely be required to provide past years' IRS filings. Again, in a court of law or during a deposition, you'll be under oath.

## **Consider a settlement instead of a lawsuit**

No one likes to think they can't win a lawsuit, but in fact, a vast majority of cases are settled out of court. If there's to be a settlement, it'll be directed and choreographed by your attorney. They know from experience if a settlement is reasonable and if one is likely. Follow their advice. Your attorneys can advise you on specifics, but just know they'll expect their time and effort to be part of the compensation.

## **Have a reasonable time expectation**

For small losses, claims can come to resolution within six months—notice I said resolution, not settlement. You may not get a penny. For most cases I've been involved with, it took 12 to 18 months for a resolution. For the larger cases involving millions of dollars, I've seen resolutions take three to five years. You can easily see that, for most circumstances, you won't have a new crop in place for sale or the cash in hand to handle that season's cash flow shortfall. This leads me to the secret method to surviving total crop losses and keeping your business afloat you can establish now.

1. Estimate from last year's crops how much operating cash it takes to repopulate and operate a growing season in the greenhouse. Somehow, some way, have that value of cash in the bank as a liquid asset, as a rainy-day fund.
2. Pre-test your major purchase input before you plant a half-million-dollar crop. Use a few petunias and New

Guinea impatiens as a quick test crop. Keep them around to test a new pesticide or crop treatment 48 hours before you use the entire 100-gal. tank on your half-million-dollar crop.

3. Re-enforce recording thorough pesticide and fertility treatment records. Crop journals are the No. 1 tool for crop issue resolution, and because you now check them often, it keeps grower's eyes on the crop and what they're doing.

## **Cut yourself, and your staff, a break**

Just a personal observation here: Once the matter has come to resolution, have a company picnic, an evening BBQ or some other way to celebrate and give the employees, and you, closure. You and your family should take a week off on vacation. Huge crops losses can be gut-wrenching and cause upheaval in your life. Having been involved in this process for many years, your best decision will be to take a break and reset your mental clock. Things will get better. **GT**

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