

# Getting Paid — What Operators Can Do

by Lawrence S. Ebner

1985 was a tough year for farmers — and an even tougher one for aerial operators who did not get paid for the services they performed. To ensure economic survival in 1986, many operators may have to place a limit on their own patience and good will. They may have to change the way they normally do business and begin withholding service from delin-

quent customers, running credit checks on new customers, using written service agreements, or requiring full or partial payment in advance or at the time service is rendered.

Even with these and similar measures, aerial operators may find themselves at the back of a long line of creditors. An “unsecured” operator has the lowest priority. He is simply a creditor; and without voluntary payment by the farmer a creditor must obtain a court judgment to force payment. Those with priority over unsecured operators are judgment creditors (creditors who already have obtained a judgment against the farmer for another debt), creditors who have obtained consensual security agreements from the farmer, and lien creditors (creditors who have filed statutory liens against the farmer’s crops or property).

To determine whether a prospective customer is a poor credit risk, operators should determine how many other creditors already have a security interest or a lien on the farmer’s property. The farmer’s primary lender often can be a good source of information, although not all lending institutions are willing to disseminate such information. Additionally,

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any creditor having a security interest in the farmer's property is required to file a financing statement with the secretary of state or the county recorder. Use of a professional search service can help identify such creditors.

To increase the chances of getting paid, operators should consider taking steps to achieve priority over other creditors of the same customer. For example, an operator may want to insist on a written security interest in the farmer's crops or property (collateral) in which there is no prior security interest. The security interest must be perfected by filing a financing statement with the secretary of state or county recorder. If the farmer then defaults on his obligation, the operator is entitled to take possession of the collateral without judicial process, assuming that can be accomplished without a breach of the peace.

An alternative to the security agreement is the special statutory lien which recently has been enacted in some states (for example, Nebraska, North Dakota, Kansas, Iowa, and Minnesota). These statutes generally give a lien on crops to the suppliers of agricultural chemicals. Like a security agreement, the lien must be perfected by filing with the secretary of state or county recorder within the time period provided by the statute.

While these liens do not necessarily give the lien-holder priority over other liens or security interests, they offer some payment security by enabling the lienholder to bring a court action to enforce the lien. The primary benefit of these statutory liens, however, seems to be leverage. Often the threat of a lien may be enough to produce payment of the debt. In this regard, the aerial operator should make careful note of the time period for filing the lien as provided in the state statute.

The other main benefit of some of the lien statutes is that they require banks to cooperate in providing financial information. If the bank does not cooperate, the op-

erator's lien will have priority.

If an operator has no security agreement or statutory lien on a delinquent customer's crop or property, he must resort to a succession of coercive tactics to force payment. These usually begin with "friendly" reminders that the account is overdue and that remittance would be appreciated.

Such reminders can be a simple sticker attached to the monthly billing or a separate, more formal notice with return envelope. If you have a lawyer, consider having him send a letter. Should such attempts fail, the only recourse left may be contacting a collection agency or an attorney to begin legal action. ▼

