

STATE ENVIRONMENTAL LAWS AFFECTING MICHIGAN AGRICULTURE

*(See NASDA's website for
Federal Environmental Laws Affecting U.S. Agriculture)*

A Project of the

**National Association of State Departments
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Research and Information**

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The Project Participants

National Association of State Departments of Agriculture Research Foundation

The National Association of State Departments of Agriculture (NASDA) is a nonprofit, nonpartisan association of public officials comprised of the Commissioners, Secretaries, and Directors of the fifty State Departments of Agriculture in the fifty states and the territories of Puerto Rico, Guam, American Samoa, and the Virgin Islands. NASDA's mission is to represent the State Departments of Agriculture in the development, implementation, and communication of sound public policy and programs which support and promote the American agricultural industry while protecting consumers and the environment. The NASDA Research Foundation is a 501(c)(3) nonprofit, tax-exempt corporation for educational and scientific purposes.

National Center for Agricultural Law Research and Information

The National Center for Agricultural Law Research and Information (Center) was created in 1987 under Public Law 100-202, 101 Stat. 1329-30 to address the complex legal issues that affect American agriculture. The Center focuses its efforts on research, writing, publishing, development of library services, and the dissemination of information to the public. The Center is located at the University of Arkansas School of Law in Fayetteville, Arkansas.

Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service (SCS), is a federal agency within the U.S. Department of Agriculture (USDA). NRCS conservationists work with private landowners and operators to help them protect their natural resources.

U.S. Environmental Protection Agency

The U.S. Environmental Protection Agency (EPA) is a federal agency with primary responsibility for implementation of most federal laws designed to protect, enhance, and conserve the nation's natural resources.

Disclaimer

This guide is designed for use by farmers, ranchers, landowners, and their consultants in understanding the effect environmental laws have on agricultural operations. It is not a substitute for individual legal advice. Producers should always confer with their own attorneys, consultants, or advisors, as well as federal, state, and local authorities responsible for the applicable environmental laws.

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The contents and views expressed in this guide are those of the authors and do not necessarily reflect the policies or positions of the United States Department of Agriculture (USDA) NRCS or EPA.

Although every effort has been made to ensure the accuracy of the information contained in this book, environmental statutes, regulations, and ordinances are constantly changing. In addition, the overwhelming complexity and extent of environmental law make it impossible for a single book to describe in complete detail and depth all of the environmental laws and regulations impacting agricultural operations. The following material is simply a basic primer on environmental law for agricultural producers. For these reasons, the utilization of these materials by any person constitutes an agreement to hold harmless the authors, contributors, reviewers, the National Center for Agricultural Law Research and Information, the University of Arkansas, the United States Department of Agriculture, the National Association of State Departments of Agriculture Research Foundation, the Natural Resources Conservation Service, the state of Michigan and the United States Environmental Protection Agency for any liability, claims, damages, or expenses that may be incurred by any person or organization as a result of reference to, or reliance on, the information contained in this book.

The background research and final documents were completed in October 2000.

Anyone with comments concerning the guide should contact the NASDA Research Foundation at 1156 15th Street, N.W., Suite 1020, Washington, D.C. 20005, or phone (202) 296-9680.

Quick Reference Guide

Producer Note: The following chart is intended as a quick reference guide to permits which may be necessary for a particular operation. If a permit is necessary, refer to the page numbers listed referencing this document for further information and contact the agencies listed in the final column for information on applications and procedures for securing a permit for an operation. A list of agencies and contact information is also provided in Appendix A.

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 1-5</i>	Livestock and aquaculture operations, depending on size	NPDES and state general permit or land disposal permit	Environmental Protection Agency (EPA) Regional Office , Michigan Department of Environmental Quality (DEQ), and Michigan Department of Agriculture (DOA)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit	U.S. Army Corps of Engineers with EPA and Michigan DEQ approval
	Water usage	No permit, but some facilities may be required to report water withdrawals	Michigan DEQ
Groundwater <i>pp.5-6</i>	Groundwater protection	No permit if BMPs are followed unless size restrictions exceeded	Michigan DOA
	Water well construction and use	No permit, but construction standards must be followed	Michigan DEQ
Air Quality <i>pp. 6-8</i>	Grain terminals and grain elevators	Permit required	EPA Regional Office or Michigan DEQ
	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance suits	EPA Regional Office or Michigan DEQ

Regulatory Area	Type of Activity	Permit Required	Agency
	Burning	Permit required in certain circumstances	Michigan DEQ
Solid Waste and Hazardous Waste <i>pp. 8-11</i>	Storage, treatment, or disposal of hazardous or solid waste	Permit required for disposal, treatment, or storage activities	EPA Regional Office and Michigan DEQ
	Public notice of hazardous waste	No permit	Local Emergency Planning Committee and Michigan Consumer and Industry Services
Pesticides and Chemigation <i>pp. 10-12</i>	Application and use of pesticides	No permit, but certification and a business license may be required	EPA and Michigan DOA
	Use of pesticides around farm workers	No permit, but training and notification is required	EPA and Michigan DOA
	Record keeping	No permit, but all requirements must be met	United States Department of Agriculture (USDA) and Michigan DOA
Wildlife Protection <i>pp. 12</i>	Taking of wildlife	Permit required if endangered or threatened species may be affected	U.S. Fish and Wildlife Service and Michigan Department of Natural Resources

STATE ENVIRONMENTAL LAWS AFFECTING MICHIGAN AGRICULTURE

Producer Note: Agricultural producers are faced with many challenges in today's rapidly changing world. Changes in industrialization, use of computer-based technology, governmental involvement in market dynamics, and environmental regulation are affecting producers in a number of ways. Environmental regulation is a complex area with both federal and state government involvement. Staying informed is the producer's most useful instrument for meeting the challenges of today's agriculture. This information on environmental regulation is provided to inform producers of the breadth and scope of environmental laws which may impact daily production activities.

I. WATER QUALITY

A. Michigan Water Quality Laws and Regulations

1. Michigan Overview

Most states have enacted clean water legislation. While these statutes usually contain provisions similar to those found in the parallel federal legislation, there may be significant differences. In fact, state statutes may impose requirements that are even more restrictive than the federal law. In all cases, Clean Water Act (CWA) requirements must be followed and enforced along with the state enacted statutes and regulations implemented by state administrative agencies.

Because Michigan is a Great Lakes state, there are special laws in effect to protect these waters. Producers should be aware that, depending on their location, they may be subject to more stringent regulations than other non-sensitive watershed areas.

2. Michigan Water Quality Standards

The Department of Environmental Quality (DEQ) has the authority in Michigan to promulgate rules and establish pollution standards for waters of the state with respect to the pollution control of surface and ground water including the Great Lakes.¹ The DEQ has broad powers to prevent and to address pollution of the waters of Michigan.² If a producer plans to conduct agricultural activities within a floodplain, the DEQ should be contacted so that together a

¹ MICH. COMP. LAWS ANN. § 324.3103 (West 1999).

² MICH. COMP. LAWS ANN. § 324.3106 (West 1999).

plan can be worked out.³ The DEQ has the right to enter onto land to inspect or investigate conditions of that land. The producer should be aware of the government's right to enter, but the entry must occur at reasonable times and for the purpose of inspection and investigation times.⁴

Regarding discharges, the Michigan statute sets forth that "a person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following: a) to the public, health, safety, or welfare, b) to...agricultural...uses that are being made or may be made of such waters, d) ...to livestock, wild animals, birds, fish, aquatic life, or plants or to the growth, propagation, or the growth or propagation thereof..."⁵ Thus, persons are liable for discharges which may affect livestock, animals, or crops, and wildlife, birds, fish, and their habitat.

3. *Michigan CAFOs and NPDES Permits*

Under the CWA, EPA has delegated the National Pollution Discharge Elimination System (NPDES) permit program to many states. NPDES permits are generated to protect designated uses of the water, to meet specific in-stream criteria, and to require compliance with water quality-based and technology-based requirements for a given discharge. In 1973, EPA approved a state program for Michigan that was viewed across the nation as a model program. Oversight authority for Michigan's program originally rested with the Water Resources Commission but currently rests with the Department of Natural Resources after a state agency reorganization in 1991. The early EPA-approved program, however, did not include a state delegated NPDES permit program for livestock producers or animal feeding operations.^{6 7} Despite the absence of NPDES permits, the approved program set forth that Michigan livestock producers were to work voluntarily to protect the environment. Accordingly, Michigan uses two tools--the Right to Farm Act and the Generally Accepted Agricultural and Management Practices (GAAMPs)--to encourage Michigan livestock producers to voluntarily protect the environment.

³ MICH. COMP. LAWS ANN. § 324.3104 (West 1999).

⁴ MICH. COMP. LAWS ANN. § 324.3105 (West 1999).

⁵ MICH. COMP. LAWS ANN. § 324.3109 (West 1999).

⁶ There is a Memorandum of Understanding between the Michigan Department of Environmental Quality (DEQ) and the Michigan Department of Agriculture (DOA) regarding the process of handling manure discharge incidents through the Right to Farm Act complaint process.

⁷ Nonetheless, if an animal or aquatic feeding operation is or is considered a point source discharger, Michigan requires the facility to have a certified operator in charge of its wastewater treatment facilities.

The Right to Farm Act provides a producer a basis for defense against a claim of nuisance. (See the Michigan Right to Farm section.) In conjunction with the nearby land use changes⁸ defense in the Right to Farm Act,⁹ Michigan has developed Generally Accepted Agricultural Management Practices in three specific areas to also serve as a basis for a defense. These GAAMPs are based on the best available technology and scientific research.¹⁰ Besides serving as a defense to a nuisance claim, the Right to Farm Act encourages the use of the GAAMPs by providing financial incentives to producers to implement them. The three areas where GAAMPs have been developed include:

- 1) Nutrient utilization;
- 2) Pesticides utilization and pest management; and
- 3) Manure management and utilization which encompasses production, collection, storage, transfer, treatment, utilization, and record keeping; an important requirement of a GAAMP is that the livestock producer must manage the manure and wastewater handling system in a manner that minimizes any negative effect on the environment.

Drafters of the Right to Farm program anticipated citizen environmental complaints and set forth the procedure to respond to complaints and environmental problems. As an innovator, Michigan was one of the first states to create a formal Memorandum of Understanding (MOU) between the Michigan Department of Agriculture (DOA) and what is now the Department of Environmental Quality (DEQ). This MOU allows the DOA to handle the educational aspects of Right to Farm and to verify any complaints received. It allows the DEQ to enforce provisions of the federal CWA and to issue penalties against producers who are in violation of the Right to Farm Act's GAAMPs and who fail to implement corrective measures.

Michigan currently has a zero waste discharge policy for the waters of the state and has refused to consider issuing NPDES permits for CAFOs. The EPA's position is to maintain an inspection presence until a final EPA report is issued or compliance occurs.

To avoid the mandatory NPDES permit system, Michigan has proposed an Agricultural Environmental Assurance Program (AEAP) that would provide a voluntary process of meeting the Environmental Protection Agency's Unified Strategy CAFO standards for operations with

⁸ Land use changes within one mile of the farm's boundary that occur after the existence of the farm operations will not serve as a basis for a nuisance claim against the farm's operations.

⁹ MICH. COMP. LAWS ANN. §§ 286.471 - .474 (West 1999); Michigan's Right to Farm Act also offers some protection from public or private nuisance suits if the farm existed prior to a land use change within one mile of the farm boundaries and the farm operation would not have been a nuisance before the change in land use occurred.

¹⁰ GAAMPs are updated annually to promote sound environmental stewardship.

1,000-head animal units or more, as well as smaller operations. The AEAP includes proactive environmental assurance programs that provide education, on-farm technical assistance, environmental risk assessments, site-specific action plans (not merely size dependent), Comprehensive Nutrient Management Plans (CNMP), plus Environmental Assurance Certification.

4. *Michigan Wetlands*

Wetlands in Michigan are protected by the Goemaere-Anderson Wetland Protection Act originally passed in 1979. The law is now Part 303 of the Natural Resources and Environmental Protection Act (NREPA), Public Act (P.A.) 451 of 1994. The NREPA provides for the preservation, management, protection, and use of wetlands; it requires permits to alter wetlands, and it provides penalties for illegal wetland alteration. The Land and Water Management Division within DEQ has responsibility for issuing permits to dredge, fill, drain, construct, operate, or maintain any use or development in a wetland.

Michigan is one of two states allowed to assume federal permitting authority to regulate the dredging and filling of wetlands in areas except in the coastal areas where the Army Corps of Engineers retains authority. The Michigan DEQ administers the program in accordance with Section 404 of the CWA regulation and various Memoranda of Agreement.

Caution: Because environmental laws and regulations change frequently, all producers must stay in contact with both state and federal officials in order to remain aware of and in compliance with changes in the law.

Producer Note: Often the specifics of environmental laws are found in agency regulations. In addition, regulations are likely to be amended frequently. As a result, a producer must stay in contact with offices administering specific programs in order to keep up with all changes which may occur.

5. *Michigan Iron Ore Mining and Phosphorous*

There are special rules in Michigan for the mining of iron ore and its affect on the waters of the state.¹¹ There is also a prohibition against selling cleaners, rinsing aids, or sanitizing agents for use in dairy, egg, fish, or other food manufacture, preparation, or processing of foods that contain more than 14% elemental phosphorous by weight.¹² This prohibition is due to its ability

¹¹ MICH. COMP. LAWS ANN. §§ 324.3501- .3508 (West 1999).

¹² MICH. COMP. LAWS ANN. § 324.3901 (West 1999); however, the phosphorous restriction is 8.7% elemental phosphorous by weight when applied to cleaning agents such as laundry detergents, household cleaners, and dishwashing compounds.

to spur the growth of vegetation in waters such that the vegetation interferes with the use of that water by humans and animals.

6. Michigan Enforcement

It is unlawful for a person to discharge waste or waste effluent into the waters of the state without a valid permit from the department.¹³ If a person is denied a permit,¹⁴ they can appeal the decision through procedures set out in the administrative procedures act. If a person is found to violate the sections of this act, they may be subject to both civil and criminal penalties.¹⁵

II. GROUNDWATER

A. Michigan Groundwater Laws and Regulations and the Freshwater Protection Act

The Freshwater Protection Act provides for the proactive protection of groundwater from contamination by pesticides and fertilizers through the development of groundwater stewardship practices and a voluntary on-site assessment system.¹⁶ Programs are implemented through local groundwater stewardship teams and various agencies under the guidance of Michigan's DOA. Education, technical assistance, and cost-share programs are available for the implementation of groundwater stewardship practices.

Two programs developed under environmental stewardship practices include the Michigan Clean Sweep program that focuses on the safe disposal of unwanted or canceled pesticides and the Pesticide Container Recycling Program that allows pesticide users to bring clean (triple-rinsed), empty containers to preselected sites for grinding and recycling into a variety of products. This reduces the potential for adverse environmental impacts and saves valuable space in sanitary landfills.

¹³ MICH. COMP. LAWS ANN. § 324.3112 (West 1999).

¹⁴ MICH. COMP. LAWS ANN. § 324.3113 (West 1999).

¹⁵ MICH. COMP. LAWS ANN. §§ 324.3114 - .3115 (West 1999).

¹⁶ The Michigan DOA promotes the use of the assessment system based on the Farm A Syst package that is designed to show pesticide and fertilizer users whether and to what degree farmers are following groundwater stewardship practices.

Producer Note: Local groundwater stewardship teams are involved with education, demonstration projects, workshops, technical assistance, on-site assistance, stewardship plans, private well sampling, grants-in-aid, emergency response, and land application of pesticide and fertilizer-contaminated materials. For more information, contact the Michigan DOA at (517) 335-6529.

III. AIR QUALITY

A. Michigan Air Quality Laws and Regulations

The Michigan Air Pollution Control Act¹⁷ (APCA) establishes the state's air pollution control program and serves as the principal source of air quality regulation. The APCA is administered by the Air Quality Division (AQD) within DEQ. The AQD has broad powers to develop plans for the control and abatement of air pollution. It coordinates state and local efforts in controlling air pollution and regulates sources of air pollution.

While most agricultural operations do not violate the air pollution laws of Michigan, odors from farm operations that use GAAMPs are by definition not considered air polluters. Nonetheless, there are a few regulations that producers should be aware. Generally, these regulations include:

- ! Sources of air contaminants should not cause unreasonable interference with the comfortable enjoyment of life and property;
- ! Grain terminals and grain storage facilities subject to New Source Performance Standards must annually calculate and report emissions so that a fee can be assessed;
- ! Unpermitted open burning is not allowed; however, exceptions exist; unless prohibited by local laws or regulations, exceptions to unpermitted open burning include:
 - Waste disposal materials from one or two family dwellings;
 - Fire prevention training materials and structures with DEQ approval;
 - Trees, logs, brush, and stumps but not closer than 1,400 feet to city limits;
 - Bee keeping equipment and products burned for bee disease control; and
 - Materials for food preparation and recreation.

¹⁷ MICH. COMP. LAWS ANN. §§ 324.5501 - .5542 (West 1999).

- ! Visible emissions greater than 20 percent average opacity are prohibited with the exception of one emission per hour of 27 percent opacity being allowed; and
- ! Some agricultural sources are required to report annual emissions; however, emission sources are notified by DEQ and the necessary reporting forms are supplied.

There is a permitting process in place for all sources that emit an air contaminant in Michigan including agricultural activities.¹⁸ The generation of air pollutants from a process or equipment in Michigan is not allowed without a permit to install. A permit to install must be applied for and received before any process or process equipment that is a source of air pollution may be installed, constructed, reconstructed, modified, relocated, or altered unless an exemption applies. Sources that were installed before 1967 are presently "grandfathered" and are not required to be permitted unless the equipment or processes are modified. Note, however, that emissions from grandfathered equipment may be subject to control requirements or to the renewable operating permit program discussed below. Exemptions from the permit to install requirements are applicable to the following agricultural activities:

- ! Livestock and livestock handling systems from which the only potential air emissions is odorous gas;¹⁹
- ! Equipment for handling and drying grain on a farm;²⁰ and
- ! Commercial equipment used for grain unloading, handling, cleaning, storing, loading, or drying in a column dryer in which exhaust gases pass through a screen filter no coarser than 50 mesh.²¹

Producers should not purchase equipment that produces air contaminants before receiving a permit to install unless the producer recognizes that the action may be risky. If an air permit is not approved by AQD, the equipment cannot be installed or operated even if large sums have been invested in it. The DEQ suggests that permits to install be obtained before making such purchases. A valid permit and proper operations will usually prevent problems for producers.

An application for a permit to install must be made to AQD. Applications for permits to install that are not controversial and that are minor sources of air contaminants are processed by

¹⁸ MICH. COMP. LAWS ANN. §§ 324.5505 - .5512 (West 1999); and see corresponding Michigan Administrative Code R336.1201.

¹⁹ Michigan Administrative Code R336.1285(n).

²⁰ Michigan Administrative Code R336.1285(o).

²¹ Michigan Administrative Code R336.1285(p).

the AQD. Controversial applications and most major source permits are subject to public notice and public hearings and may require consideration by the DEQ Director.

The permit to install will include two kinds of provisions: general conditions and special conditions. The general conditions are included in all permits and will not be modified by the AQD. Applicants are generally given an opportunity, however, to comment on special permit conditions.

The permit to install allows an individual process or operation of individual pieces of equipment as long as the permit conditions are followed. If the source is subject to a renewable operating permit (a facility-wide permit), the terms of the permit to install govern until its terms and conditions are incorporated into the renewable operating permit. The permit to install then becomes void.

There are regulations of emissions addressing “fugitive dust.” For example, Michigan’s DEQ may request a source to draft and submit a fugitive dust control program if ambient air quality measurements exceed a threshold or substantive complaints are received about the emissions. Sources may include any facility that processes, stores, transports, or conveys bulk materials such as grain and granular fertilizer. The producer should be aware of these regulations although it is not likely that their operations would fall under the auspices of these regulatory standards.²² Violators of these laws and regulations may result in a civil or criminal fine.²³

IV. SOLID WASTE AND HAZARDOUS WASTE

A. Michigan Solid Waste and Hazardous Waste Laws and Regulations

1. Michigan Solid Waste Laws and Regulations

Producer Note: While most farmers and ranchers are not generators, transporters, or disposers of solid waste as defined by federal laws and regulations, it is important to check with state officials concerning definitions of solid waste under state statutes for solid waste and hazardous waste to determine whether an operation's activities could be regulated. Michigan’s definition of solid waste includes animal waste.

The Michigan Solid Waste Management Act (SWMA), Public Act 641 of 1978 regulates household, commercial, and industrial wastes in the state. The SWMA defines waste types²⁴ and

²² MICH. COMP. LAWS ANN. §§ 324.5524 - .5525 (West 1999).

²³ MICH. COMP. LAWS ANN. §§ 324.5528 - .5535 (West 1999).

²⁴ Within the definition of solid waste.

sets standards for waste disposal and disposal facilities. The SWMA does not address the use or disposal of animal manure generated by livestock and poultry. Applications of manure to farmland are addressed under the GAAMPs for Manure Management and Utilization in the Michigan Right to Farm Act, Public Act 93 of 1981.²⁵ The stated public policy behind the disposal of solid waste is that the disposal must be environmentally sound.²⁶

However, a producer must be aware that they may fall under the definition of a solid waste transporter when they haul manure over public roads.²⁷ Farmers should make sure that the transporting vehicle does not contribute to littering and that it conforms to all rules and regulations regarding solid waste since penalties including fines and imprisonment are applicable.²⁸

2. Michigan Farm Implements and Junk Motor Vehicles

Interestingly, Michigan has a program in place for municipalities or counties to establish and operate a collection for junk motor vehicles or farm implements.²⁹ The law sets out a method for the collection of junk motor vehicles or farm implements through a collection center and disposal through a process of competitive bidding.³⁰

3. Michigan Underground Storage Tanks

Michigan has an Underground Storage Tank (UST)³¹ program in place that mandates all USTs be registered, inspected, identified if leaking, and removed if sites are contaminated along with clean up of the site. This program addresses tanks and containers that store three products: flammable and combustible liquids, liquefied petroleum gas, and compressed natural gas. Septic tanks and heating oil tanks for on-premise heating are excluded from regulation as well as tanks 1,100 gallons or less as well as 2,000 gallons or less if used for liquefied petroleum gas unless the site capacity exceeds 4,000 gallons. Leaking USTs (LUSTs)³² must be reported within 24 hours; owners or operators must hire a qualified UST consultant to correct the leaking and perform

²⁵ MICH. COMP. LAWS ANN. §§ 286.471- .474 (West 1999).

²⁶ MICH. COMP. LAWS ANN. § 324.11507 (West 1999).

²⁷ MICH. COMP. LAWS ANN. § 324.11527 (West 1999).

²⁸ MICH. COMP. LAWS ANN. § 324.11549 (West 1999).

²⁹ MICH. COMP. LAWS ANN. § 324.11530 (West 1999).

³⁰ *Id.*

³¹ MICH. COMP. LAWS ANN. §§ 324.21101 - .21112 (West 1999).

³² MICH. COMP. LAWS ANN. §§ 324.21303 - .21330 (West 1999).

cleanup; cleanup criteria must be conducted in accordance with the American Society for Testing and Materials Standards Guide for Risk Based Corrective Action. The Michigan UST Financial Assurance (MUSTFA)³³ program provides financial assistance for contamination clean up.

4. *Michigan Hazardous Waste Laws and Regulations*

The Michigan Hazardous Waste Management Act, Public Act 64 of 1979 requires proper disposal of pesticides and pesticide containers.³⁴ Pesticides and pesticide containers are considered hazardous wastes and are subject to regulations as hazardous waste unless they are disposed properly. Wastes generated by crop production and animal production are not considered hazardous wastes.

Producers can dispose of waste or excess pesticides by using the total volume of the pesticide according to the pesticide label, or they can turn in pesticides during an approved pesticide collection program, e.g. the Clean Sweep program. Otherwise, the pesticides are subject to all state and federal hazardous waste laws and regulations. Producers are encouraged to purchase only those pesticides they are certain to need and mix only the quantities they are certain to need. A producer must be sure to comply with all disposal rules regarding any material that is used on the farm that may be deemed “hazardous.” See more detail in the pesticide section that follows.

V. PESTICIDES

Producer Note: Use of pesticides and other farm chemicals is regulated by federal and state statutes. Most states have some form of licensing or certification requirements controlling those who use pesticides. In addition, if a producer employs agricultural workers, there are regulations which address safety concerns about pesticide use by or around those workers.

³³ MICH. COMP. LAWS ANN. §§ 324.21501 - .21551(West 1999).

³⁴ MICH. COMP. LAWS ANN. § 324.8322 (West 1999); storage and handling of pesticides are addressed by the Pesticide Control Act, Public Act 171 of 1976.

A. Michigan Pesticide Laws and Regulations

Producer Note: Michigan, like most states, has laws designed to control the use of pesticides. The laws are designed to closely monitor the distribution and ultimate use of these substances within the state.

The Michigan Pesticide Control Act (PCA), Public Act 171 of 1976 is the primary legislation addressing pesticides in Michigan. The Michigan Department of Agriculture (DOA) has the authority to administer this law. Generally, pesticides are regulated according to their classified type³⁵ (general use or restricted use), their label, their applicator (private or commercial), and their distribution (to dealers or end users) The PCA, thus, regulates the registration of pesticides, the certification of applicators, and the licensing of dealers (of restricted use pesticides).³⁶

Certification of applicators in Michigan parallels the federal law³⁷ and regulations. In order to apply or supervise the use of any restricted use pesticide in Michigan, a private agricultural applicator or a commercial applicator must be properly certified.³⁸ However, persons applying general use pesticides for a private agricultural purpose are exempt from the certification requirement.

To become certified applicators,³⁹ persons must pass an exam to demonstrate their practical knowledge of the principles and practices of pest management and the safe use of pesticides. Producers should be aware that there is an small application fee for private agricultural applicators.

Aerial applications of pesticides must meet certain specific standards. They include at least three years experience with not less than 200 hours of agricultural aerial application experience under the supervision of a commercial aerial applicator.⁴⁰ There is a training program requirement and a requirement that the applicator undergo a performance test every three years.

³⁵ EPA lists all federal restricted use pesticides; states may be more restrictive and add pesticides to the restricted use classification; pesticides that are not classified as restricted use pesticides are classified as general use pesticides.

³⁶ MICH. COMP. LAWS ANN. §§ 324.8301 - .8336 (West 1999).

³⁷ Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

³⁸ MICH. COMP. LAWS ANN. § 324.8311 (West 1999).

³⁹ Registered applicators must also pass an exam to demonstrate their practical knowledge of the principles and practices of pest management and the safe use of pesticides but may not apply restricted use pesticides unless they are under direct supervision of a certified applicator; see MICH. COMP. LAWS ANN. § 324.8311 (West 1999).

⁴⁰ MICH. COMP. LAWS ANN. § 324.8315 (West 1999).

Additional regulations for pesticide use include:

- ! Standards related to the calibration of application equipment, prevention of pesticide run-off, drift, or off-target direct discharge, and minimization of exposure to humans, livestock, domestic animals, and wildlife;
- ! Management plans for pesticide drift;
- ! Notification and posting requirements for medically sensitive persons and organic farms registered in the affected area as well as golf courses, rights-of-way, lawns, commercial buildings, and public buildings; and
- ! Restricted use pesticides may be sold only by persons holding a dealer's license for restricted use pesticides; dealers must pass a written exam for their licensing requirement; and sales of all restricted use pesticides must be recorded and reported to the DOA monthly.

The Michigan DOA in partnership with private industry and local cooperators have established a voluntary Clean Sweep program. The Clean Sweep program is designed to help reduce potential adverse impacts of pesticides that are no longer useable. Anyone who has old, banned, unregistered, or otherwise unusable pesticides can participate in this disposal program. The Clean Sweep program maintains permanent collection sites throughout Michigan where local cooperators arrange for the collection, storage, and disposal of unusable pesticides. These services are generally provided free of charge. For more information, contact the Michigan DOA at (517) 335-6529.

Michigan rules allow for the management of excess pesticides and pesticide containing materials. This includes the management of diluents, soils, sediments, debris, or other solids containing pesticides. Regulations require proper disposal which includes application of materials to a site in accordance with the pesticide label. Contact the Michigan DOA for more information.

VI. PROTECTION OF WILDLIFE

Producer Note: Agricultural producers also have responsibilities concerning wildlife and migratory birds which may have habitat on the producer's property. Federal and state laws contain measures designed to protect or enhance wildlife or wildlife habitat.

A. Michigan Wildlife Protection Laws and Regulations

Producer Note: Many states have additional measures which either enhance protections under federal laws or address issues peculiar to wildlife found within the state. These states also may address common problems caused by wildlife. Michigan has laws protecting wildlife.

Michigan has an endangered species law that is intended to comply with and support the federal endangered species act.⁴¹ The Michigan Department of Natural Resources (DNR) has the authority to determine endangered or threatened species within the state.⁴² Farmers should be aware of hunting and fishing regulations so that if the taking of an animal occurs on their property, they are not in violation of any laws.

VII. ENFORCEMENT OF STATE ENVIRONMENTAL LAWS

As with federal environmental laws, persons who violate the regulatory requirements of state environmental laws face substantial penalties. The specific penalties vary to some degree with each statute. However, they generally include both civil and criminal fines. Additional fines can be assessed for each day that a person remains in violation. For severe or repeated violations, jail sentences can be imposed. State agencies can also bring proceedings, either in court or before an administrative tribunal, to enjoin a producer's activities and force compliance with the statute. In some cases, citizens may file suits to enforce the requirements of the environmental laws. As with the federal statutes, state laws afford producers the right to administrative and/or judicial review of agency decisions.

VIII. OTHER MICHIGAN STATUTES AFFECTING AGRICULTURE

A. Farmland and Open Space Preservation

There is a process for Michigan property owners to establish agreements for the restriction of farmland development rights. The purpose of the process is to ensure that the character of the farmland remains and that future development on the farmland will not interfere with farming operations.⁴³ There are tax advantages associated with the agreements to restrict farmland development rights that a producer may wish to capitalize upon.⁴⁴

⁴¹ MICH. COMP. LAWS ANN. § 324.36502 (WEST 1999).

⁴² MICH. COMP. LAWS ANN. § 324.36503 (WEST 1999).

⁴³ MICH. COMP. LAWS ANN. §§ 324.36101 - .36117 (West 1999).

⁴⁴ MICH. COMP. LAWS ANN. § 324.36109 (West 1999).

Procedures also exist for the relinquishment of land from a development rights agreement. A course of action is set forth regarding the development rights if a sale or division of the property should occur.⁴⁵

B. Michigan Right to Farm Act

The Michigan Right to Farm Act⁴⁶ is designed to protect the interests of farmers and agriculture. The law provides a producer a foundation for a defense against a claim of being a private or public nuisance. A farming operation is exempt from being declared a nuisance if the farm is managed and operated according to Generally Accepted Agricultural and Management Practices (GAAMPs). These GAAMPs are based on best available technology and scientific research and are reviewed annually by the Michigan Commission of Agriculture.

The Right to Farm law also provides protection from being declared a public or private nuisance if the farm was in existence before there was a change in the land use within one mile of the boundary of the farm. This protects farms that are being encroached by suburban sprawl from new neighbors claiming that the farm is a nuisance.

A farming operation that is in conformance with the Right to Farm Act provisions will not be deemed a nuisance if:

- ! There is a change in ownership or size of the operation;
- ! There is a temporary period of cessation or interruption in farming on the land;
- ! The operation is enrolled in government programs;
- ! There is an adoption of new technology at the operation; or
- ! There is a change in the type farm product being produced.

This law is in place to protect an existing operation from nuisance claims unless there are adverse effects on the environment or public health. The Right to Farm Act preempts local ordinances, regulations, or resolutions that purport to extend or revise the provisions of the act or GAAMPs developed under the act.

⁴⁵ MICH. COMP. LAWS ANN. § 324.36110 (West 1999).

⁴⁶ MICH. COMP. LAWS ANN. §§ 286.471 - .474 (West 1999).

Appendix - Agencies

Producer Note: State agencies are available to answer questions regarding environmental matters and a producer's compliance with environmental laws and regulations. The following is a list of agencies which should be able to answer questions or provide materials for a producer.

STATE AGENCIES:

Michigan Department of Agriculture

P. O. Box 30017
Lansing, MI 48909
(800) 292-3939 toll free
(517) 373-1104
(517) 335-7071 fax
Spills Hot Line
(800) 405-0101
<http://www.mda.state.mi.us>

Divisions:

Animal Industry

(517) 373-1077
(517) 373-6015 fax

Environmental Stewardship (Clean Sweep & Pesticide Container Recycling Programs)

(517) 241-0236
(517) 335-3329 fax

Food and Dairy

(517) 373-1060
(517) 373-3333 fax

Agriculture Development

(517) 241-2178
(517) 335-0628 fax

Pesticide and Plant Pest Management

(517) 373-1087
(517) 335-4540 fax

Michigan Department of Environmental Quality

P.O. Box 30473
Lansing, MI 48909-7973
(517) 373-7917
(517) 241-7401 fax
Pollution Emergency
(800) 292-4706
Environmental Assistance Center
(800) 662-9278
<http://www.deq.state.mi.us>

Divisions:

Air Quality

(517) 373-7023
(517) 335-6993 fax

Drinking Water & Radiological Protection

(517) 335-9218
(517) 335-8298 fax

Environmental Assistance

(517) 373-2419

(517) 335-4729 fax

Environmental Response

(517) 373-9837
(517) 373-2637 fax

Geological Survey

(517) 334-6907
(517) 334-6038 fax

Land and Water Management

(517) 373-1170
(517) 241-8098 fax

Storage Tanks

(517) 373-8168
(517) 335-2245 fax

Surface Water Quality

(517) 373-1949
(517) 373-9958 fax

Waste Management

(517) 373-2730
(517) 373-4797 fax

Michigan Department of Natural Resources

P. O. Box 30028
Lansing, MI 48909
(517) 373-2329
(517) 335-4242 fax
<http://www.dnr.state.mi.us>

Divisions:

Fisheries

(517) 373-1280
(517) 373-0381 fax

Forest Management

(517) 373-1275
(517) 373-2443 fax

Land and Mineral Services

(517) 241-2438
(517) 335-3264 fax

Law Enforcement

(517) 373-1230
(517) 373-6816 fax

Wildlife

(517) 373-1263
(517) 373-6705 fax