

STATE ENVIRONMENTAL LAWS AFFECTING NEW YORK AGRICULTURE

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

A Project of the

**National Association of State Departments
of Agriculture Research Foundation**

through the

**National Center for Agricultural Law
Research and Information**

• • •

Website: <http://www.nasda-hq.org/> under the Research Foundation Section

STATE ENVIRONMENTAL LAWS AFFECTING NEW YORK AGRICULTURE

Table of Contents

This document has two components: the state guide and the federal guide. To complete this guide, please download the federal guide also found on NASDA’s website.

| | |
|---|--------|
| The Project Participants | NY-iii |
| Disclaimer | NY-iv |
| Quick Reference Guide | NY-v |
| I. Water Quality | NY-1 |
| A. New York Water Quality Laws and Regulations | NY-1 |
| 1. New York Overview | NY-1 |
| a. Agricultural Environmental Management Program | NY-2 |
| b. Local Governments | NY-3 |
| c. Uniform Procedures Act | NY-3 |
| d. State Environmental Quality Review Act | NY-3 |
| e. State Protection of Waters Law | NY-4 |
| f. Wild, Scenic, and Recreational Rivers | NY-5 |
| 2. New York Water Quality Standards | NY-6 |
| 3. New York State Pollutant Discharge Elimination System (SPDES) Permits | NY-7 |
| 4. New York Concentrated Animal Feeding Operations (CAFOs) | NY-7 |
| 5. New York Wetlands | NY-9 |
| a. Freshwater Wetlands | NY-9 |
| b. Tidal Wetlands | NY-9 |
| 6. New York Non-point Source Pollution Control | NY-11 |
| 7. New York General Discharge Prohibition | NY-11 |
| a. Discharge or Spill Reporting of Hazardous Wastes | NY-11 |
| 8. Enforcement of New York Water Quality and Water Pollution Laws | NY-11 |
| B. New York Coastal Erosion Hazard Area | NY-12 |
| II. Groundwater | NY-13 |
| A. New York Ground Water Laws and Regulations | NY-13 |
| 1. Water Wells | NY-13 |
| III. Air Quality | NY-14 |
| A. New York Air Quality Laws and Regulations | NY-14 |
| 1. Open Burning | NY-14 |

| | | |
|-------|--|-------|
| IV. | Solid Waste and Hazardous Waste | NY-15 |
| A. | New York Solid Waste and Hazardous Waste Laws and Regulations | NY-15 |
| 1. | Solid Waste | NY-15 |
| 2. | Hazardous Waste | NY-17 |
| 3. | Underground, Aboveground, and Non-Stationary Storage Tanks .. | NY-18 |
| V. | Pesticides and Chemigation | NY-20 |
| A. | New York Pesticide and Chemigation Laws and Regulations | NY-20 |
| 1. | Pesticides | NY-20 |
| 2. | Control and Eradication of Injurious Insects, Noxious Weeds, and Plant Diseases | NY-21 |
| VI. | Protection of Wildlife | NY-22 |
| A. | New York Wildlife and Aquatic Protection Laws and Regulations | NY-22 |
| 1. | Environmental Conservation Laws | NY-22 |
| 2. | Endangered Species | NY-22 |
| 3. | Interference with Fish and Wildlife | NY-23 |
| VII. | Enforcement of State Environmental Laws | NY-23 |
| VIII. | Other New York Statutes | NY-23 |
| A. | Right-to-Farm Statutes | NY-23 |
| B. | Nuisance and Other Discharge Prohibitions | NY-24 |
| | Appendix A - Agencies | NY-25 |

The Project Participants

National Association of State Departments of Agriculture Research Foundation

The National Association of State Departments of Agriculture (NASDA) is a nonprofit association of public officials representing the Commissioners, Secretaries, and Directors of Agriculture in the fifty states and four territories. The NASDA Research Foundation is a 501(c)(3) nonprofit, tax-exempt corporation for education 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. Farmers and ranchers should always confer with their own attorneys, consultants, or advisors, as well as federal, state, and local authorities responsible for the applicable environmental laws.

This guide has been prepared in part with funding from the Natural Resources Conservation Service (NRCS) cooperative agreement number NRCS 68-75-5-174 and the United States Environmental Protection Agency (EPA) grant number CX-825088-01-0.

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, 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, 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 April 2002. Updates of the information contained in the guide will occur on an annual basis and be made available on the Internet.

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. 1-12</i> | Livestock and aquaculture operations depending on size | NPDES and state general permit, various state agency permits and certifications, possible multiple federal agency involvement. | NY Dept. of Environmental Conservation (DEC). Other possible state agencies includes NY State Dept. of State (DOS), NY State Office of General Services (OGS), and EPA. Other possible agency involvement includes U.S. Army Corps of Engineers (USACOE), U.S. Fish & Wildlife Service (USFWS), U.S. Forest Service, State and local land use and management divisions and districts. |

| Regulatory Area | Type of Activity | Permit Required | Agency |
|---|---|--|--|
| | Wetlands dredge and fill activity or dam, dike, or bridge building activities | Section 404 permit, State agency certification, State agency permits or approvals | USACOE with EPA and DEC. Other possible state agency involvement includes DOS and OGS. |
| | Water well construction and use | Permit required | NY Dept. of Health (DOH), and contact DEC in Long Island counties. |
| Groundwater <i>pp. 13-14</i> | Groundwater protection | Permit required depending on type of activity and area affected, BMPs may be required Permit required for injection wells | DEC EPA |
| Air Quality <i>pp. 14-15</i> | General agricultural operations including odor, dust, or flies Burning | No permit, but may be subject to nuisance suits Permit, approval, or notice required | DEC |
| Solid Waste and Hazardous Waste <i>pp. 15-20</i> | Storage, treatment, or disposal of solid waste | No permit required for most agricultural solid waste, some special requirements may apply | DEC |

| Regulatory Area | Type of Activity | Permit Required | Agency |
|--|--|--|---------------|
| | Storage, treatment, or disposal of hazardous waste | Permit required | DEC and EPA |
| Pesticides and Chemigation <i>pp. 20-21</i> | Sale, distribution, and transport of pesticides | Registration, license | DEC and EPA |
| | Application of pesticides | License restrictions, special requirements, record keeping | DEC and EPA |
| Wildlife Protection <i>pp. 22-23</i> | Disposal of pesticide containers | Special requirements | DEC and EPA |
| | Taking of wildlife | Permit or license required, some absolute prohibitions | DEC, USFWS |

STATE ENVIRONMENTAL LAWS AFFECTING NEW YORK 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 farmers and ranchers in a number of ways. Environmental regulation is a complex area with both federal and state government involvement. Keeping informed is the most useful instrument for meeting the challenges of today's agriculture. This information on environmental regulation is provided to inform farmers and ranchers of the breadth and scope of environmental laws which may impact daily production activities.

I. WATER QUALITY

A. New York Water Quality Laws and Regulations

1. *New York Overview*

Most states have enacted clean water legislation. While these statutes usually contain provisions similar to those found in the parallel federal CWA 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, CWA requirements must be followed along with the state enacted statutes and regulations implemented by the state administrative agencies. Under the CWA, EPA has delegated the NPDES permit program to with approved programs. New York has implemented its delegated program since 1975.

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

The principal water quality laws in the state are the New York Water Resources Law (WRL)¹ and the New York Water Pollution Control Law (WPCL).² The New York Department of Environmental Conservation (DEC) is charged with preserving the purity and quality of the state's water resources. These water resources include all surface and underground water whether natural or artificial, inland or coastal, fresh or salt, and public or private.

The DEC, in cooperation with the New York State Soil and Water Conservation Committee and County Soil and Water Conservation Districts, facilitates the establishment of County Water Quality Coordinating Committees (WQCC's) in each county in the State. WQCC's provide a local

¹ N.Y. ENVTL. CONSERV. LAW §§ 15-0101 TO 15-2723 (MCKINNEY 1997).

² N.Y. ENVTL. CONSERV. LAW 17-0101 TO 17-1909 (MCKINNEY 1997).

perspective to issues identified in the statewide management plan. These issues include prioritization of watersheds, pollutants, and sources; identification of programs and practices to address nonpoint concerns and identification and administration of funding to implement a local nonpoint source program. The New York Department of Health (DOH) regulates most private or individual water wells.

a. Agricultural Environmental Management Program

New York's Agricultural Environmental Management (AEM) program is a statewide, locally-run program of voluntary pollution prevention. The program helps identify and correct environmental risks to watersheds and promotes public understanding and support for agricultural/environmental initiatives.

The AEM program consists of problem identification, planning, and implementation of environmental stewardship practices. Participation in the program provides effective and confidential environmental risk assessments. The program is funded by the New York State Environmental Protection Fund, the Clean Water/Clean Air Bond Act, and federal EQUIP funds.

Farmers and ranchers participating in AEM may receive cost sharing (up to 100 percent in more sensitive watershed areas such as the Skaneateles Lake Watershed) for implementing recommended best management practices (BMPs) that correct identified environmental risks. The watershed approach serves the broader interests of other state and federal programs as set forth in the CWA, CZMA, and SDWA.

The AEM program is implemented through the cooperation of several agencies. Cornell Cooperative Extension provides training and education. Soil and Water Conservation Districts (SWCDs) provide on-farm assessments plus cost share prioritizing in conjunction with Natural Resource Conservation Service (NRCS). The prioritizing aspect of the program encourages more environmental stewardship practices to be adopted in more sensitive watersheds such as the Skaneateles and the New York City watersheds.

Producer Note: The substantive law in New York is often contained in the New York Codes, Rules, and Regulations. Regulations tend to be updated regularly. Farmers and ranchers should keep in contact with the agencies in order to keep up with specific changes in the regulations. Agencies can provide copies of regulations, application materials, notices of proposed changes, and guidance materials.

b. Local Governments

New York encourages local participation in environmental protection and conservation of natural resources.³ A county, city, town, or village may adopt and enforce additional local laws, ordinances, and regulations, including permit, license, or approval requirements.⁴ Likewise, DEC may delegate certain review and approval duties to county and city health departments. Farmers and ranchers should check with local authorities to determine if any of their operations require permits or are subject to other regulatory requirements. DEC must be informed of any local approvals.

c. Uniform Procedures Act

The New York Uniform Procedures Act (UPA),⁵ establishes and governs uniform review procedures for DEC regulatory programs and provides strict time periods for DEC action on applications for permits. The UPA divides projects into two categories, minor and major. Major projects require public notice and comment and may entail a public hearing. The UPA provides that permit applications will not be considered complete until requirements of the State Environmental Quality Review (SEQR) Act have been met. (See following section.)

Many activities require more than one permit. For example, an activity in a protected tidal wetland may require a tidal wetland permit plus a “protection of waters” permit, a permit from the U.S. Army Corps of Engineers, a Coastal Consistency Certification, and a Coastal Erosion Hazard Area permit. When a project requires more than one DEC permit, all applications for such project must be submitted simultaneously.⁶ DEC requires a list of permits, a statement of approval status, and a SEQR whenever other agencies are involved.

d. State Environmental Quality Review Act

The New York State Environmental Quality Review (SEQR) Act⁷ requires state and local agencies to prepare an environment impact statement, consider alternatives, and mitigate harm whenever certain agency actions are taken which may have a significant effect on the environment. DEC may coordinate the SEQR with other state or local agencies having jurisdiction over the project. In such case, an agency other than DEC may be designated as the “lead agency.” It is the

³ N.Y. ENVTL. CONSERV. LAW 15-0101 *ET SEQ.*, 17-0101 *ET SEQ.*, 19-0101 *ET SEQ.*, §§ 24-0101 *ET SEQ.*, §§ 25-0101 *ET SEQ.*, AND 27-0101 *ET SEQ.* (MCKINNEY 1997).

⁴ *ID.*

⁵ *ID.* 70-0101 *ET SEQ.*

⁶ N.Y.C.R.R. TIT. 6, §§ 621 TO 624 (N.Y.C.R.R. refers to the New York Codes, Rules, and Regulations).

⁷ N.Y. ENVTL. CONSERV. LAW, 8-0101 *ET SEQ.* (MCKINNEY 1997); for regulations regarding SEQR, see N.Y.C.R.R. TIT. 6, §§ 617 TO 620.

“lead agency” that determines whether or not a project will have a significant adverse impact on the environment.

Regulations contain classifications of actions. “Actions” is broadly defined and includes approval of permits, certificates, licenses, loans, or other funding assistance. An applicant must file an environmental assessment form for actions classified as Type I or Unlisted. These type actions may require environmental impact statements, public hearings, or mitigation. Actions classified as Type II are exempt from the SEQR process, unless the action may have a significant impact on a critical area or is in an area of particular concern.

The following listed actions, pertaining to agriculture, are not subject to the SEQR process:

- Maintenance or repair involving no substantial changes in an existing structure;
- Agricultural farm management practices, including construction, maintenance, and repair of farm buildings and structures and land use changes consistent with generally accepted farming principles; and
- Best forest management practices on less than 10 acres of land, but not land clearing unless such clearing is directly related to forest management and not waste disposal, clear-cutting, or the application of pesticides or herbicides.

e. State Protection of Waters Law

The New York Protection of Waters Law (PWL)⁸ charges the DEC with the protection of certain streams, navigable waters, and water bodies. The PWL program regulates the following categories of activities:

- Bed or bank disturbance of protected streams or other water bodies depending on their classification;
- Construction, reconstruction, and maintenance of dams or other artificial obstructions whether temporary or permanent;
- Excavation or placement of fill in navigable waters including adjacent marshes and wetlands;
- Activities which may result in any discharge or runoff into navigable waters; and
- Construction of docks and other moorings.

⁸ N.Y. ENVTL. CONSERV. LAW 15-0501 *ET SEQ.* (MCKINNEY 1997); AND N.Y.C.R.R. TIT. 6, §§ 608 AND 673.

DEC requires a Protection of Water permit for the above activities, depending on the classification of the stream or water body. DEC may require additional permits, such as a freshwater or tidal wetlands permit. Failure to obtain all required permits prior to commencing any regulated activities will subject a person to civil or criminal actions, fines, or an order for remedial action.

DEC exempts certain activities from regulation under this section. Some of these exemptions pertain to agriculture. Protection of Water permits are not required for the following agricultural activities:

- Stream crossings by livestock or farm equipment;
- Withdrawal of irrigation water that does not alter stream beds or banks; and
- Farm ponds, provided certain requirements are met.

Lagoons and impoundment structures for wastes or materials other than water are not subject to regulation under the PWL.

f. Wild, Scenic, and Recreational Rivers

The stated policy of the New York Wild, Scenic, and Recreational River System Act (WSRRSA)⁹ is the preservation of certain selected rivers in a free-flowing condition and the protection of these rivers and their immediate environs for the benefit and enjoyment of present and future generations. Designated rivers and their boundary descriptions can be found in the WSRRSA and in state agency regulations. Regulations differ depending on whether the activity is along or near a wild river, a scenic river, a recreational river, or a recreational river within a community.

DEC regulates land use along designated wild, scenic, and recreational areas, except in the Adirondack State Park, where regulations of the Adirondack Park Agency (APA) apply.¹⁰ The WSRRSA allows delegation of powers, functions, and responsibilities to a local government or group of local governments. However, DEC retains permit authority.

Some land uses require a permit, others are prohibited entirely. Land uses existing on the date the regulations took effect have been grand-fathered. A permit is not required for maintaining, rehabilitating, restoring, replacing, or reconstructing lawfully existing structures provided the structures are not changed. A permit is required to resume a discontinued land use after such use has been discontinued for one year.

There are, however, some exemptions for agriculture. A permit is not required to resume farming on agricultural land that has been farmed in two of the five preceding years or which is

⁹ N.Y. ENVTL. CONSERV. LAW §§ 15-2701 *ET SEQ.* (MCKINNEY 1997).

¹⁰ N.Y.C.R.R. TIT. 6, § 666; Adirondack Park Agency regulations can be found in N.Y.C.R.R. TIT. 9, § 577.

enrolled in a federal set aside program as part of a certified farm plan. No structure of any sort is allowed within one half mile of a “wild river” segment, regardless of use. In all other areas, agricultural use structures located 100 feet or more from the river bank do not require a permit.

Docks, boathouses, stream improvement structures, and fences require a permit. There are permit requirements or prohibitions regarding forest management and accessory structures depending on location and slope. There are restrictions on roads, trails, and bridges, depending on location. Waste storage or disposal, private sewage disposal systems, and water wells are either prohibited, require a permit, or have other restrictions depending on location.

The WSRRSA prohibits the modification of any listed waterway by impoundment, diversion, rip-rap, bulkheads, or other structures or improvements that may impede or alter the natural flow of water or free flowing condition of the waterway.

The WSRRSA also prohibits the withdrawal of surface or ground water, the diversion of water, the release of water, or any acts comprising water-related or water-dependent land uses within a watershed designated as a “wild” river segment. Water withdrawals from other designated river segments are permitted subject to certain regulatory provisions.

2. New York Water Quality Standards

DEC regulations set out water quality standards for various water use classes.¹¹ They also contain general conditions applying to all water classifications; special classifications and standards; classes and standards assigned to certain fresh surface and tidal salt waters; applications for reclassification of waters; best usages of classes of water; use and protection of waters; criteria governing thermal discharge; and effluent standards. Regulations also give the current classification of streams, lakes, and other waters according to drainage basins. Operations must not cause or contribute to any violation of water quality standards. DEC may, depending on the circumstances, grant a variance or request a modifications of a water quality effluent limitation. Effluent standards or limitations set the maximum allowable degradation of waters.

New York’s Public Health Law gives the New York Department of Health (DOH) the authority to promulgate regulations for the protection from contamination of any or all public supplies of potable waters and water supplies.

It is a crime to throw or deposit gas tar, offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, sewer, or stream running or entering any such public

¹¹ N.Y.C.R.R. TIT. 6, §§ 608, 609, 700, 701, 702, 703, 705, AND 800.

waters.¹² It is also a crime to deposit, leave, or keep any noisome or unwholesome substance on or near a route of public travel including a route of public water travel.¹³

3. *New York State Pollutant Discharge Elimination System (SPDES) Permits*

Under the federal CWA, point source discharges of pollutants into waters of the United States require a NPDES permit. A point source means a discernible, confined, and discrete conveyance such as a pipe, ditch, channel, tunnel, conduit, well, container, rolling stock, fissure, or concentrated animal feeding operation (CAFO). In New York, EPA has delegated this permitting responsibility to New York's DEC pursuant to a Memorandum of Agreement.¹⁴

New York state law is broader than the federal NPDES program. New York regulates discharges into all state waters including groundwater. Article 17 of Environmental Conservation Law (ECL) requires a State Pollutant Discharge Elimination System (SPDES) permit for point source discharges of wastewater into waters of the state which includes surface water and ground water.¹⁵ Permittees are required to pay an annual regulatory fee.

The SPDES program was initially developed for industrial wastewater treatment plants and for municipal and private commercial sewage treatment plants. Permits to control stormwater were added in 1993. SPDES permits issued in lieu of NPDES permits are valid up to five years. All other SPDES permits are valid up to ten years¹⁶. DEC regulations contain standards and effluent limits. The New York Protection of Waters Act requires a separate permit for certain waters and certain activities. (See *State Protection of Waters Law* section.)

4. *New York Concentrated Animal Feeding Operations (CAFOs)*

Concentrated animal feeding operations (CAFOs) are considered to be point sources under the federal CWA, and thus, must obtain a NPDES permit. A Performance Partnership Agreement between DEC, DOH, and EPA allows DEC to implement the federal CWA's NPDES program as part of the state's SPDES program for CAFOs.¹⁷ Thus, DEC has agreed to implement a general SPDES permit program for regulating CAFOs that are point sources of pollution in New York.

¹² N.Y. ENVTL. CONSERV. LAW § 71-3503 (MCKINNEY 1997); N.Y. PUB. HEALTH LAW § 1300-B (MCKINNEY 1997).

¹³ N.Y. PUB. HEALTH LAW § 1300-A (MCKINNEY 1997).

¹⁴ N.Y. ENVTL. CONSERV. LAW §§ 17-0701 TO 17-0801 *ET SEQ.* (MCKINNEY 1997); for DEC regulations regarding the SPDES program, see N.Y.C.R.R. TIT. 6, §§ 750 TO 758 AND § 702; Also "*The Memorandum of Understanding Between the New York State Department of Environmental Conservation and the United States Environmental Protection Agency, Region 2*", April 28, 1975.

¹⁵ NY STATE ENVIRONMENTAL CONSERVATION LAW §17-0101 *ET SEQ.* (MCKINNEY 1997).

¹⁶ NY STATE ENVIRONMENTAL CONSERVATION LAW §17-0817(1) (MCKINNEY 1997).

¹⁷ EPA, New York State Performance Partnership Agreement, State Fiscal Years 1999-2001.

a. General Permits and Agricultural Waste Management Plans (AWMPs)

DEC defines CAFOs as all animal feeding operations of greater than 1000 animal units plus those greater than 300 animal units if they discharge or have a potential to discharge to surface waters directly or through a man-made ditch, flushing system, or other similar man-made device. An animal feeding operation (AFO) of less than 300 animal units is not a CAFO unless the permit authority conducts an on site inspection and determines that the operation should and could be regulated under the permit program. An AFO is defined as a facility where animals are fed and confined for a total of 45 days or more in any twelve consecutive month period and where crops, vegetation, forage growth, or post harvest residue are not sustained in the feedlot or facility. For example, a feedlot would be considered a point source but a pasture would not. Thus, agricultural operations that may require permits include concentrated animal feeding operations and concentrated aquatic animal feeding facilities depending on their size and whether they discharge into state waters.

DEC's general permit program includes three tiers of AFOs: 1) those with between 301 and 1,000 animal units and discharge or have the potential to discharge into state waters, 2) those which exceed 1,000 animal units, and 3) those found to be a significant contributor of pollution to surface waters. Animal feeding operations of less than 300 animal units are not designated as CAFOs requiring general permits unless the permit authority conducts an on site inspection and determines that the operation should and could be regulated under the permit program.

All CAFOs covered by a general permit are required to have a certified site specific Agricultural Waste Management Plan (AWMP) developed in accordance with the Natural Resources Conservation Service (NRCS). The general permit itself is a uniform permit with identical language and requirements. However, to account for each CAFO's unique characteristics, facility-specific requirements are detailed in the AWMP. The AWMP must be designed to prevent discharge except in the instance of a 25 year, 24-hour stormwater discharge standard, and the plan must be certified by DEC.¹⁸

Producer Note: DEC has made extensive changes to its SPDES program regulations. Farmers and ranchers should consult with DEC representatives to determine if their operations are affected by the changes.

¹⁸ 40 C.F.R. § 412.13(B) (1999).

5. *New York Wetlands*

a. Freshwater Wetlands

The New York Freshwater Wetlands Act (FWA)¹⁹ charges DEC with regulating activities in freshwater wetlands and their adjacent areas. Local governments or counties may administer the FWA or have their own separate land use controls for freshwater wetlands. The FWA requires DEC to map all protected wetlands, except for those within the Adirondack Park Region which are mapped by the Adirondack Park Agency (APA). Wetland boundaries are subject to change and DEC may amend maps to reflect these changes. Usually, a wetland must be 12.4 acres or more for protection. The APA regulates park wetlands of at least one acre or those bordering open water. Adjacent areas are outside wetlands and usually extend 100 feet from the wetland boundary.

Freshwater wetlands are generally lands or submerged lands that support or are enclosed by aquatic or semi-aquatic vegetation such as marshes, swamps, sloughs, bogs, and flats. DEC has classified these wetlands according to their functions, values, and benefits. DEC regulations assign levels of compatibility for certain projects. There are additional requirements for incompatible projects or those having more than an insubstantial impact on a wetland or adjacent area. These additional requirements include minimization of impacts, mitigation measures, and demonstration of no feasible alternative.

Most activities conducted in a wetland or an adjacent area require a permit. A permit determination under the FWA does not relieve anyone from meeting requirements of federal law or other state law. Most, but not all, agricultural activities are exempt from FWA permit requirements. For example, aquaculture is not an exempted activity, and filling related to agriculture activities requires a permit.²⁰ Classifications, class standards, exempt activities, and those requiring a permit are listed in the regulations.

| |
|---|
| <p>Producer Note: Farmers and ranchers should consult with DEC representatives to determine if their agricultural activities are exempt or require a permit.</p> |
|---|

b. Tidal Wetlands

The New York Tidal Wetlands Act (TWA)²¹ charges DEC with regulating activities in tidal wetlands and their adjacent areas. Thus, DEC promulgates land use regulations for tidal wetlands. These regulations apply anywhere there is tidal inundation twice daily. Tidal wetlands generally

¹⁹ N.Y. ENVTL. CONSERV. LAW §§ 24-0101 *ET SEQ.* (MCKINNEY 1997); DEC REGULATIONS REGARDING FRESHWATER WETLANDS CAN BE FOUND IN THE N.Y.C.R.R. TIT. 6, §§ 662 TO 665.

²⁰ 1. MATERIALS SIDECAST DURING EXCAVATION ASSOCIATED WITH DRAINAGE IS CONSIDERED FILLING.

²¹ N.Y. ENVTL. CONSERV. LAW §§ 25-0101 *ET SEQ.* (MCKINNEY 1997); DEC regulations regarding Tidal Wetlands can be found in the N.Y.C.R.R. TIT. 6, §§ 660 AND 661.

consist of all salt marshes, non-vegetated and vegetated flats and shorelines subject to tides. DEC maps show the locations of regulated wetlands. Local governments have not been delegated authority to issue TWA permits.

A permit is generally required for any activity which will alter wetlands or their adjacent areas.²² Adjacent areas extend up to 300 feet from the wetland boundary (less distance within New York City). Regulations detail the types of uses permissible in different types of wetlands and adjacent areas. Classification, compatibility, and additional requirements for tidal wetlands are the same as for freshwater wetlands discussed above. The following are some examples of activities requiring a permit:

- New agricultural activities, excluding cultivating and harvesting of natural occurring agricultural and horticultural products and manual harvesting of salt hay;
- Construction, reconstruction, or expansion of any structure, including septic tanks, dams, dikes, weirs, sea walls, docks, drainage structures, residences, roads, driveways, and accessory structures; and
- Movement of earth material including clearing, clear-cutting, dredging, dredge spoil placement, grading, filling, dune building, beach nourishment, and excavation.

Exempt activities include:

- The continuation of any lawfully existing use which does not alter lands or wetlands and which does not change existing structures in or adjacent to a tidal wetland.

The DEC maintains inventory maps showing the approximate location of freshwater and tidal wetlands. These maps are available at county clerk's offices or DEC regional offices. These maps should be consulted prior to conducting an activity in or near a wetland. The DEC staff are available to delineate the boundary of a wetland on the property.

Violations²³ of the TWA may result in civil penalties up to \$10,000 for each violation, each failure to adhere to the conditions contained in the permit, and each failure to respond to an order to restore or remediate an affected tidal wetland or its adjacent area to its condition prior to the violation. Criminal penalties may also be assessed not less than \$500 and up to \$5000 for first offenses. Subsequent violation may be assessed not less than \$1000 and up to \$10,000 or imprisoned not less than 15 days and up to 6 months.

²² N.Y.C.R.R. TIT. 6, § 661.

²³ N.Y. ENVTL. CONSERV. LAW §§ 17-2305 *ET SEQ.* AND 17-2501 *ET SEQ.* (MCKINNEY 1997).

6. *New York Non-point Source Pollution Control*

The New York Water Pollution Control Law (WPCL) empowers DEC to regulate non-point source pollution.²⁴ The general discharge prohibition (discussed below) makes it unlawful to indirectly allow pollutants to run or otherwise discharge into state waters. Likewise, waste runoff must not injuriously affect edible fish or shellfish nor run into a marine district.

7. *New York General Discharge Prohibition*

The New York Water Pollution Control Law (WPCL)²⁵ makes it illegal to directly or indirectly throw, drain, run, or otherwise discharge organic or inorganic matter that will cause or contribute to a condition in contravention of water quality standards adopted by DEC. DEC has authority to approve, review, supervise, and issue permits for activities that discharge pollutants.

The WPCL prohibits the discharge of pollutants into waters of the state in the marine district and waters of Long Island tributary to the marine district. It is illegal to place or allow to run into waters of these marine districts any wastes or any substance injurious to edible fish and shellfish, or to the propagation of such, or which will affect the flavor, color, odor, or sanitary condition of fish or shellfish. It is illegal to throw, dump, or permit to run into the waters of the marine district any garbage, cinders, ashes, oils, sludge, or refuse of any kind.

a. Discharge or Spill Reporting of Hazardous Wastes

The DEC requires certain procedures to be followed in the event of a discharge or spill of hazardous wastes.²⁶ When there is knowledge that a spill has reached surface water, the generator must immediately call the National Response Center at (800) 424-8802 and also notify DEC at (518) 457-7362.

8. *Enforcement of New York Water Quality and Water Pollution Laws*

DEC is responsible for assistance, inspections, monitoring discharges, compliance, and enforcement of state water quality and water pollution laws. Enforcement is by administrative order, injunction, civil penalty of up to \$25,000 per day, or by criminal prosecution.²⁷ DOH is responsible for the inspection, compliance, and enforcement of public health standards for water wells and water supply systems. Specific enforcement provisions can be found in the respective agency regulations.

²⁴ N.Y. ENVTL. CONSERV. LAW §§ 17-1401 *ET SEQ.* (MCKINNEY 1997).

²⁵ N.Y. ENVTL. CONSERV. LAW §§ 17-0101 *ET SEQ.* (MCKINNEY 1997).

²⁶ N.Y.C.R.R. TIT. 6, §§ 372, 595, AND 596.

²⁷ N.Y. ENVTL. CONSERV. LAW §§ 17-0101 *ET SEQ.* (MCKINNEY 1997).

B. New York Coastal Erosion Hazard Area

The New York Shoreowner's Protection Act (SPA)²⁸ charges DEC with identifying coastline areas²⁹ prone to erosion and regulating activities in such areas. Coastline means areas adjacent to the State's coastal waters which include certain lakes and rivers. The SPA specifically provides for local government regulation of Coastal Erosion Hazard Areas within its jurisdiction. With the exception of activities undertaken by state agencies, DEC will not exercise jurisdiction until after all appropriate levels of local government have had an opportunity to assume and exercise their jurisdiction. Coastal Erosion Management Permits are required for any regulated activity within a Coastal Erosion Hazard Area. Regulated activities include:

- Construction, modification, restoration, addition to, or placement of a structure;
- Any action or use of land which materially alters the condition of the land; and
- Grading, excavating, dumping, mining, dredging, filling, or other disturbance of soil.

The following activities are excluded from the definition of a "regulated activity:"

- Routine agricultural operations involving cultivation and harvesting; and
- Implementation of practices recommended in a soil and water conservation plan under the New York Soil and Water Conservation Districts Law.

Despite the above exclusions from the definition of regulated activities, agricultural operations and implementation of any practice involving the construction or placement of a structure are not exempt from regulation. A structure means any object constructed or placed on or under land or water. In addition to buildings of all types, a structure includes, but is not limited to any tank, pool, pier, dock, road, collection system, groin, jetty, seawall, or any addition to or alteration of these.

Provided certain conditions are met, DEC may grant a variance to regulatory restrictions or requirements if such restrictions or requirements will cause a practical difficulty or unnecessary hardship.

²⁸ N.Y. ENVTL. CONSERV. LAW §§ 34-0101 *ET SEQ.* (MCKINNEY 1997); for regulations regarding Coastal Erosion Hazard Areas, see N.Y.C.R.R. TIT. 6, § 505.

²⁹ Coastal areas include coastal waters and adjacent shorelands. Coastal waters is defined as Lakes Erie and Ontario, the St. Lawrence and Niagara Rivers, the Hudson River south of the federal dam at Troy, the East River, the Harlem River, the Kill von Kull and Arthur Kill, Long Island Sound and the Atlantic Ocean, and their connecting water bodies, bays, harbors, shallows, and marshes. See N.Y. EXEC. LAW § 911(3).

II. GROUNDWATER

A. New York Ground Water Laws and Regulations

The New York Environmental Conservation Law³⁰ (ECL) charges DEC with the protection of groundwater as well as surface water. The ECL directs DEC to classify state waters by best usage, adopt standards of water quality and purity, and enforce those standards. Both the WRL and the WPCL specifically include underground water in their definitions of “waters.” In addition, DEC is authorized to designate special groundwater protection areas and implement regulations to protect groundwater under the Sole Source Aquifer Protection law.³¹ DEC regulates land use in areas important to groundwater protection. DEC regulations contain groundwater classifications, quality standards, and effluent standards or limitations.³² DEC may, depending on the circumstances, grant a variance to a groundwater effluent limitation. DEC regulations exempt the following agricultural activities from effluent limitations set for class GA waters (fresh groundwaters):

- A normally accepted agricultural practice of utilizing chemicals and fertilizers for growing crops for human and animal consumption; and
- Waste management systems that employ land application techniques and have renovative capabilities provided that there will be no actual or potential public health hazard, that water quality standards will be met in saturated zones, and that water quality standards will not be violated in any adjacent state waters.

1. *Water Wells*

The New York Department of Health (DOH) regulates the construction, operation, maintenance, or abandonment of private or individual water wells.³³ A person must obtain a permit from DOH prior to the construction or abandonment of any water well. DOH requires a completed well log be submitted within 30 days after installation of a water well. DOH may issue a variance from any one or more requirements if such requirements would present an undue hardship.

DEC requires permits for water wells in Long Island counties whose capacity singularly or in the aggregate is in excess of forty-five gallons a minute.³⁴ This requirement also applies to the use of water for agricultural purposes. However, DEC may make an emergency authorization for a replacement well when it is needed during a growing season. There is a moratorium on the

³⁰ N.Y. ENVTL. CONSERV. LAW §§ 70-0101 *ET SEQ.* (MCKINNEY 1997).

³¹ N.Y. ENVTL. CONSERV. LAW §§ 55-0101 *ET SEQ.* (MCKINNEY 1997).

³² N.Y.C.R.R. TIT. 6, §§ 701, 702, AND 703.

³³ N.Y.C.R.R. TIT. 10, § 5.

³⁴ N.Y. ENVTL. CONSERV. LAW §§ 15-1501 *ET SEQ.* (MCKINNEY 1997); N.Y.C.R.R. TIT. 6, § 602.

granting of permits to drill wells or make new withdrawals of water from the Lloyd Sands for all areas that are not coastal communities.

III. AIR QUALITY

A. New York Air Quality Laws and Regulations

The New York Air Pollution Control Act (APCA)³⁵ charges the New York Department of Environmental Conservation (DEC) with regulating air quality in the state. DEC adopts and enforces air quality standards, emission control requirements, and other regulations. The New York clean air program follows the requirements of the federal Clear Air Act. EPA and DEC work cooperatively to enforce these requirements.

In general, stationary sources of air pollution require a permit from DEC before any equipment or process that may cause air pollution is constructed, operated, replaced, or relocated. The DEC regulations also govern burning of solid wastes. Burning used and waste oils in furnaces and boilers is prohibited. There are special requirements for hazardous and toxic air emissions. There are civil and criminal penalties for violations of the APCA.

Nuisance laws may apply to agricultural operations. The APCA specifically preserves rights and remedies to suppress nuisance or to abate any pollution, including noise,³⁶ presently or hereafter existing. Punitive damages may be awarded in private nuisance suits against violators of state environmental laws. There is some limited protection against private nuisance suits provided for agriculture. (See *Right-to-Farm Statute* at NY-23.)

With the exception of open burning discussed below, agricultural activities have few special air quality requirements. Most agricultural operations will not require air quality permits. On-farm incinerators and grain elevators may be exceptions.

1. Open Burning

DEC regulates open burning. The following open burning activities are prohibited: burning of garbage, burning refuse during an air pollution episode, burning of rubbish for salvage, and onsite burning of rubbish generated by industrial and commercial activities-- agricultural activities are exempted.³⁷

Refuse includes all waste material including garbage, dead animals, offal, and incinerator residue. Rubbish includes trees and parts of such, vines, chemicals, oils, grease, sludge, wood,

³⁵ N.Y. ENVTL. CONSERV. LAW §§ 19-0101 TO 19-0923 (MCKINNEY 1997); DEC air quality and pollution control regulations can be found in N.Y.C.R.R. TIT. 6, §§ 200 TO 317.

³⁶ N.Y.C.R.R. TIT. 6, §§ 211.

³⁷ N.Y.C.R.R. TIT. 6, §§ 215.1 TO 215.3.

plastics, rags, paper, and tires. Rubbish does not include garbage, dead animals, offal, or incinerator residue. DEC regulations contain a classification table for refuse.

DEC may issue a permit for the following types of open burning, provided the burning does not violate any other laws:

- Onsite burning of trees and vegetation from land clearing or demolition for the erection of any structure, pipeline, etc.;
- Onsite burning in designated areas of paper products, trees trimmings, and leaves;
- Burning of toxic, explosive, or dangerous materials provided there is no other safe or economical method of disposal.

IV. SOLID WASTE AND HAZARDOUS WASTE

Producer Note: There are several laws which control the use and disposal, as well as the cleanup, of hazardous wastes. Farmers and ranchers who use hazardous chemicals or use petroleum or other products stored in storage tanks must be aware of the requirements governing their actions.

A. New York Solid Waste and Hazardous Waste Laws and Regulations

1. *Solid Waste*

New York's solid waste management law (SWML)³⁸ imposes requirements on solid wastes that do not otherwise qualify as hazardous waste. (See discussion of hazardous waste below). These laws give the most attention to the regulation of landfills and solid waste management facilities. However, they may contain provisions that apply to agriculture.³⁹ The New York Department of Environmental Conservation (DEC) is charged with administering the solid waste management law.⁴⁰

The definition of disposal is very broad. Disposal includes abandonment, discharge, deposit, injection, dumping, spilling, leaking, or the placing of any substance so that it or any constituent of it may enter the environment. Any accumulation of solid waste for more than 18 months is deemed to constitute disposal. Solid waste means any garbage, refuse, sludge, and other discarded material resulting from industrial, mining, agricultural, commercial, or community activities.

³⁸ N.Y. ENVTL. CONSERV. LAW §§ 27-0101 *ET SEQ.* (MCKINNEY 1997).

³⁹ Land application of certain wastes is allowed. See N.Y. C.R.R. TIT. 6 § 360-4.

⁴⁰ N.Y.C.R.R. TIT. 6, PT. 360 contains the DEC regulations pertaining to solid waste management.

The term “solid waste” does not include:

- Solid or dissolved materials in sewage;
- Solid or dissolved materials in irrigation return flows;
- Industrial discharges that are pollution point sources subject to permits under the New York Water Pollution Control Act.

All waste must be disposed at authorized or exempt facilities. No one may construct or operate a solid waste management facility except in accordance with a valid permit. However, the following activities are exempt from permit requirements:

- Disposal areas located within the property boundaries of a single family residence or farm for solid waste generated from that residence or farm;
- Disposal areas for waste pesticides by the farmer who used them if the farmer complies with DEC pesticide and solid waste regulations;⁴¹ and
- Disposal areas located within the property boundaries of a farm for crop residuals, animal and aquacultural manure,⁴² animal and aquacultural carcasses, and parts generated from a farm and other similar solid waste generated by farm activities.⁴³

The planning and implementation of BMP's to address the disposal of animal waste can be accomplished through cost-sharing provided from the Agricultural Nonpoint Source Abatement and Control Program administered by the Department of Agriculture and Markets (DOA), the state Soil and Water Conservation Committee, and Soil and Water Conservation Districts. Eligible BMP's are identified in the Agricultural Management Practices Catalogue for Nonpoint Source Pollution Prevention and Water Quality.

DEC regulations allow for the onsite disposal of dead farm animals. The New York DOA also has regulations regarding disposal of dead farm animals.⁴⁴ Animals which have died other than by slaughter must be buried at least three feet below the ground or disposed in a sanitary manner.

⁴¹ N.Y.C.R.R. TIT. 6, § 325.

⁴² The solid waste policy is: 1) to reduce the amount of solid waste generated; 2) to reuse and recycle solid waste materials; and 3) to recover energy in an environmentally acceptable manner from solid wastes.

⁴³ N.Y.C.R.R. TIT. 6, § 360-1.7(B).

⁴⁴ N.Y. AGRIC. & MKTS. LAW § 377 (MCKINNEY 1997).

Composting facilities are regulated by DEC, and permits are required. Composting facilities that accept only animal manure and/or food processing wastes and that satisfy certain conditions⁴⁵ are exempt from permitting requirements. Written notification to DEC, however, must be given. Composting facilities that require permits, for example animal manure mixed with non-exempt waste, must submit an operation and management plan along with their request for the permit.⁴⁶

DEC may make case specific Beneficial Use Determinations (BUD). The BUD regulations identify certain solid wastes that if used in a specific manner are no longer subject to solid waste management regulation. Anyone may petition DEC for a BUD. DEC may make occasional inspections to insure compliance with agency BUD provisions.

Producer Note: Farmers and ranchers should check with DEC to determine whether any of their operations require permitting or are subject to other regulatory requirements.

2. *Hazardous Waste*

Wastes deemed to be hazardous are regulated to a greater extent than other wastes under both New York and federal law. New York Hazardous Waste Law (HWL)⁴⁷ has provisions similar to the federal Resource Conservation and Recovery Act (RCRA) for regulating hazardous wastes, including reporting requirements.⁴⁸ DEC is charged with administering the HWL. The HWL definition of hazardous waste is the same as the federal definition. (See “solid waste” at NY-31 for the definition of waste and items excluded from this definition as they are similar under the HWL). Spills and releases of hazardous substances that have the potential to impact human health or the environment must be promptly reported to DEC by an oral report.

Owners and operators may be exempted from some hazardous waste regulations. In addition, there are special exemptions for farmers regarding pesticides, provided certain safety steps are taken. These steps include the following:

- Triple rinsing of containers and liners with a solvent and certain other rinsing procedures;
- Removal of inner liners;

⁴⁵ N.Y.C.R.R. TIT. 6, § 360-5(B)(2).

⁴⁶ N.Y.C.R.R. TIT. 6, § 360-5.2(C)(3).

⁴⁷ N.Y. ENVTL. CONSERV. LAW §§ 27-0101 *ET SEQ.* (MCKINNEY 1997); Hazardous waste regulations can be found in N.Y.C.R.R. TIT. 6, §§ 370 TO 376 AND §§ 596 TO 599.

⁴⁸ N.Y.C.R.R. TIT. 6, §§ 370 TO 374.

- On farm disposal of pesticide residues in a manner consistent with the label or with DEC regulations, whichever is more restrictive; and
- On farm transport of hazardous wastes to a household hazardous waste collection facility if the farmer is a conditionally exempt small quantity generator.

DEC regulations incorporate by reference many of the EPA regulations for a cradle to grave regulatory tracking mechanism. DEC regulations have incorporated EPA regulations listing hazardous waste and standards for determining whether substances not on the lists should nevertheless be considered as hazardous. DEC regulations contain exceptions, additions, and modifications to EPA regulations. DEC may grant variances from one or more handling and storage requirements.

Persons who generate, store, or transport hazardous wastes are subject to extensive regulatory requirements. These requirements include record keeping, storage, equipment, container and building standards, disposal restrictions, permit requirements, emergency planning, personnel training, spill and leak prevention, and financial responsibility requirements.

Producer Note: Hazardous waste regulations are extensive. Farmers and ranchers should check with DEC to determine whether any chemicals or other substances such as waste oils⁴⁹ used in their operations have been listed as hazardous and as to the regulatory requirements for any such substances.

3. *Underground, Aboveground, and Non-Stationary Storage Tanks*

The DEC regulates underground storage tanks (USTs), aboveground storage tanks (ASTs), non-stationary storage tanks (NSTs) under the authority of New York's Environmental Conservation Law (ECL).⁵⁰ The Hazardous Substance Bulk Storage Act (HSBSA)⁵¹ is the primary New York law dealing with chemical bulk storage. UST means any tank which is completely covered with earth or other backfill material and used to store a hazardous substance. AST means any stationary tank with a capacity of at least 185 gallons and is not entirely covered with earth. NST means any non-stationary tank, barrel, drum or other holding vessel which is mobile and used to store 1000 kilograms (2,200 pounds) or more of a hazardous substance for 90 consecutive days or more.

⁴⁹ Waste oils that exceed specifications and standards at N.Y.C.R.R. TIT. 6 § 360-14 AND § 37-374 are considered hazardous wastes. Waste oils that do not exceed these standards are considered non-hazardous solid wastes and are managed accordingly.

⁵⁰ N.Y. ENVTL. CONSERV. LAW §§ 3-0101 *ET SEQ.*, §§ 15-0101 *ET SEQ.*, §§ 37-0101 *ET SEQ.*, AND §§ 40-0101 *ET SEQ.* (MCKINNEY 1997); most regulations regarding storage tanks can be found in N.Y.C.R.R. TIT. 6, §§ 596 TO 599.

⁵¹ N.Y. ENVTL. CONSERV. LAW §§ 40-0101 *ET SEQ.* (MCKINNEY 1997).

Petroleum is statutorily excluded from the definition of hazardous substance.⁵² A storage tank or storage tank system means any UST, AST, or NST and includes any associated piping, lines, dikes, and ancillary equipment. USTs, ASTs, and NSTs are regulated as storage facilities. DEC excludes the following from regulation as a storage facility:

- NSTs, unless used to hold 1000 kilograms (2,200 pounds) or more of a hazardous substance for 90 consecutive days or more;
- Process tanks or accessory equipment with more than 90 percent of the volume above ground;
- Septic tanks and storm water or wastewater collection systems;
- Any AST on an operating farm used solely to store or contain a hazardous substance which will be used for agricultural purposes on such farm;
- Certain pipeline facilities regulated under other statutes related to oil or gas operations; and
- Facilities regulated under other ECL statutes such as industrial hazardous waste facilities, solid waste management facilities, and resource recovery facilities.

Owners or operators should conduct regular checks for leakage and report discharges immediately. Storage tanks are heavily regulated, and there are lists of requirements that must be met. Requirements differ for new versus existing tanks. However, regulations require upgrading of existing storage systems, depending on the type, by December 1998 or December 1999. DEC storage system requirements include:

- Implementing leak detection systems;
- Reporting releases and spills;
- Financial assurance requirements;
- Record keeping requirements;
- Design and performance standards;
- Remediation requirements; and
- Closure requirements.

⁵² Petroleum bulk storage regulations are found at N.Y.C.R.R. TIT.6 §§ 612, 613, AND 614. Storage of used oil is regulated pursuant to N.Y.C.R.R. TIT.6 §360-14.

Producer Note: Storage tanks are subject to extensive regulation in New York. Farmers and ranchers should check with DEC periodically to ensure their storage tank systems are in compliance with applicable regulations.

V. Pesticides and Chemigation

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 pesticide users. In addition, if a farmer or rancher employs agricultural workers, there are regulations which address safety concerns about pesticide use by or around those workers.

A. New York Pesticide and Chemigation Laws and Regulations

Producer Note: New York 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.

1. Pesticides

The New York Pesticide Law (PL)⁵³ charges the New York Department of Environmental Conservation (DEC) with the regulation of pesticides. Regulations regarding pesticides are extensive. Pesticides include plant regulators, defoliants, desiccants, and substances used to destroy, repel, or mitigate insects, rodents, weeds, plant viruses, or fungi.

Pesticides must be used in such a manner as to prevent contamination of crops, property, structures, lands, pasturage, or waters adjacent to the area of application. The manner of use must take wind and other conditions into consideration. Grape growing areas may have special rules restricting the use of certain pesticides.

The PL and DEC regulations apply to anyone who applies, manufactures, sells, distributes, transports, formulates, stores, disposes, uses, or advises the use of pesticides. All pesticides must be registered with the DEC. It is illegal to use, sell, distribute, or transport unregistered pesticides.

⁵³ N.Y. ENVTL. CONSERV. LAW §§ 33-0101 *ET SEQ.* (MCKINNEY 1997); the majority of state pesticide regulations can be found in N.Y.C.R.R. TIT. 6, PTS. 320 TO 326.

The law requires all pesticides be used, applied, or disposed in a manner consistent with their labeling. Some pesticide waste and pesticide containers are considered hazardous waste and, thus, are subject to special handling requirements. Restricted use pesticides⁵⁴ must be applied by a certified applicator or under the direct supervision of a certified applicator. DEC may issue special restricted use permits under certain conditions. DEC requires a purchase permit for the purchase or possession of restricted use pesticides. Regulations exempt holders of commercial permits and certified private applicators applying pesticides to their own crops from this requirement.

Pesticide rules include:

- Standards, prohibitions, and restrictions on the use of certain pesticides;
- Minimum requirements and certification requirements for pesticide applicators;
- Record keeping requirements;⁵⁵
- Pesticide container cleaning and disposal requirements;
- Pesticide equipment requirements;
- Applicator and employee protection requirements; and
- Storage requirements.

| |
|---|
| <p>Producer Note: Farmers and ranchers should refer to DEC regulations and consult with DEC representatives to determine the specific use and disposal requirements applicable to the pesticides they use.</p> |
|---|

2. Control and Eradication of Injurious Insects, Noxious Weeds, and Plant Diseases

The New York Department of Agriculture (DOA) is charged with the control and eradication of injurious insects, noxious weeds, and plant diseases.⁵⁶ All noxious weeds and any plants, trees, or other materials including soil infected, infested, or exposed to injurious insects or plant diseases are deemed a public nuisance. DOA may order a farmer or any person owning or in control of such a nuisance to take steps to eradicate or control the infestation.

⁵⁴ N.Y. ENVTL. CONSERV. LAW § 33-0903.

⁵⁵ DEC REQUIRES RETENTION OF RECORDS FOR THREE YEARS. SEE N.Y.C.R.R. TIT.6 §§ 325.25 AND 325.44.

⁵⁶ N.Y. AGRIC. & MKTS. LAW § 164 (MCKINNEY 1997).

VI. PROTECTION OF WILDLIFE

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

A. New York Wildlife and Aquatic Protection Laws and Regulations

New York has enacted a variety of laws to protect wildlife, aquatic life, and the habitats of such. The regulations and statutes discussed under state water quality, groundwater, solid and hazardous waste, and pesticides have provisions for the protection of wildlife and aquatic life. The New York Fish and Wildlife Law (FWL)⁵⁷ charges the New York Department of Environmental Conservation (DEC) with administering state hunting, fishing, and habitat laws. These laws may affect agricultural activities.

1. Environmental Conservation Laws

DEC administers state hunting and fishing laws and other requirements for the taking of wildlife. These include laws regarding hunting and fishing licenses, hunting and fishing seasons, and other requirements for the taking, possession, transportation, liberation, propagation, stocking, or sale of game species. Wildlife protection and hunting and fishing laws are extensive. There are special requirements for taking animals that are causing damage to crops, livestock, property, or resources.⁵⁸ There are criminal penalties for violation of state wildlife laws.

2. Endangered Species

“Endangered or threatened species” means any endangered or threatened species, plant, or animal as defined in federal regulations (50 CFR part 17) or native to New York and in imminent danger of extinction or likely to become endangered in the foreseeable future.⁵⁹ Species of special concern are native New York species for which there is a welfare concern or risk of endangerment. DEC maintains a list of endangered or threatened species and species of special concern. These species include aquatic life, mammals, birds, reptiles, insects, amphibians, and plants. DEC listings of these species may be updated to reflect changing conditions. It is illegal to take, import, transport, sell, or possess any endangered, threatened, or special concern species except with a permit issued by DEC.

⁵⁷ N.Y. ENVTL. CONSERV. LAW §§ 11-0101 *ET SEQ.* AND §§ 13-0101 *ET SEQ.* (MCKINNEY 1997); for regulations regarding fish, wildlife, their harvesting, and habitats, see N.Y.C.R.R. TIT. 6, §§ 1 TO 188.

⁵⁸ N.Y. ENVTL. CONSERV. LAW §§ 11-0521 AND 11-0523 (MCKINNEY 1997).

⁵⁹ N.Y. ENVTL. CONSERV. LAW §§ 11-0501 *ET SEQ.* (MCKINNEY 1997); for DEC regulations, see N.Y.C.R.R. TIT. 6, PT. 182.

Farmers and ranchers using propane cannons or other noise-making devices to scare birds from fruit or vegetable crops may be subject to neighboring landowner complaints or challenges in court. Court cases are often decided on the definition of normal agricultural practices which may vary as to local practices. Check with your local cooperative extension office or regional DEC for more information.

3. *Interference with Fish and Wildlife*

Streams must not be obstructed so as to interfere with the free passage of fish. The FWL prohibits the diversion or holding back of water in such a manner or amount as to interfere with a state hatchery. Flumes or raceways in streams stocked by the state must be screened as directed by DEC. Any device which will prevent frogs from having free egress from and access to water is prohibited. No person may disturb a beaver dam, house, or den or a muskrat house or den except as permitted by DEC. Agricultural landowners can obtain permits from DEC to control muskrat or beaver damage to ponds, waterways, ditches, or other irrigation structures. Beavers damaging fruit trees can also be trapped or shot if the appropriate state permits can be obtained.⁶⁰ Consult with the regional DEC office to secure the necessary permits for beaver or dam removal.

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 an operation 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 also 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 NEW YORK STATUTES

A. Right-to-Farm Statutes

New York has a statute sometimes referred to as a "Right to Farm Statute."⁶¹ Lands included in agricultural districts and exclusively committed to agricultural use are generally afforded protection from nuisance suits.⁶² Agricultural activities conducted on a farm are deemed not a private nuisance provided the following conditions are met:

⁶⁰ NY ENVTL. CONSERV. LAW § 11-0521 (MCKINNEY 1997).

⁶¹ N.Y. PUBLIC HEALTH LAW § 1300-C (MCKINNEY 1997).

⁶² N.Y. AGRIC. & MKTS. LAW § 308 (MCKINNEY 1997).

- Such activities were begun prior to the surrounding activities;
- Such activities have not increased substantially in magnitude or intensity; and
- Such activities have not been determined by the New York Department of Health (DOH) to be a cause of conditions dangerous to life or health.

B. Nuisance and Other Discharge Prohibitions

The WPCL specifically preserves rights and remedies to suppress nuisance or to abate any pollution presently or hereafter existing. Punitive damages may be awarded in private nuisance suits against violators of state environmental laws. There is some limited protection against private nuisance suits provided for agriculture. (See *Right-to-Farm Statute* discussed above.)

The New York Fish and Wildlife Law (FWL)⁶³ prohibits anyone from allowing any substance injurious to fish or wildlife to enter any waters whether public or private. The FWL prohibits the deposit of soil, refuse, or any other solid substance in any trout waters. Also prohibited is depositing such substances on the banks of such waters in a manner which might result in these substances running into such waters. Under the FWL, it is deemed a public nuisance to have any privy, pigsty, poultry enclosure, barn, barnyard, or drain from any building where drainage or refuse might find its way into any waters used by a state fish hatchery.

The New York Public Health Law (PHL)⁶⁴ gives local health officers the power to investigate and abate public nuisances which may affect health. The PHL requires every local board of health to order the suppression and removal of all nuisances and conditions detrimental to life and health found to exist within the health district.

⁶³ N.Y. ENVTL. CONSERV. LAW §§ 11-0101 *ET SEQ.* AND §§ 13-0101 *ET SEQ.* (MCKINNEY 1997).

⁶⁴ N.Y. PUB. HEALTH LAW §§ 13 (MCKINNEY 1997).

Appendix A - Agencies

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

State Agencies:

New York Department of Agriculture & Markets

1 Winners Circle
Albany, NY 12235
(518) 457-4418 or (800) 554-4501 toll free
<http://www.agmkt.state.ny.us/index.html>

Programs:

Ag Protection & Development

(518) 457-7076

Animal Industry

(518) 457-3502

Counsel's Office

(518) 457-1059

Plant Industry

(518) 457-2087

New York Department of Environmental Conservation

50 Wolf Road
Albany, NY 12233-1011
(518) 485-8940
(518) 457-7744 fax
www.dec.state.ny.us

Divisions:

Air and Waste Management

(518) 457-1415

Environmental Permits

(518) 457-7424

(518) 457-5965 fax

Fish, Wildlife & Marine Resources

(518) 457-5690

Lands and Forests

(518) 457-2475

Natural Resources

(518) 457-0975

Pollution Prevention

(518) 457-7267

Solid & Hazardous Materials

(518) 457-6934

Water

(518) 457-7464

Water Quality & Environmental Remediation

(518) 457-6559

Toll Free Numbers:

Bulk Storage Helpline

(800) 242-4351

Hazardous Waste Annual Report

(800) 452-1925

Hazardous Waste Sites Information

(800) 342-9296

Oil & Chemical Spill Reporting

(800) 457-7362

Ozone Information

(800) 535-1345

Pollution Prevention

(800) 462-6553

Sm. Quan./Household Hazardous Waste

(800) 462-6553

Turn in Poachers & Polluters

(800) 847-7332

New York Department of Health

Corning Tower
Empire State Plaza
Albany, NY 12237
(518) 474-2011
<http://www.health.state.ny.us>

Divisions:

Environmental Health

(518) 402-7500

(518) 402-7509 fax

New York Department Of State

41 State Street
Albany, NY 12231-0001
(518) 474-4750
(518) 474-4765 fax
<http://www.dos.state.ny.us>

Toll Free Numbers:

Watershed Project

(888) 426-7433

Watts Burn Line
(800) 345-5811

**New York Office of Parks, Recreation and Historic
Preservation**

Pebbles Island
PO Box 219, Delaware Avenue
Waterford, NY 12188
(518) 237-8643
<http://www.nysparks.state.ny.us>

New York Soil and Water Conservation Committee

1Winners Circle
Albany, NY 12235-0001
(518) 457-3738
(518) 457-3412 fax
www.agmkt.state.ny.us/soilwater/home.html

New York State Office of General Services

Erastus Corning II Tower Building
Empire State Plaza
Albany, NY 12242
(518) 474-1541
www.ogs.state.ny.us/default.asp

Cornell University Cooperative Extension

365 Roberts Hall
Cornell University
Ithaca, NY 14853-4203
(607) 255-2237
(607) 255-2473 fax
<http://www.cce.cornell.edu/>