

ENVIRONMENTAL LAWS AFFECTING OREGON AGRICULTURE

A Project of the

**National Association of State Departments
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through the

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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 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. 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, 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 1999. 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.

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. 1-15</i>	Livestock and aquaculture operations, depending on size	NPDES and state general permit or land disposal permit	EPA Regional Office and Oregon Department of Agriculture
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit	US Army Corps of Engineers with EPA and Oregon approval
	Water well construction and use	No permit, but construction standards must be followed	Oregon Water Resources Department
Groundwater <i>pp. 15-18</i>	Groundwater protection	No permit, but groundwater protection standards must be followed	Oregon Water Resources Department, Oregon Department of Environmental Quality, and Oregon Department of Agriculture
Air Quality <i>pp. 18-20</i>	Grain terminals and grain elevators	No permit required	Oregon Department of Agriculture
	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance suits	EPA Regional Office or Oregon Water Resources Department
	Burning	Permit required in certain circumstances	Oregon Department of Environmental Quality and Oregon Department of Agriculture
Solid Waste and Hazardous Waste <i>pp. 20-26</i>	Storage, treatment, or disposal of hazardous or solid waste	Permit required for disposal, treatment, or storage activities	EPA Regional Office and Oregon Department of Environmental Quality

Regulatory Area	Type of Activity	Permit Required	Agency
	Public notice of hazardous waste	No permit required	Oregon Department of Environmental Quality
Pesticides and Chemigation <i>pp. 26-30</i>	Application and use of pesticides	No permit, but a license may be required	EPA and Oregon Department of Agriculture
	Use of pesticides around farmworkers	No permit required	Oregon Department of Agriculture
	Record keeping	No permit, but all requirements must be met	Oregon Department of Agriculture
Wildlife Protection <i>pp. 30-33</i>	Taking of wildlife	Permit required if endangered or threatened species may be affected	U.S. Fish and Wildlife Service
Waste Lagoons <i>pp. 45</i>	Storage of animal waste	No permit required	Oregon Department of Environmental Quality
Land Application of Waste <i>p. 46</i>	Land application of animal waste to cropland	No permit required	Oregon Department of Agriculture
Dead Animal Disposal <i>p. 48</i>	Disposal of animal carcasses	No permit, but regulations must be followed	Oregon Department of Agriculture

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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. Keeping 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. Federal Clean Water Act

1. Overview

The Clean Water Act¹ (CWA) is an important federal environmental statute affecting agriculture. The law was originally enacted by Congress in 1972 and has been amended several times since. Its objective is to reduce or eliminate water pollution in the nation's rivers, streams, lakes, and coastal waters. A variety of mechanisms are employed by the CWA to control domestic, industrial, and agricultural pollution. Several types of agricultural activities and practices are regulated under the statute. Direct discharges from feedlots are an example. The U.S. Environmental Protection Agency (EPA) is charged with enforcing the CWA.

To mark the 25th anniversary of the CWA; EPA, the U.S. Department of Agriculture (USDA), and several other federal agencies released the *Clean Water Action Plan: Restoring and Protecting America's Waters* (Action Plan). The Action Plan builds on the successes of 25 years of progress and provides more than 100 recommendations for continued improvement using four tools. The four key tools to achieve clean water goals are:

- ! A Watershed Approach - A new, collaborative effort by federal, state, tribal, and local governments; the public; and the private sector to restore and sustain the health of watersheds in the nation. The watershed approach is the key to setting priorities and taking action to clean up rivers, lakes, and coastal waters.
- ! Strong Federal and State Standards - This calls for federal, state, and tribal agencies to revise standards where needed and make existing programs more effective. Effective standards are key to protecting public health, preventing polluted runoff, and ensuring accountability.

¹ 33 U.S.C. § 1251 *et seq.* (1994).

- ! Natural Resource Stewardship - Most of the land in the nation's watersheds is cropland, pasture, rangeland, or forests, and most of the water that ends up in rivers, lakes, and coastal waters falls on these lands first. Clean water depends on the conservation and stewardship of these natural resources. The Action Plan calls on federal natural resource and conservation agencies to apply their collective resources and technical expertise to state and local watershed restoration and protection.
- ! Informed Citizens and Officials - Clear, accurate, and timely information is the foundation of a sound and accountable water quality program. Informed citizens and officials make better decisions about their watersheds. The Action Plan calls on federal agencies to improve the information available to the public, governments, and others about the health of their watersheds and the safety of their beaches, drinking water, and fish.

Producer Note: Many of the recommendations in the Clean Water Action Plan will have an impact on agriculture and agricultural production, particularly nonpoint sources of pollution. Your participation in watershed-level stakeholder meetings is important and you should take the opportunity to present your views. Producers must keep informed about these recommendations and their impact by contacting your local Natural Resources Conservation Service (NRCS), USDA or state department of agriculture representative.

2. *Water Quality Standards*

The CWA requires each state to adopt water quality standards for most water bodies located within the state's borders. Rivers and streams are often divided into segments for this purpose. The water quality standards specify appropriate uses to be achieved and protected for each segment of water, such as public water supplies; protection and propagation of fish, shellfish, and wildlife; recreation in and on the water; agricultural uses such as irrigation or livestock watering; and navigation. Each state's water quality standards also include numerical or narrative criteria that are designed to protect these uses. The standards are then used to establish treatment controls and strategies to protect the water quality, and may include specific requirements placed in permits issued to point sources. However, there are no federal laws or regulations that require the control of nonpoint sources to achieve water quality standards. In addition, as an anti-degradation policy, water quality standards may also prohibit new waste discharges into waters of exceptionally high quality.

3. *NPDES Permits*

Discharges of waste from point sources into navigable waters are regulated through a permit system known as the National Pollutant Discharge Elimination System (NPDES). Permits are issued either by EPA or by the state under a program approved by EPA. It is illegal to

discharge waste from point sources into navigable waters without a permit or in violation of the terms of the permit. The CWA defines a point source as the following:

The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigation.

Navigable waters are defined by the CWA as "waters of the United States." This phrase has been interpreted broadly by EPA regulations and the courts to include most rivers, streams, lakes, and wetlands. Navigable waters do not have to be accessible by boats to meet the definition.

NPDES permits contain effluent limitations specifying the amounts of pollutants which may also be discharged. The permits contain other terms and conditions as well. Operational practices may also be specified. Monitoring, record keeping, and reporting requirements are usually included. If EPA is issuing the permit, a state certification that the permit complies with the CWA and state laws is required. In some cases, a permit may prohibit all discharges into water.

The permit issuance process normally involves the submission of an application, agency review of the application for completeness, a tentative permit decision by the agency, time for public comment or a hearing, and the final permit decision.

Producer Note: Many animal feeding operations and aquatic feeding operations are considered point sources and therefore require permits. If a pollutant discharge into waters of the U.S. occurs and the operation does not have a required permit, an owner or operator may be exposed to serious penalties. Producers may contact state and federal authorities to determine if a permit is required for a particular operation. Generally, an NPDES permit application will request information concerning activities occurring at the facility, including a description of the nature of the business. In addition, the name, address, telephone number, and ownership status of the operation will be required, along with a list of all other environmental permits or construction approvals which have been received or for which application has been made, a topographical map, and whether the facility is located on tribal land.

Concentrated animal feeding operations (CAFOs) are required to obtain an NPDES permit. A facility is a CAFO if it has more than 300 animal units and discharges directly into navigable waters, or if the operation has more than 1,000 animal units. A feeding operation does not need a permit if it only discharges as a result of a 25-year, 24-hour storm event. An animal unit is defined as 1.0 unit per animal for slaughter and feeder cattle, 1.4 units per animal for

mature dairy cattle, 0.4 unit per animal for swine, 0.1 unit per animal for sheep, and 2.0 units per animal for horses.²

Generally, 1,000 animal units is the equivalent of 1,000 slaughter and feeder cattle, 700 mature dairy cattle, 2,500 swine which are over 55 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 100,000 laying hens or broilers with continuous overflow watering, 30,000 laying hens or broilers with a liquid manure system, or 5,000 ducks. In addition, 300 animal units is the equivalent of 300 slaughter or feeder cattle, 200 mature dairy cattle, 750 swine over 55 pounds, 150 horses, 3,000 sheep or lambs, 16,500 turkeys, 30,000 laying hens or broilers with overflow watering, 9,000 laying hens or broilers with a liquid manure system, or 1,500 ducks.

Concentrated aquatic feeding operations require an NPDES permit if they produce more than 9,090 harvest weight kilograms per year of cold water fish or 45,454 harvest weight kilograms per year of warm water fish. Discharges into aquaculture projects also require a permit. An aquaculture project is a "defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals."

To help implement the Clean Water Action Plan, on March 9, 1999, EPA and USDA jointly issued the final Unified National Animal Feeding (AFO) Strategy. The AFO strategy sets forth a national program for addressing water pollution caused by livestock operations. The strategy contains the following basic components:

- ! Approximately 450,000 animal feeding operations are expected to develop and implement Comprehensive Nutrient Management Plans (CNMPs) by 2009.
- ! CNMPs will be voluntary for most AFOs, but will be encouraged through environmental education and financial and technical assistance programs.
- ! CNMPs will be mandatory for concentrated animal feeding operations (CAFOs) that require NPDES permits under the Clean Water Act or equivalent state laws.
- ! Approximately 20,000 CAFOs will require either a general or individual permit by the year 2002. This is a much greater number than in the past. CAFOs requiring permits will be larger facilities with significant manure production, facilities with unacceptable conditions, and facilities that are significant contributors to water quality impairment.
- ! CNMPs will be required to address feed management, manure handling and storage, on-farm and off-site land application of manure, land management, record keeping, and alternative uses of manure.

² 40 C.F.R. § 122.23, app. B to pt. 122 (1996).

- ! EPA may amend its regulations to include poultry operations using dry waste systems within the definition of a CAFO thus requiring such operations to obtain NPDES permits.
- ! EPA may also require that corporate integrators in the poultry and hog industries be co-permittees with their contract producers.

4. *Wetlands*

Producer Note: When agricultural operators conduct dredging and filling activities which affect water sources, these activities may require a permit. Failure to obtain a required permit expose the operator to serious penalties.

A separate permit, known as the section 404 permit,³ is required by the CWA for discharges of dredge and fill materials into navigable waters. These permits are issued by the U.S. Army Corps of Engineers (Corps) and are subject to review and approval by EPA and the state. The filling of wetlands and the construction of structures in streams, such as irrigation gates or docks, will often require a section 404 permit.

Although minor wetlands filling activities may be covered by a section 404 General or Nationwide Permit, substantial dredging or filling will usually require an individual permit. Permits may be denied if the activity causes significant adverse effects on the water body or the surrounding environment and there are practical alternatives available.

There are 40 section 404 General or Nationwide Permits.⁴ The following agricultural activities are allowed under the permits:

- ! Fish and wildlife harvesting, enhancement, and attraction devices and activities (permit #4);
- ! Wetland riparian and restoration and creation activities (permit #27);
- ! Cranberry production activities (permit #34);
- ! Emergency watershed protection and rehabilitation (permit #37);
and

³ 33 U.S.C. § 1344 (1994).

⁴ 61 Fed. Reg. 65, 874 (1996).

! Farm buildings (permit #40).

In addition, a number of permitted activities may relate to a farming operation, including maintenance, utility line backfill and bedding, bank stabilization, road crossing, return water from upland contained disposal areas, minor discharges, minor dredging, oil spill cleanup, headwaters and isolated waters discharges, temporary construction and access, and cleanup of hazardous and toxic waste. On December 13, 1996, the Corps reissued the existing Nationwide Permits with some modifications and issued two new Nationwide Permits.⁵ The two new permits were for moist soil management for wildlife (permit #30) and maintenance of existing flood control facilities (permit #31).

In the December 13th notice, the Corps proposed to change the date that permit #26 expires from December 13, 1998 to December 28, 1999. When permit #26 expires, the Corps is proposing to issue six new nationwide permits and modify six existing nationwide permits. These new nationwide permits will be activity-specific, and most will be restricted to discharges of dredged or fill material into non-tidal waters of the United States. In addition, changes to headwaters and isolated waters discharges (permit #26) will cause an increase in review time for some activities and more clearly define the activities allowed under the permit.

Producer Note: All producers are encouraged to check with state and federal environmental officials to determine if a specific farming activity will be covered by a section 404 General or Nationwide Permit, or if the activity needs an individual permit. Should the activity be covered by a permit, a producer should obtain a copy of the permit for reference and guidance. Copies can be requested from the Corps.

A permit may include either onsite or offsite mitigation requirements. Mitigation requirements include restoring altered wetlands and permanently protecting other wetlands from alteration.

Many normal farming, ranching, and logging practices, such as plowing, seeding, cultivating, minor drainage, and harvesting, are exempt from permit requirements under section 404(f) of the CWA if the activities are already occurring and will be ongoing and continuous.⁶ However, a permit may still be required if major changes to the operation occur.

⁵ 61 Fed. Reg. 65,874 (1996).

⁶ 33 C.F.R. § 323.4 (1996).

5. *Nonpoint Source Pollution*

Producer Note: Section 319 of the CWA was enacted in 1987 and guides the states in conducting nonpoint source assessments, developing nonpoint source management programs, and, as of 1990, beginning implementation of those programs. There are no federal regulatory requirements in section 319.

Nonpoint source pollution is generally caused by runoff or snowmelt from cropland, pastures, barnyards, and impervious surfaces such as roads, parking lots, and roofs. The runoff may carry sediment, pesticides, herbicides, fertilizers, and other chemicals into adjacent waters, causing pollution. The CWA recognizes that cleaning up the nation's waters requires control of nonpoint as well as point source pollution, and regulation of nonpoint source pollution involves cooperative programs with the states.

A state section 319 plan will generally provide for the development of best management practices (BMPs) as a means of controlling nonpoint sources of pollution. Cost sharing programs to help farmers and ranchers implement BMPs on their operations are also authorized. To assist states implementing their approved programs, states have received a total of about \$470 million in the years 1990-1996 to implement programs, including cost share for demonstration projects, technical assistance, education, training, and enforcement.

6. *Oil Spill Liability*

The CWA imposes strict liability on the operators of facilities that spill oil or other hazardous wastes into navigable waters. This would include spills from petroleum storage tanks located on farms. The CWA requires that the operator promptly notify EPA of any spill. A failure to give EPA notice of the spill is a violation of the statute.

7. *Special Programs*

The CWA establishes special pollution control programs for certain waters, including the Chesapeake Bay, the Great Lakes, and the Gulf of Mexico. Producers in Alabama, Florida, Illinois, Indiana, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New York, Ohio, Pennsylvania, Texas, Virginia, Washington, D.C., and Wisconsin may be affected by these programs. In addition, the National Estuary Program protects estuaries of national significance like the Puget Sound area in Washington, Buzzards Bay in Massachusetts, and Albemarle-Pamlico Sound in North Carolina.

Producer Note: There are currently 28 estuaries in the National Estuary Program. These are located in Alabama, California, Connecticut, Delaware, Florida, Louisiana, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Texas, Washington, and Puerto Rico. Additional areas may be named in the future. Producers should regularly check information sources, such as NRCS or EPA, for affected waters in their areas.

8. *Enforcement and Judicial Review*

Violators of the regulatory requirements of the CWA may face substantial penalties. These include both civil and criminal fines. Incarceration is possible for severe violations. EPA or the state can enjoin or stop producers' activities in order to force compliance with the statute. The CWA allows citizens to file suits to enforce CWA requirements in certain circumstances. However, if a producer disagrees with the way CWA requirements are applied to an operation, opportunities for both administrative and judicial review of EPA and state decisions are available.

Producer Note: In order for producers to maintain compliance with water quality legislation, they must be aware of state water quality standards, NPDES permit requirements, state and local nonpoint source pollution programs, wetlands permits, oil spill liability, and whether there are waters requiring special protection in their area. The states take active roles in ensuring that producers comply with these requirements.

B. **Federal Coastal Zone Management Act**

The Coastal Zone Management Act of 1972⁷ (CZMA) was enacted to protect the natural, commercial, recreational, ecological, industrial, and aesthetic resources of the coastal areas of the United States. Coastal areas are the coastal waters and adjacent areas, including islands, transitional and intertidal areas, salt marshes, wetlands, beaches, and inland areas affecting coastal water quality. Coastal areas include the Great Lakes waters.

The CZMA authorizes each state containing coastal zone areas to adopt a management program for those areas. Federal grants are available to develop and implement these programs. In addition, under the Coastal Zone Act Reauthorization Amendments of 1990⁸ (CZARA), states with coastal zone management programs are required to develop coastal nonpoint pollution control programs to protect coastal waters. A state CZMA management program must include:

- ! Identification of zone boundaries;

⁷ 16 U.S.C. § 1451 *et seq.* (1994).

⁸ Pub. L. No. 101-508, 104 Stat. 1388, 1388-314 *et seq.* (1990).

- ! Permissible land uses and water uses within the zones;
- ! Inventory of areas within the zone;
- ! Priorities of uses within the zone;
- ! Means of controlling uses;
- ! Planning mechanisms for energy, shoreline erosion, and beach protection; and
- ! Identification of the management structure which will implement the program.

Producer Note: Coastal zone management programs only apply in those states with coastal areas. There are 35 states or territories, of which Oregon is one, in which the CZMA has some application. At this time, 29 states have federally approved programs. The CZMA is important because it is the first law which required states to implement programs designed to address nonpoint source pollution.

A coastal nonpoint pollution control program must include specific measures to address nonpoint pollution and enforceable policies and mechanisms that ensure implementation.

Management measures within state plans must reflect the best available nonpoint source pollution control practices, technologies, processes, siting standards, operating methods, and other criteria.

Section 6217 of CZARA requires each state to develop a coastal nonpoint pollution program and implement management measures and state plans coordinated with state and local water quality plans and programs. The state plans must provide for identification of land uses, identification of critical coastal areas, management measures to be used in those areas, technical assistance measures, public participation opportunities, and administrative considerations. If these plans are not approved, coastal management and water pollution control assistance funds can be withheld.

Producer Note: EPA has issued a guidance manual⁹ on nonpoint pollution in coastal waters, which applies in all coastal states. The manual identifies measures pertaining to agriculture which are designed to reduce pollutants. Potential causes and solutions of nonpoint pollution are addressed, such as sediment and erosion control through conservation tillage, strip cropping, contour farming, terracing, or practices to remove settleable solids; confined animal facilities through limiting discharges of animal waste and designing and implementing waste management systems which will reduce runoff; nutrient management through budgeting of nutrients provided to crops; pesticide management through reducing pesticide use and improving the timing and efficiency of application; livestock grazing through protection of sensitive areas such as streambeds and wetlands from improved grazing management; and irrigation through more effective irrigation systems and special precautions in chemigation.

C. State Water Quality Laws and Regulations

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, CWA requirements must be followed, and are enforced 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 many states.

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.

Oregon is dependent upon rivers, streams, lakes, and subsurface waters as both a public and private water supply and for agricultural, industrial, and recreational uses. To maintain state water quality, Oregon has enacted a series of laws dealing with water pollution control.¹⁰ The laws are administered by the Oregon Department of Environmental Quality (DEQ) and the Environmental Quality Commission (EQC).

1. NPDES Permit Program

Any person who discharges or proposes to discharge any pollutant from a point source into state water must first obtain a permit. In addition, anyone proposing to modify an existing

⁹ OFFICE OF WATER, U.S. ENVTL. PROTECTION AGENCY, GUIDANCE SPECIFYING MANAGEMENT MEASURES FOR SOURCES OF NONPOINT POLLUTION IN COASTAL WATERS (1993).

¹⁰ OR. REV. STAT. § 468B *et seq.* (1992).

waste disposal system must obtain a permit. The Commission is given the power to issue the NPDES permits authorized under the Federal Water Pollution Control Act.

Pollutants are solid waste of any type, garbage, sewage, and any type of agricultural waste discharged into water. Oregon authorizes the issuance of a general permit, which authorizes pollutant discharges for a group or category of operations instead of individual permits issued for the discharge of pollutants from specific sources.

2. Concentrated Animal Feeding Operations

Oregon laws deal specifically with the discharge of pollutants by concentrated animal feeding operations (CAFOs). A CAFO is the concentrated and confined feeding or holding of animals or poultry, including swine feeding areas, dairy confinement areas, slaughterhouse or shipping/holding areas, and poultry and egg production facilities. All types of CAFOs that have wastewater containment disposal systems and which confine animals for a period longer than four months during any 12 month period are required to obtain a permit distributed by the Oregon Department of Agriculture (ODA). The permit will specify the maximum number of animals that may be housed at the feeding operation. The number is determined by the ability of the feeding operation to contain, treat, hold, and dispose of wastes as necessary to comply with the permit.

Producer Note: Any confined feeding operation that exceeds the maximum number of animals specified in its permit by more than 10 percent or 25 animals is in violation of the permit. A permit violation is a misdemeanor punishable by a fine of up to \$25,000, imprisonment for up to one year, or both.

A CAFO may be inspected at any reasonable time to determine if the operation is in compliance with its permit. The inspection includes access to the feeding operation's records. Records of a feeding operation include blueprints, design drawings and specifications, maintenance records or logs, and operating rules, procedures, or plans. Guidelines have been issued for the construction of CAFOs.¹¹

Producers who wish to construct, commence, or substantially modify or expand an operation must submit plans and specifications for the facility and obtain written approval of the action.¹² The submission should include:

- !** Location map showing ownership, zoning, and use of adjacent lands and the location of the facility in relation to residences and domestic water supply sources;

¹¹ OR. ADMIN. R. 340-51-060 (1996).

¹² OR. ADMIN. R. 340-51-005 et seq. (1996).

- ! Topographic map of the site showing the natural drainage pattern and the proposed surface water diversion area and roof drainage control system;
- ! Climatological data for the site describing normal annual and seasonal precipitation quantities and patterns, evaporation rates, and prevailing winds;
- ! Information regarding the proximity to surface waters and typical soil types in the area of the proposed site and disposal areas;
- ! Estimated maximum numbers and types of animals to be confined at the site at any one time, and estimated volume of wastes to be collected and disposed;
- ! Detailed plans and specifications and procedures for wastewater and manure collection, handling, retention, storage, treatment, and disposal systems;
- ! Details of feed preparation, storage, handling, and use and proposed methods and facilities for controlling wastes that may result; and
- ! Any additional information which may reasonably be required.

Generally, applications will receive a preliminary evaluation of completeness within 14 days, and written notice of approval or disapproval will be issued within 45 days of receipt. All disapprovals will contain itemized deficiencies.¹³

Extensive guidelines have been issued for the construction and operation of CAFOs. These guidelines include recommendations for drainage and waste volume control, liquid manure and solids collection and storage facilities, conveyance facilities and practices, liquid manure and solids disposal facilities and practices, and other incidental control practices.

a. Waste Management

Recommendations for liquid manure collection and storage facilities include:

- ! Ponds used to accumulate manure and contaminated drainage waters should have sufficient usable capacity to contain the maximum accumulated rainfall and manure runoff from the entire

¹³ OR. ADMIN. R. 340-51-015.

collection area for the maximum expected period of accumulation - generally ponds with capacity equal to one-half the average annual rainfall over the entire collection area will usually provide adequate operating and reserve capacity to catch one in ten year peak storm runoff;

- ! Lagoons and collection sumps should be constructed of good quality soil material, well compacted during construction, with sideslopes consistent with accepted earthfill practices for the materials used and stabilized with vegetation recommended by the Agricultural Extension Service, immediately after construction;
- ! Lagoons or collection sumps with earth dikes should be constructed with overflow relief structures to prevent a washout in the event of failure in other parts of the system;
- ! Where unusually windy conditions prevail, or surface aeration equipment is used, dikes should be protected to prevent erosion;
- ! Reinforced concrete manure holding tanks should be constructed in accordance with, or at least equivalent to, specifications for steel placement and concrete quality contained in a design which has been prepared by or has been reviewed and found acceptable by a qualified structural engineer; and
- ! Where seasonal groundwater levels rise above the bottom of a below-ground-level tank, drain tile should be laid at the base of the tank before it is backfilled.

In solids handling collection and storage facilities, manure solids should be collected, stored, and utilized or disposed with a minimum of water or rainfall addition in a manner which will prevent water pollution and minimize the production of flies and odors. In addition, where large accumulations of manure are stored during winter months, contaminated drainage collection and holding or disposal facilities should be provided.¹⁴

b. Land Application of Waste

Oregon also has recommendations for the land application of liquid manure and solids. These recommendations include determining a nutrient budget based on the nutrient value of wastes and crop needs, establishment of a predetermined plan of uniform coverage, operation of irrigation systems according to a predetermined plan of rotation, careful selection of equipment,

¹⁴ OR. ADMIN. R. 340-51-060.

adequate land for effective year-round manure disposal, regular harvesting or grazing of vegetative cover on disposal land, avoidance of grazing on saturated soil conditions, and no use of seepage basins without adequate groundwater protection.

Solids disposal requires uniform field spreading of manure, avoidance of storage or depositing manure where it can be washed into surface drainage, and avoidance of using solids as fill or land raising material where ground or surface waters may be polluted. In addition, all dead animals should be promptly collected and disposed of in an approved manner.¹⁵ (See page OR-48).

3. *Agricultural Water Quality Management*

Where required by state or federal laws, ODA has the authority to create areas which are subject to a water quality management plan.¹⁶ ODA develops and implements a plan for the prevention and control of water pollution from agricultural activities and soil erosion.

All agricultural activities conducted on agricultural and rural lands within an identified water quality management area must be conducted in compliance with all water pollution control requirements. In order to carry out the water quality management plan on agricultural lands, specific actions may be required by the ODA. These actions may include:

- ! Routine construction, maintenance, and clearance of any works and facility;
- ! Agricultural and cropping practices; and
- ! Any other measures or avoidance necessary for the prevention or control of water pollution of the waters of the state.

ODA and the Oregon Board of Agriculture (Board) must consult with DEQ and EQC in the adoption and review of water quality management plans. All plans must be based on scientific information. Producers who do not comply with ODA water quality management plan are subject to ODA civil penalties of up to \$2,500 for the first violation and \$10,000 for a second violation. In addition to this penalty, noncompliance may also result in penalties issued by DEQ or EQC.

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 keep in contact with offices administering specific programs in order to keep up with all changes which may occur.

¹⁵ OR. ADMIN. R. 340-51-070.

¹⁶ OR. REV. STAT. § 568.900 *et seq.* (supp. 1996)

II. GROUNDWATER

A. Federal Groundwater Laws and Regulations

I. Safe Drinking Water Act

The Safe Drinking Water Act¹⁷ (SDWA) is the principal federal statute addressing groundwater quality. Under the act, EPA establishes tolerance levels for a host of pollutants potentially present in public drinking water.

The SDWA does have indirect effects on farmers and ranchers, however, and these effects may become more direct in the future. The SDWA was amended in 1996 to require public reporting of detections of chemical contaminants in drinking water. Since many of these contaminants could be agriculture chemicals, it is likely that public concerns about pesticides and herbicides will be heightened.

a. Source Water Quality Partnership Petition Program

The SDWA authorizes federal assistance for local programs that identify, assess, and deal with groundwater quality problems. One approach is to promote the creation of local, voluntary incentives programs to protect source water quality. Farmers and ranchers may find it in their interest to participate in such, especially where local concerns about public water contaminants are heightened by the release of information about contamination.

The Source Water Quality Partnership Petition Program is initiated by a local government or community water system by petitioning the state for assistance in establishing an incentive-based partnership between the petitioner and persons likely to be affected by water quality problems. A variety of funding sources support the installation of a pollution prevention infrastructure, including the Drinking Water State Revolving Fund, established by the SDWA. Using these funds, several municipalities and public water systems have provided 100 percent cost-sharing to farmers and ranchers who install best management practices designed to reduce sediment, nutrient, and chemical loading. For public water systems, investment in pollution prevention is considerably less expensive than the cost of treating contaminated water.

b. Underground Injection Control Program

Underground injection means the subsurface emplacement of fluids by well injection. The SDWA provides an underground injection control (UIC) program which is intended to protect groundwaters that may reasonably be expected to supply any public water system from contaminants which may result in noncompliance with drinking water regulations or otherwise adversely affect public health. Farmers and ranchers with agricultural drainage wells are required

¹⁷ 42 U.S.C. § 300g-1 *et seq.* (1996).

to furnish inventory information to appropriate state agencies. In addition, states can require individual well permits. Agricultural drainage wells include:

- ! Air conditioning return flow wells;
- ! Waste receiving cesspools with open bottoms and perforated sides;
- ! Cooling water return flow wells used to inject water used for cooling;
- ! Drainage wells primarily used to drain storm runoff;
- ! Dry wells used for waste injection;
- ! Recharge wells used to replenish aquifers;
- ! Salt water intrusion barrier wells;
- ! Sand backfill, other backfill wells, and injection wells used primarily in mining areas;
- ! Septic system wells used to inject waste or effluent from multiple dwelling or business septic tanks; and
- ! Subsidence control wells.¹⁸

Producers are not allowed to inject contaminants into an underground source of drinking water which uses a well if the contaminant could cause a violation of any primary drinking water regulation or if the activity would adversely affect the public health.

2. *Groundwater Pesticide Management Plans*

EPA has adopted a regulation that would allow the continued use of the agricultural chemicals alachlor, atrazine, cyanazine, simazine, and metolachlor only in states that have adopted groundwater management plans that provide specific safeguards for the use of those chemicals. EPA would have to approve the details of such plans before they become effective. EPA is expected to issue the final regulation during the summer of 1999. The states would have two years from the date of final regulation in which to develop their plans. EPA would have one year from the receipt of the plan to review and either approve or reject the plan.

¹⁸ 40 C.F.R. § 146.5 (1996).

Producer Note: Producers should contact the state agriculture department or USDA to determine the current status of the regulation and the groundwater pesticide management plan for their state.

B. State Groundwater Laws and Regulations

Oregon has enacted a series of laws protecting groundwater.¹⁹ The Department of Environmental Quality (DEQ) has promulgated rules establishing the maximum level of contaminants allowed in groundwater. A contaminant is any substance which does not occur naturally in groundwater, and includes fertilizer or pesticide residues.

DEQ and the Health Division have the authority to declare areas of the state subject to special scrutiny and control if the nitrate contaminants in the groundwater in that area exceed the permissible level of contaminants established by DEQ for that area by 70 percent.

Oregon regulates water well construction²⁰ through the Oregon Water Resources Department (WRD) and the Water Resources Commission (WRC). Water well contractors must be licensed by the WRC.

Producer Note: In Oregon, permits are not required for producers who drill wells for their own domestic purposes.

Groundwater usage and water well construction require authorization by the Commission. However, authorization for use of groundwater is not required for:

- ! Watering of stock;
- ! Watering lawns or noncommercial gardens that do not exceed ½ acre in size;
- ! Domestic purposes in an amount that does not exceed 15,000 gallons a day;
- ! Down-hole heat exchange purposes; and
- ! Single industrial or commercial purposes in any amounts not exceeding 5,000 gallons per day.

¹⁹ OR. REV. STAT. § 468B.150 *et seq.* (1992).

²⁰ OR. REV. STAT. § 537.747 *et seq.* (1988).

Farmers who drill their own wells solely for domestic purposes which do not exceed 15,000 gallons per day or are used for watering stock are not required to obtain well construction permits or permits to use groundwater. However, if the well is drilled for another individual, a water well constructor's license is required and detailed records of the well construction must be kept.

III. AIR QUALITY

A. Federal Clean Air Act

The Clean Air Act²¹ (CAA) is a comprehensive and complex piece of environmental legislation. The 1990 amendments to the CAA require sources which may cause pollution to obtain operating permits. These permits include a comprehensive statement of the pollution source's CAA obligations regarding emission limits, fee requirements, inspection, monitoring, and reporting duties. Violators are exposed to administrative compliance orders and federal court injunctions.

Under the 1990 CAA amendments, all criminal penalties are felonies. Fines of up to \$250,000 per day may be imposed on individuals and up to \$500,000 per day on corporations. Prison terms of up to five years may be imposed. Subsequent violations may result in the doubling of sanctions. Knowing endangerment offenses for the release of hazardous air pollutants may subject individuals to fines of up to \$250,000 with jail sentences of up to 15 years, and corporations may be fined up to \$1,000,000.

Negligently releasing hazardous air pollutants can subject the polluter to fines of up to \$250,000 and one year in jail if the polluter knows that the actions will place another person in imminent danger of death or serious bodily injury. Making false statements on reports or tampering with monitoring devices may result in fines up to \$250,000 per day and jail terms of up to two years.

In April of 1994, EPA announced a reward program for citizens who report companies that violate the CAA. Rewards of up to \$10,000 may be awarded to citizens whose information results in a criminal conviction or fine under the CAA.

The overall objective of the CAA is to protect human health, welfare, and the environment by maintaining and improving the quality of the air through the development of standards. Standards controlling ambient air emissions from farming practices like prescribed burning are geographically specific within each State Implementation Plan (SIP). The SIP may also provide visibility standards. Locations which the National Ambient Air Quality Standards designate as air non-attainment areas are subject to more restrictions.

²¹ 42 U.S.C. § 7401 *et seq.* (1994).

Finally, grain terminal elevators having a permanent storage capacity of more than 2.5 million bushels and grain storage elevators with a permanent storage capacity of more than one million bushels, including their loading and unloading facilities, are governed by regulations controlling discharge of gases and grain loading and unloading emissions.

Currently, the CAA has no application to the problem of odor, which is a common complaint regarding agricultural facilities. Odor problems are usually handled under state nuisance laws or other state environmental laws or local ordinances. However, livestock producers must stay informed of changes in the CAA which might affect them in the future. For example, regulations have been proposed which would prohibit dust from remaining in the air beyond the property on which it originates. A strict interpretation of this regulation could subject combining, disking, or other farm and ranch operations to the provisions of the CAA.

Producer Note: While most agricultural operations are not air pollution sources under the CAA, complaints concerning odor and dust resulting from agricultural operations may be made. These complaints normally come in the form of actions filed under state law against an agricultural producer for nuisance.

B. State Air Quality Laws and Regulations

Oregon regulates state air quality²² through the Department of Environmental Quality (DEQ) and the Oregon Environmental Quality Commission (EQC). EQC has enacted regulations which require a permit if air pollution occurs.

Producer Note: Air contaminants include dust, fumes, gas, mist, odor, smoke, vapor, or any particulate matter. Air pollution means the presence of air contaminants in a quantity or duration which is likely to be injurious to the public.

Except for burning permits, the Oregon air pollution laws do not apply to the following activities:

- ! Agricultural operations, the growing or harvesting of crops or the raising of fowl or animals;
- ! Use of equipment in agricultural operations in crop growing or raising animals or fowl;
- ! Agricultural land clearing or land grading;

²² OR. REV. STAT. § 468A.005 *et seq.* (1992).

- ! Heating equipment, other than wood stoves, used for residences which are exclusively used as dwellings for not more than four families; and
- ! Barbecue equipment used in connection with any residence.

1. Penalties

Anyone violating state air pollution laws recklessly causing substantial harm to human health or the environment is guilty of a felony and may be sentenced to jail for up to five years and pay a fine not to exceed \$200,000.

Producer Note: DEQ has established a small business advisory assistance program to assist small businesses in complying with the various air pollution laws.

2. Agricultural Burning

Agricultural burning²³ is also regulated by DEQ and EQC, and Oregon's policy is to reduce the amount of open field burning. Permits are required for open burning of the residue from perennial grass seed crops, annual grass seed crops, and cereal grain crops. Permits are issued in accordance with regulations adopted by DEQ.

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. Producers who use hazardous chemicals or use petroleum or other products stored in storage tanks must be aware of the requirements governing their actions.

A. Federal Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act²⁴ (RCRA) controls the treatment, storage, and disposal of hazardous waste as well as the disposal of municipal solid waste. RCRA also regulates the storage of petroleum and other products in underground storage tanks.

RCRA could have the following impacts on producers:

²³ OR. REV. STAT. § 468A.575 (1992).

²⁴ 42 U.S.C. § 6901 *et seq.* (1994).

- ! Disposal of hazardous waste on a farm could subject producers to significant responsibility including closure and post-closure care;
- ! Recalled pesticides intended for disposal may be subject to manifest and transportation requirements; and
- ! Offsite disposal of hazardous waste could subject producers to hazardous waste generator requirements.

1. Disposal

Producers disposing of their own used waste pesticides which are hazardous wastes are exempted from hazardous waste requirements, so long as the emptied containers are triple-rinsed in accordance with the labeling, and the pesticide residue is disposed of on the farm in a manner consistent with the disposal instructions on the pesticide label. However, if the chemical is defined as a RCRA waste, the triple-rinsate must be disposed of at an approved hazardous waste site.

Producers can dispose of non-hazardous agricultural wastes on their own property, unless the disposal is prohibited by other state or local laws. This includes manure and crop residues returned to the soil as fertilizers or soil conditioners and solid or dissolved materials in irrigation return flows.

2. Underground Storage Tanks

Underground storage tanks²⁵ (USTs) and their associated piping holding less than 1,100 gallons of motor fuel for non-commercial purposes, tanks holding heating oil used on the premises, and septic tanks are excluded from RCRA regulations. All new regulated USTs are required to meet standards related to construction, monitoring, operating, reporting to state or federal regulatory agencies, owner record keeping, and financial responsibility (see discussion of state storage tanks on page OR-25).

3. Used Oil

Producers who generate an average of 25 gallons or less per month of used oil from vehicles or machinery per calendar year are exempt from regulations. Producers exceeding 25 gallons are required to store the used oil in tanks meeting underground or aboveground technical requirements and use waste transporters with EPA authorization numbers for removal of the waste from the farm. Storage in unlined surface impoundments which are wider than they are deep is banned.

²⁵ 42 U.S.C. § 6991 *et seq.* (1994).

4. *Farming*

For food chain crops, farming can occur on land where hazardous chemicals are applied so long as the producer receives a permit from EPA. The producer must demonstrate that no substantial risk to human health is caused by the growth of crops in that manner.

5. *Penalties*

RCRA criminalizes a variety of knowing violations in the transportation of waste to unpermitted facilities, or transporting, treating, storing, or disposing of waste without a permit. In addition, making false statements or knowingly omitting material information in applications, manifests, or reports constitutes criminal conduct. Fines can be as high as \$50,000 per day of violation, and imprisonment may be from two to five years, depending on the violation. Subsequent convictions result in a doubling of penalties. Any person who knowingly violates the law and subjects another person to imminent danger of death or serious injury may be fined up to \$250,000 and imprisoned up to 15 years. A corporation found guilty of knowing endangerment is subject to a fine of up to \$1,000,000.

B. Federal Comprehensive Environmental Response, Compensation and Liability Act

The Comprehensive Environmental Response, Compensation and Liability Act²⁶ (CERCLA) was passed to rectify perceived inadequacies of earlier environmental legislation, especially RCRA. RCRA was deemed inadequate to address past hazardous waste disposal sites.

The federal government is authorized under CERCLA to conduct cleanup operations with funds from the "Superfund." The government may then seek to recover the costs of cleanup from "potentially responsible parties" (PRPs). The government is also authorized to issue cleanup directives or seek injunctive relief ordering PRPs to conduct responsive actions to abate an "immediate and substantial endangerment to public health or the environment." In addition, private parties are authorized to seek reimbursement from the "Superfund" or they may file cost recovery actions against PRPs.

CERCLA and the courts have broadly defined the term "persons" to include individuals, corporations, and other corporate actors, such as corporate officers, as well as other types of business entities.

Under CERCLA, criminal penalties may be levied for failing to report releases, knowingly reporting false or misleading information, or knowingly destroying or falsifying records. Fines may be as high as \$250,000 for individuals and \$500,000 for corporations. Incarceration for up to three years for a first conviction and up to five years for subsequent convictions can also be

²⁶ 42 U.S.C. § 9601 *et seq.* (1994).

imposed. An individual who provides information leading to the arrest and conviction of a person failing to report a release can receive up to \$10,000 as a reward.

C. Federal Toxic Substances Control Act

The Toxic Substances Control Act²⁷ (TSCA) allows EPA to regulate new commercial chemicals prior to sale on the market and to regulate the distribution and use of existing chemicals when they pose an unreasonable risk to human health or to the environment. TSCA also prohibits the use of polychlorinated biphenyl (PCB) transformers in areas that could affect food or feed. An exposure risk to food or feed is caused if PCBs are released in any way from the item and the releases have a potential pathway to human food or animal feed. EPA considers human food or animal feed to include items regulated by USDA or the Food and Drug Administration (FDA) as human food or animal feed, including direct additives. Food or feed stored in private homes is excluded.

D. Federal Emergency Planning & Community Right to Know Act

The objectives of the Emergency Planning & Community Right to Know Act²⁸ (EPCRA) are to: (1) allow state and local planning for chemical emergencies; (2) allow for emergency release notification; and (3) allow for toxic and hazardous chemical right-to-know.

EPCRA requires businesses which store chemicals subject to the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard to submit information or a list of those chemicals to state and local authorities. Submittal of this information will facilitate emergency planning and response. Annual reporting to state and local authorities is required for businesses which have those chemicals present at the facility in amounts above a certain threshold. However, hazardous chemicals used in routine agricultural operations or fertilizers held for resale by a retailer are excluded from EPCRA.

Farms storing and using hazardous chemicals for routine agricultural operations do not have to meet the requirements for reporting under EPCRA. However, farms storing any amount of an extremely hazardous substance above specified thresholds must notify state and local emergency planning committees.

Businesses which produce, store, or use extremely hazardous substances or CERCLA hazardous chemicals must report any non-permitted releases of a listed chemical above threshold amounts to federal, state, and local authorities. Releases could occur into the atmosphere, surface water, or groundwater.

²⁷ 15 U.S.C. § 2601 *et seq.* (1994).

²⁸ 42 U.S.C. § 11001 *et seq.* (1994).

Producer Note: Farmers and ranchers should work with their Local Emergency Planning Committee (LEPC) to ensure that the LEPC has sufficient information to respond should a local emergency occur. Excluded from the emergency planning requirements are activities involving the proper application of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulated pesticide products as well as the handling and storage of these pesticide products by an agricultural producer.

E. Occupational Safety and Health Administration

Producer Note: State OSHA or Labor Department officials can assist the operator in fully understanding worker training and safety requirements, particularly in the area of exposure to hazardous chemicals.

The Occupational Safety and Health Administration (OSHA) has regulations which include training requirements to protect workers from hazardous chemicals. Employers must comply with the regulations. The regulations cover workers involved in cleanup responses under CERCLA and RCRA.

OSHA has over 100 standards, which include some training requirements. OSHA has also promulgated a right-to-know law for employees exposed to hazardous chemicals, and many states have similar laws. RCRA regulations require treatment, storage, and disposal facility personnel to have expertise in their areas of assignment.

F. State Solid Waste and Hazardous Waste Laws and Regulations

Producer Note: While most farmers and ranchers are not generators, transporters, or disposers of solid waste, it is important to check with state officials concerning the definitions of solid waste to determine whether an operation's activities could be regulated under state solid and hazardous waste statutes.

Under Oregon law, hazardous waste²⁹ means any residue resulting from industry, trade, or business, if those residues are classified as hazardous by order of the Environmental Quality Commission (EQC) of the Department of Environmental Quality (DEQ). In order to be classified as hazardous, the residue must be found by the Commission to contribute significantly to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or to pose a substantial hazard to human health or the environment. Hazardous wastes may include residue from fungicides, herbicides, and insecticides if the particular substances are classified as hazardous by EQC. Hazardous waste may only be stored at a properly licensed hazardous waste treatment, storage, or disposal site.

²⁹ OR. REV. STAT. § 465.003 *et seq.* (1992).

Violations of the hazardous waste laws can be punished by both civil and criminal penalties. Civil penalties include a fine of up to \$10,000 per day for each separate violation. Criminal penalties may include punishment of up to one year in jail and a fine of \$10,000 for each violation.

1. Solid Waste Control

Oregon regulates solid waste disposal.³⁰ Solid waste is all rotting and nonrotting wastes including garbage, rubbish, sewage, manure, vegetable or animal solid or semisolid waste, and dead animals. The term solid waste does not include materials used for fertilizer or for other productive purposes or materials which are salvageable, so long as these materials are applied on land for growing crops or raising animals.

The EQC has enacted a number of regulations relating to how solid waste can be stored, transported, and disposed of in Oregon, and farmers are urged to contact the DEQ to obtain a copy of the regulations. Generally, solid wastes can only be disposed of at a properly licensed landfill.

2. Underground Storage Tanks

<p>Producer Note: In Oregon, only producers with underground oil storage tanks of 1,100 gallons or less are not required to comply with the regulations for underground storage tanks.</p>

Oregon laws concerning underground storage tanks³¹ may apply to farmers if they have large underground oil storage tanks. EQC has adopted a statewide underground storage tank program to protect the public health, safety, and welfare, and the environment, from the consequences of an underground storage tank release. EQC has also enacted regulations for the proper installation of an underground storage tank. An underground storage tank is any one or combination of tanks and underground pipes connected to the tank, used to contain regulated substances whose volume is 10 percent or more beneath the surface of the ground. Regulated substances include oil or any other substance listed by the Environmental Protection Agency (EPA) under CERCLA, such as almost all commercial chemical substances, many household products containing strong chemicals, most paints and paint removal products, and many other substances which generally contain strong chemicals.

The underground storage tank statutes do not apply to the following:

- !** Farm or residential tanks with a capacity of 1,100 gallons or less which store motor fuel for noncommercial purposes;

³⁰ OR. REV. STAT. § 459.005 *et seq.* (1992).

³¹ OR. REV. STAT. § 466.706 *et seq.* (1992).

- ! Tanks used for storing heating oil for consumption on the premises;
- ! Surface impoundments, pits, ponds, or lagoons; and
- ! Storm water or waste water collection systems.

Producer Note: Operation or removal of underground storage tanks without a permit from DEQ is not allowed. Deposit of a regulated substance into an underground storage tank is not allowed unless the tank is operating under a permit received from DEQ.

3. *Used Oil*

Oregon promotes the recycling of used oil.³² Permits are required to dispose of used oil by discharging it into sewers, drainage systems or any state waters. The permits must be obtained from EQC. The Commission has adopted a number of regulations relating to the use, management, disposal, and resource recovery from used oil. If used oil does not show the characteristics of a hazardous waste, it can be used as a dust suppressant or as an herbicide on the property of the person who generated the oil.

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 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.

A. Federal Insecticide, Fungicide, and Rodenticide Act

EPA also administers the Federal Insecticide, Fungicide, and Rodenticide Act³³ (FIFRA), the major federal statute governing pesticide use. FIFRA establishes minimum national standards for the use of pesticides, and regulates the registration, production, and sale of pesticides.

FIFRA grants primary, but not exclusive, enforcement responsibility for pesticide use to the states. States retain the authority to regulate the sale or use of any federally- registered pesticide or device in the state, but only if state regulations do not permit sale or use of pesticides prohibited under FIFRA. States may not impose any requirements for pesticide labeling or packaging in addition to or different from those required under FIFRA.

³² OR. REV. STAT. § 468.850 *et seq.* (1992).

³³ 7 U.S.C. § 136 *et seq.* (1994).

1. Use of Pesticides

FIFRA provides that it is unlawful for any person to use a registered pesticide in a manner inconsistent with its labeling. Based on the pesticide's toxicity or the degree of adverse effects on humans and the environment, EPA divides pesticides into two broad groups, either unclassified (general use) or restricted use pesticides.³⁴

Pesticides for unclassified or general use may be purchased and used by any person in a manner consistent with the pesticide's label. Restricted use pesticides may be applied only by or under the direct supervision of a certified applicator. Note that "under the direct supervision of a certified applicator" means that the pesticide is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed. This means that the certified applicator need not be physically present at the time and place the pesticide is applied, unless the pesticide label prescribes a greater degree of supervision.

FIFRA requires the certification of applicators of restricted use pesticides and provides for EPA-approved state certification programs.

2. Record Keeping Requirements

Under FIFRA regulations, commercial applicators must keep and maintain routine operational records containing information on kinds, amounts, uses, dates, and places of application of restricted use pesticides. Records must be maintained and kept for a period of two years.

Producer Note: Individual states may have requirements which are more stringent than FIFRA.
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The 1990 Farm Bill added the following record keeping and disclosure requirements for pesticide use:

- ! All pesticide applicators, including certified and non-certified, must maintain restricted use pesticide application records; time frames governing when records must be maintained are included and spot application records are required;
- ! Within 30 days of a restricted use pesticide application, all applicators must give a copy of the records of pesticide application to the person for whom the application was provided;

³⁴ Pesticides classified under FIFRA for restricted use are listed at 40 C.F.R. § 152.175 (1996).

- ! Records must be made available to any federal or state agency that deals with pesticide use or any health or environmental issue related to the use of pesticides at the request of the agency; however, a government agency may not release data from the records that directly or indirectly reveals the identity of individual producers and USDA is charged with administering access to the records by federal agencies, while states designate a lead agency to administer access by state agencies;
- ! When a health professional determines that pesticide information maintained in the records is necessary to provide medical treatment or first aid to an individual who may have been exposed to pesticides, persons required to maintain the records must promptly provide the record and available label information to the health professional upon request, and, in the case of an emergency, the information must be provided immediately;
- ! Penalties in the form of fines may be imposed by USDA for failure to comply with pesticide use and reporting requirements; and
- ! USDA and EPA are required to use the records to develop and maintain a database sufficient to enable USDA and EPA to publish annual comprehensive reports concerning agricultural and nonagricultural pesticide use.

Producer Note: Certified private pesticide applicators must record information no later than 14 days following the pesticide application. The information must include the brand or product name of the federal restricted use pesticide and the product's EPA registration number; the total amount applied; the size of the area treated; the crop, commodity, stored product, or site to which the pesticide was applied; the location of the application; the month, day, and year of the application; and the certified applicator's name and certified number.

Producer Note: For spot applications, certified private pesticide applicators must record information regarding spot treatments if they apply restricted use pesticides on the same day in a total area of less than 1/10th of an acre. The information must include the brand or product name of the federal restricted use pesticide and the product's EPA registration number; the total amount applied; the location of treatment designated as "spot application," followed by a description (e.g. the location could be recorded as "spot application" followed by "treatment for noxious weeds on Field A, C, and all pastures"); and the month, day, and year of the application. This provision does not pertain to greenhouse and nursery applicators, who are required to keep all data elements as listed.

3. *Disposal of Pesticides and Pesticide Containers*

Producer Note: Producers must take special care in disposing of pesticide containers. Although permits for disposal are not required under FIFRA, the pesticide labeling will reflect requirements for disposal which must be met in order to prevent violations of the law.

A pesticide's labeling may contain specific procedures for disposal of the pesticide and its container. Disposal of the pesticide in a manner inconsistent with the labeling violates FIFRA. EPA regulates the disposal of pesticides which can no longer be legally used due to cancellation of their registration. The agency also recommends special procedures for the disposal of unwanted pesticides.³⁵

To facilitate the collection and proper disposal of canceled and other unusable or unwanted pesticide products, EPA has enacted the Universal Waste Rule (UWR).³⁶ Many states have enacted rules similar in content and intent to UWR. Some states sponsor collections of these products on a regular basis.

4. *Worker Protection Standard*

Producer Note: Producers are also required to take precautions to protect farm workers from pesticides. Producers must properly train and notify workers of pesticide dangers. Producers should refer to the EPA publication entitled *The Worker Protection Standard for Agricultural Producers) How to Comply; What Employers Need to Know* for specific explanations of the requirements. Contact EPA or your state department of agriculture for the most current requirements.

Agricultural employers must also comply with the Worker Protection Standard (WPS) for Agricultural Pesticides. The WPS covers all agricultural employers and their employees. The WPS contains requirements for training employees who handle pesticides, provisions for protecting employees from pesticide exposure, and how to provide emergency assistance to exposed employees.

B. *State Pesticide and Chemigation Laws and Regulations*

Producer Note: Oregon, 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.

³⁵ 40 C.F.R. pt. 165 (1996).

³⁶ 40 C.F.R. pt. 273 (1996).

Oregon regulates pesticides through a series of statutes dealing with pesticide control.³⁷ Every pesticide distributed in Oregon must be registered with the Oregon Department of Agriculture (ODA). A pesticide dealer is a person who distributes restricted use pesticides. Typically, the pesticide dealer or manufacturer will assure that the pesticides are properly registered. All pesticide operators must have a license issued by ODA. Pesticide operators are those who own or operate a business engaged in the application of pesticides upon the land or property of another.

A license to apply pesticides is not required for the following:

- ! A farmer applying pesticides to the farmer's own land, other than restricted use pesticides, by use of the farmer's own equipment, or for others on an occasional basis so long as it is not a regular occupation and the other person furnishes the pesticide;
- ! Persons who do not advertise or publicly hold themselves as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small lawns, shrubs, or gardens; and
- ! Persons who do not advertise themselves as being in the business of applying pesticides and whose principal activity relating to pesticides is selling pesticides or leasing the application equipment.

Application of certain pesticides (including 2,4-D) are restricted during certain times of the year in local areas of eastern Oregon. Farmers are advised to check with their local extension agent or ODA for information about these restrictions.

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. Federal Endangered Species Act

The Endangered Species Act³⁸ (ESA) is designed to protect endangered and threatened species from federally-funded or directed activities, including pesticide use and wetlands manipulation (see also page OR-33).

³⁷ OR. REV. STAT. § 634.016 *et seq.* (1994).

³⁸ 16 U.S.C. § 1531 *et seq.* (1994).

The ESA also prohibits private persons from taking any listed endangered or threatened species of animal without a permit or exemption which allows the taking. Taking is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting the animal. An intent to take the animal is a required element for a violation of the ESA. No reported cases involve the taking of animals by pesticide poisoning, but the U.S. Fish and Wildlife Service has taken administrative action against farmers and ranchers who kill protected animals with meat illegally laced with pesticides. For example, in *Christy v. Hodel*,³⁹ a court upheld the authority of the U.S. Fish and Wildlife Service to assess penalties against livestock owners who deliberately killed grizzly bears, an endangered species, in order to protect their livestock.

Producer Note: An unlawful taking can result in serious criminal and civil penalties. Producers can apply for incidental taking permits if a contemplated activity might result in an inadvertent taking of a protected species. Permits are granted by the U.S. Fish and Wildlife Service.

The ESA makes it unlawful for anyone to import, take, possess, sell, deliver, or transport an endangered species of fish or wildlife or an endangered species of plant. Any person who knowingly violates the ESA is liable for a criminal fine of up to \$50,000 and up to one year of imprisonment. All other ESA violations, such as reporting violations, are subject to a criminal fine of up to \$25,000 and up to six months imprisonment.

Through FIFRA, mandatory limitations on pesticide use are included on pesticide labels and in county specific use bulletins. If producers use pesticides in an area where mandatory limitations exist, they need to follow the directions and limitations contained in the bulletins. Voluntary limitations on pesticide usage may also be employed to protect endangered and threatened species, and are contained in interim pamphlets available through EPA or your state department of agriculture.

Producer Note: The Endangered Species Act can be a powerful tool in the protection of wildlife and its habitat through the imposition of serious criminal and civil penalties for the destruction or harming of protected species. Producers must be aware of any endangered or threatened species existing on their property and take steps to ensure that activities do not harm those species.

³⁹ 857 F.2d 1324 (9th Cir. 1988), *cert. denied* 490 U.S. 1114 (1989).

B. Federal Migratory Bird Treaty Act

Producer Note: Treaty provisions like those which protect migratory birds will be taken into account by regulatory officials when making certain determinations. For example, these provisions will be considered by an agency when determining whether to grant or deny permits for CAFOs.

The Migratory Bird Treaty Act⁴⁰ implements conventions between the United States and Canada, Japan, Mexico, and the former USSR for the protection of migratory birds. Birds protected under the Act are not necessarily endangered. The Act provides that, except as permitted by regulation, it is unlawful to pursue, hunt, take, capture, or kill any migratory bird. Violation of the Act is a misdemeanor with penalties including fines up to \$500 and imprisonment up to six months. Federal courts have split on the question of whether intent must be present in order to impose liability under the Act in cases where birds have been poisoned by pesticides.⁴¹

C. State 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. Oregon has laws protecting wildlife.

Oregon's state wildlife laws⁴² are administered by the Oregon State Department of Fish and Wildlife (DFW) and the Oregon Fish and Wildlife Commission (FWC). Wildlife are fish, wild birds, amphibians, reptiles and wild mammals. Threatened species are defined as any native wildlife that FWC determines is likely to become an endangered species within the foreseeable future, or any native wildlife species listed as a threatened species pursuant to the federal Endangered Species Act (ESA). An endangered species is any native wildlife species determined by FWC to be in danger of extinction or any native wildlife species listed as endangered under the federal ESA.

No person can hunt or trap wildlife without a valid license, tag, or permit. Since endangered and threatened species are defined, in part, as wildlife, they cannot be hunted, trapped or killed without a license or permit.

⁴⁰ 16 U.S.C. § 703 *et seq.* (1994).

⁴¹ *See* United States v. Van Fossan, 899 F.2d 636 (7th Cir. 1990) *and* United States v. Rollins, 706 F. Supp. 742 (D.C. Idaho 1989).

⁴² OR. REV. STAT. § 496.002 *et seq.* (1994).

A person who owns agricultural lands is allowed to kill wildlife which are damaging livestock or agricultural crops.⁴³ However, if the wildlife is a game mammal, game bird, fur-bearing mammal, or any nongame wildlife species for which a permit or license is required, the farm owner must first obtain the necessary permit before killing the wildlife. However, a permit is not required to kill a cougar, bobcat, red fox, or bear that is killing livestock or destroying agricultural crops.

Producer Note: Furbearing animals include beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, and red and gray fox. Game animals include antelope, black bear, cougar, deer, elk, moose, mountain goat, mountain sheep, and silver gray squirrel.

Generally, any violation of the wildlife statutes, except those that apply to threatened or endangered species, are treated as misdemeanors. Violations involving threatened or endangered species are considered felonies and substantial monetary fines and jail time may be involved.

VII. 1996 Farm Bill

Producer Note: This section only discusses the environmental or conservation provisions of the 1996 Farm Bill.⁴⁴ For a more thorough examination of flexibility programs, export programs, dairy marketing, risk management, and other provisions of the 1996 Farm Bill, resources such as the local Farm Service Agency office, a producers' association, or appropriate governmental offices should be consulted.

A. Environmental Conservation Acreage Reserve Program

The Environmental Conservation Acreage Reserve Program (ECARP) includes the Conservation Reserve Program (CRP), the Wetlands Reserve Program (WRP), and the Environmental Quality Incentives Program (EQIP). Under ECARP, USDA may designate watersheds, multi-state areas, and regions of special environmental sensitivity as priority areas eligible for enhanced federal assistance. USDA may also designate areas in which it will assist producers in meeting federal, state, and local environmental laws and regulations.

⁴³ OR. REV. STAT. § 498.012 (1994).

⁴⁴ Federal Agriculture Improvement and Reform (FAIR) Act of 1996, P.L. 104-127.

1. Conservation Reserve Program

Producer Note: The Conservation Reserve Program⁴⁵ (CRP) has been reauthorized and extended by the 1996 Farm Bill. Producers who wish to participate in this program may submit an offer to enroll land during specified signup periods. A continuous signup is provided for certain special practices, including filter strips, riparian buffers, shelterbelts, grassed waterways, field wind breaks, living snow fences, salt tolerant vegetation, and shallow areas for wildlife. The Commodity Credit Corporation (CCC) administers the program through Farm Service Agency (FSA) state and county offices. The owner or operator submits a per acre rental bid. If accepted, the CCC enters into a contract with the owner or operator to convert the land into a conserving use for a minimum of 10 years in return for financial and technical assistance. Conservation plans approved by the local conservation district are required on eligible acreage.

The CRP has been extended through the year 2002 at the current level of enrolled acreage of 36.4 million acres. Under the 1996 Farm Bill, land ownership requirements prior to enrollment have been reduced from three years to one year.

Enrollment in CRP has been actively targeted to the most environmentally cost-effective acres. All offers are ranked competitively, based on an environmental benefits index which takes into account the government cost of the contract, soil erosion, water quality, wildlife habitat, and other costs.

USDA is authorized to allow current participants in the CRP to terminate any CRP contract which was entered into prior to January 1, 1995 with written notice, so long as the contract has been in effect at least five years. This early termination provision does not, however, apply to those enrolled lands which are determined to be of high environmental value.

CRP contracts which are not eligible for early termination include:

- ! Contracts entered into after January 1, 1995;
- ! Contracts entered into before January 1, 1995 which are less than five years old;
- ! Land with an erodibility index greater than 15;
- ! Land devoted to useful life easements, field windbreaks, grass waterways, shallow water areas, filter strips, shelterbelts, and bottom land timber on wetlands;

⁴⁵ Conservation Reserve Program-Long Term Policy, 61 Fed. Reg. 49697-01 (1996) (to be codified at 7 C.F.R. pt. 704 and pt. 1410)(proposed Sep. 23, 1996).

- ! Land enrolled under the wetland eligibility criteria; and
- ! Land located within an average of 100 feet of a stream or other permanent water body.

Total acreage placed in the CRP, combined with that placed in the Wetlands Reserve Program (WRP), may not exceed 25 percent of the total cropland of the county. In addition, no more than 10 percent of the cropland in the county can be subject to a CRP or WRP easement. CRP participants must comply with the CRP contract, implement approved conservation plans, establish required vegetative cover or water cover, comply with state noxious weed laws, and control all weeds, insects, and pests on the land. CRP participants must not produce agricultural commodities or allow grazing or harvesting on land subject to the contract without the approval of the U.S. Secretary of Agriculture. Finally, conservation compliance and Swampbuster requirements must be met as a condition of CRP eligibility.

The Conservation Reserve Enhancement Program (CREP) is a part of the CRP which provides financial incentives to farmers and ranchers to take land out of agricultural production. As these agricultural lands have been planted in trees, grass and other types of vegetation, the result has been reduced soil erosion, improved air and water quality and establishment of millions of acres of wildlife habitat. CREP builds upon CRP in several important ways. First, it is designed to address specific state and local concerns since proposals are developed by governors in consultation with local citizens, including farmers and ranchers. Second, CREP is targeted to specific geographic areas of state and national significance, such as restoration of important habitat for endangered plant or animal species. Third, the program's flexibility permits the design of conservation strategies to address specific issues and concerns. Fourth, CREP is results-oriented, requiring both measurable goals and monitoring of annual progress towards those goals.

Under CREP, federal CRP and state resources are combined to provide special financial incentives to farmers and ranchers to help solve agriculture-related environmental problems. In exchange for payments, farmers and ranchers agree to take their most environmentally sensitive lands out of production for periods of at least 10 years and plant native grasses, trees, or other vegetation, to reduce soil erosion, improve water quality, and provide wildlife habitat. CREP projects have already begun in several states; Illinois, Maryland, Minnesota, New York, North Carolina, Oregon, and Washington. USDA has committed \$170 million to reduce nutrient inflow to the Chesapeake Bay, \$200 million to reduce sedimentation in the Illinois River, and \$163 million to improve the water quality of the Minnesota River, New York to protect drinking water quality for New York City, \$275 million to improve water quality through nutrient management and sediment reduction, and with Oregon and Washington for the protection of dwindling salmon stocks. Arkansas, California, Florida, Georgia, Utah, Wisconsin, and Wyoming are currently developing CREP proposals.

2. *Wetlands Reserve Program*

The Wetlands Reserve Program⁴⁶ (WRP) has been reauthorized through the year 2002 with a maximum enrollment of 975,000 acres. Of the new enrollments, 1/3 must be in permanent easements, 1/3 in 30-year easements or less, and 1/3 in wetland restoration agreements which include cost sharing. At least 75,000 of the total acres must be enrolled in other than permanent easements before any additional permanent easements will be accepted for enrollment in the program.

Producer Note: To participate in the WRP program, a producer may enroll acreage at any time by applying for program participation with the local NRCS office.

Emphasis will be given to enrollment of lands that:

- ! Maximize wildlife benefits;
- ! Maximize the amount of wetlands;
- ! Achieve cost-efficient wetlands restoration; and
- ! Have the least likelihood of being reconverted.

Conservation plans are required for WRP program participation. Eligibility determinations for participation in the program is made by NRCS. In addition, landowners may be provided with 75 percent to 100 percent cost sharing for restoring wetlands under permanent easements, 50 percent to 75 percent for 30-year easements, and 50 percent to 75 percent for restoration cost share agreements.

3. *Environmental Quality Incentives Program*

The Environmental Quality Incentives Program⁴⁷ (EQIP) was established by the 1996 Farm Bill to provide a voluntary conservation program for farmers and ranchers who face serious threats to soil, water, and other natural resources. It provides technical, financial, and educational assistance primarily to designated priority areas) at least half of it targeted to livestock-related natural resource concerns and the remainder to other significant conservation priorities. NRCS has leadership for EQIP and consults with FSA to set the program's policies, priorities, and guidelines.

⁴⁶ Wetlands Reserve Program, 61 Fed. Reg. 42137 (1996) (to be codified at 7 C.F.R. pt. 620 and pt. 1467).

⁴⁷ 62 Fed. Reg. 28258 (1997) (to be codified at 7 C.F.R. pt. 1466).

EQIP works primarily in priority areas where significant natural resource problems exist. In general, priority areas are defined as watersheds, regions, or areas of special environmental sensitivity or having significant soil, water, or related natural resource concerns. These concerns could include soil erosion, water quality and quantity, air quality wildlife habitat, wetlands, and forest and grazing lands. Priority areas are identified through a locally-led conservation process. A local work group comprised of members of the conservation district and FSA county committees, and staff of NRCS, Cooperative State Research, Education, and Extension Service, and other federal, state, and local agencies interested in natural resources conservation identifies program priorities by completing a natural resource needs assessment and, based on that assessment, develops proposals for priority areas. The inclusion of conservation districts helps ensure that the work groups develop and implement conservation programs that fully reflect local needs and priorities. Priority area proposals are submitted to the NRCS State Conservationist, who selects those areas within the state based on the recommendations from the state Technical Committee.

EQIP can also address additional significant statewide concerns that may occur outside designated priority areas. In the first year of the program, at least 65 percent of the funds will be used in designated priority areas and up to 35 percent can be used for other significant statewide natural resource concerns. Additional emphasis is given to areas where state or local governments offer financial or technical assistance and where agricultural improvements will help meet water quality and other environmental objectives.

All EQIP activities must be carried out according to a conservation plan. Conservation plans are site specific for each farm or ranch, and can be developed by producers with help from NRCS or other service providers. Producers' conservation plans should address the primary natural resource concerns. All plans are subject to NRCS technical standards adapted for local conditions and are approved by the conservation district. Producers are not obligated, but are encouraged, to develop comprehensive or total resource management plans.

Producer Note: A producer wanting to participate in EQIP may apply at NRCS for an EQIP contract at any time. The contract includes a plan, approved by the local conservation district, that indicates the practices to be applied and the amount of cost share to be received.

EQIP offers 5- to 10-year contracts that provide incentive payments and cost sharing for conservation practices called for in the site-specific plan. Contract applications will be accepted throughout the year. NRCS conducts an evaluation of the environmental benefits the producer offers. Offers are then ranked and the FSA County Committee approves for funding the highest priority applications. Applications are ranked according to environmental benefits achieved weighted against the costs of applying the practices. Higher rankings are given to plans developed to treat priority resource concerns to a sustainable level.

Cost sharing may pay up to 75 percent of the costs of certain conservation practices, such as grassed waterways, filter strips, manure management facilities, capping abandoned wells,

wildlife habitat enhancement, and other practices important to improving and maintaining the health of natural resources in the area. Incentive payments may be made to encourage a producer to perform land management practices such as nutrient management and wildlife habitat management. These payments may be provided for up to three years to encourage producers to carry out management practices they may not otherwise use without the program incentive.

Eligibility is limited to persons who are engaged in livestock or agricultural production. Eligible land includes cropland, rangeland, pasture, forest, and other farm or ranch lands where the program is delivered. Owners of large confined livestock operations are not eligible for cost share assistance for animal waste storage or treatment facilities. However, technical, educational, and financial assistance may be provided for other conservation practices on these large operations.

Producer Note: In general, USDA has defined a large confined livestock operation as an operation with more than 1,000 animal units. But, because of differences in operations and environmental circumstances across the country, the definition of a large confined livestock operation may be modified in each state by the NRCS State Conservationist, after consultation with the state Technical Committee and approval of the NRCS Chief.

Conservation practices for natural resource concerns related to livestock will receive 50 percent of the total EQIP funding. Total cost share and incentive payments are limited to \$10,000 per person per year and \$50,000 for the length of the contract.

Four of USDA's conservation programs were combined in EQIP, including the Agricultural Conservation Program, the Water Quality Incentives Program, the Great Plains Conservation Program, and the Colorado River Basin Salinity Control Program.

B. Swampbuster, Sodbuster, and Conservation Compliance Programs

1. Swampbuster

Producer Note: The Swampbuster program has been in place since 1985 and was passed to discourage producers from converting wetlands to croplands and generally to encourage landowners to preserve wetland areas. The 1985 law made producers ineligible for farm program participation if wetlands were converted to produce an agricultural commodity after 1985. A 1990 amendment strengthened the program by making conversion alone, even without cropping, a swampbuster violation. USDA implements Swampbuster regulations and the NRCS is the primary agency involved in assuring compliance with Swampbuster provisions.

Wetland conservation provisions, known as Swampbuster, are continued under the 1996 Farm Bill. Wetland mitigation is allowed through restoration, enhancement, or creation so long as

wetland functions are maintained. When a violation of the Swampbuster program occurs, USDA has the discretion to waive the penalty of ineligibility for USDA program benefits if USDA determines the person acted in good faith and without intent to violate the Swampbuster provisions.

Abandoned prior converted wetlands and farmed wetlands are not subject to Swampbuster so long as the use of those lands is limited to agricultural purposes. USDA is authorized to identify categories of actions that constitute minimal effects. Finally, prior wetland determinations will be reviewed for accuracy.

The 1996 Farm Bill made other changes in the Swampbuster program which include:

- ! Expansion of areas in which mitigation can be used, allowing individuals to work with producers, conservation districts, and other relevant entities;
- ! More options for mitigation, including restoration, enhancement, or creation;
- ! NRCS, based upon recommendations of the state technical committee, may identify practices that have a minimal effect on the environment and may put them on fast track determination; and
- ! Wetland conversion activities authorized by a section 404 permit which make agricultural production possible will be accepted for Swampbuster program purposes if the permitted activities were adequately mitigated.

Producer Note: Prior converted cropland is a converted wetland where the conversion occurred prior to December 23, 1985, and an agricultural commodity had been produced at least once before December 23, 1985.

In addition, the 1996 Farm Bill expands the definition of agricultural land contained in the Interagency Wetlands Memorandum of Agreement⁴⁸ to include cropland, pasture land, tree farms, rangeland, native pasture land, and other land used for livestock production, placing NRCS in charge of making delineation decisions.

⁴⁸ NATURAL RESOURCES CONSERVATION SERVICE, INTERAGENCY WETLANDS MEMORANDUM OF AGREEMENT (1994). NRCS has the primary responsibility within USDA for interagency coordination and NRCS can distribute copies of the Memorandum of Agreement.

Producer Note: Interim regulations implementing Swampbuster changes found in the 1996 Farm Bill are in effect. Producers must make themselves aware of the new Swampbuster regulations by obtaining copies from NRCS or other USDA offices and should keep themselves informed of regional wetlands issues.

2. *Sodbuster*

Producer Note: The Sodbuster program also began with the 1985 Farm Bill. These programs were designed to conserve highly erodible land brought into crop production. Under Sodbuster, producers are ineligible for farm program payments unless conservation systems are applied on the land to achieve tolerable levels of soil erosion. Highly erodible land determinations are made by NRCS.

The highly erodible lands conservation program, known as Sodbuster, is retained under the 1996 Farm Bill. A new provision states that if CRP lands are returned to production, those lands cannot be required to meet a higher conservation standard than that applied to other highly erodible cropland located within the same area.

In addition, a wind erosion pilot project is established under the 1996 Farm Bill. The pilot project is for producers in selected counties which have nearly 100 percent of their cropland designated as highly erodible and where wind erosion factors are likely to have caused inequitable application of highly erodible land factors to that cropland. In this circumstance, the cropland must be redelineated.

3. *Conservation Compliance*

Producer Note: Conservation compliance provisions of the 1985 and 1990 Farm Bills were continued under the 1996 Farm Bill. These provisions required that, in order to remain eligible for certain USDA program benefits, the producer must develop and implement a plan approved by NRCS to address highly erodible cropland. These plans are continued by the 1996 Farm Bill, with some changes. The term conservation plan describes the conservation systems or practices relative to the location, use, tillage system, and treatment measures used to improve soil condition.

Under the 1996 Farm Bill, after consultation with local conservation districts, USDA is required to establish expedited procedures to grant temporary variances in conservation plans (formerly referred to as conservation compliance plans). Decisions on variances must be made within 30 days or the request will be considered granted.

County committees may provide for appropriate relief where application of a conservation system would impose an undue economic hardship on the producer. This discretion is allowed upon consideration of the use of variances and exemptions.

Public notice of future changes in the technical standards affecting conservation compliance, Swampbuster, and CRP programs are also required. If a person has acted in good faith and without any intent to violate the law, up to one year can be provided for that person to actively apply conservation plans for the farm. This action will help ensure that penalties are in proportion to violations.

USDA employees are directed under the 1996 Farm Bill to work with landowners to whom they are providing onsite technical assistance to correct an observed potential compliance problem. Landowners have up to one year to take corrective action before the violation will be reported. Farmers are encouraged to maintain records of residue measurement, including those provided by third parties. These measurements can be used to determine erosion levels on annual review.

C. Other Conservation Programs

Producer Note: Many additional conservation programs were created under the 1996 Farm Bill. Producers must contact the local NRCS or other USDA field office in order to obtain specific program regulations, applications for participation, technical assistance, and plan requirements. Some programs provide cost share payments.

1. Conservation Farm Option

The 1996 Farm Bill established a pilot program for producers of wheat, feed grains, upland cotton, and rice with market transition contract acreage. Under the Conservation Farm Option (CFO), the producer must develop and implement a conservation farm plan. Conservation farm contracts are for 10 years and can be extended for an additional five years. In exchange for payments under the CFO, the producer must forego payments in the CRP, WRP, and EQIP programs. The total payment for participation in CFO is the same as if the producer had received separate payments under each program, in addition to production flexibility contract payments.

2. Flood Risk Reduction

Contracts may be entered into with producers who have contract acreage that is frequently flooded. Participants will receive 95 percent of their market transition contract payments. The Secretary may also provide 95 percent of projected crop insurance payments. Participants agree not to receive any other contract payments, commodity loans, crop insurance, conservation program payments, or any disaster program payments on the flood risk reduction acreage.

3. *Farmland Protection Program*

USDA is authorized to purchase easements or other interests in land with prime, unique, or other productive soils if those lands are subject to a pending offer by state or local governments to acquire the land for farmland protection purposes. Easements or other interests on 170,000 to 340,000 acres are allowed. USDA has provided \$35 million to California, Colorado, Connecticut, Delaware, Florida, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin to help purchase development rights from farmers to keep productive farmland in production.

4. *Wildlife Habitat Incentives Program*

The Wildlife Habitat Incentives Program (WHIP) authorizes \$50 million in funding through the year 2002 to establish a program to make cost share payments to landowners in order to implement wildlife habitat improvement activities. In order to receive cost share payments, the landowner must submit a wildlife habitat development plan. The WHIP program, in addition to providing payments, is designed to provide technical assistance to landowners, provide education regarding wildlife needs, and foster a positive public attitude regarding wildlife, wildlife habitat, and land stewardship.

5. *Conservation of Private Grazing Land*

Federal personnel are to be made available for technical assistance through the Conservation of Private Grazing Land program. The purpose of the program is to promote conservation and enhancement of natural resources on private lands. NRCS offices will administer the program, and development of a conservation plan is required for participation.

6. *Commodity Credit Corporation Uses*

Under the 1996 Farm Bill, the Commodity Credit Corporation (CCC) Charter Act is revised to allow the use of CCC funds for authorized conservation programs. This action is intended to reduce the necessity for annual appropriations to carry out such programs.

7. *Air Quality*

The 1996 Farm Bill authorizes a task force on agricultural air quality with NRCS as the chair of the task force. This task force has been established and members appointed. The task force charter establishes the duties of the task force as advising the Secretary of Agriculture “on research efforts related to agricultural air quality, the extent to which agricultural activities contribute to air pollution, and cost-effective means in which the agricultural industry can improve air quality.

VIII. OTHER STATE STATUTES AFFECTING AGRICULTURE

Producer Note: Many other state statutes have the potential of impacting agricultural operations and their relationship to the environment. The following is a brief discussion of state laws in Oregon.

A. Farmland Preservation

1. *Planning and Zoning*

Producer Note: Agricultural operations frequently are controlled by local planning or zoning board activities. Since it is not possible to outline each local area's requirements, a producer must check with local boards to determine local planning and zoning regulations which may affect an operation.

Oregon requires counties to designate and protect agricultural lands. Oregon allows counties to zone areas as exclusive farm use zones.⁴⁹ State agencies, cities, or counties may not enact any local laws or ordinances that would restrict farm structures or regulate farm practices within a farm use zone unless those laws or ordinances are necessary for public health and safety. Farm use is broadly defined and includes raising livestock and dairy cattle, and the growing and harvesting of crops. Farm use does include aquaculture activities. However, aquaculture is not permitted outright. It is subject to review by counties.

2. *Conservation Easements*

Producer Note: Many states have passed laws allowing preservation or conservation of agricultural land through the use of easements. When easements are used for these purposes, the law frequently has certain requirements relating to the creation, compensation, and enforcement of the easement.

In Oregon, a conservation easement⁵⁰ is a way that local governments can allow individuals to restrict land use by allowing the individual to grant the property, with only certain permitted uses allowed, to a local government or a tax exempt charity. The easements can be used to protect and preserve scenic or natural lands, as well as lands for recreational, agricultural, or cultural purposes. The easement is created by property owners granting the property, with restrictions, to a local governmental body or tax exempt charity. The easements must be recorded in the county where the property is located. The person holding the easement may enforce it by obtaining an injunction or seeking an award of money damages.

⁴⁹ OR. REV. STAT. § 215.203 *et seq.* (1996).

⁵⁰ OR. REV. STAT. § 271.715 *et seq.*(1994).

B. Nuisance and Right-to-Farm

Producer Note: Many producers are confronted with concerns of local residents. These problems may originate from dust or odor generated by the operation or may result from a lack of knowledge of what is involved in an agricultural operation. While this is not specifically an area where the state or federal authorities may become involved, court actions can be brought against the operation. These actions are usually based on a nuisance theory, and in some cases, a right-to-farm defense may apply.

1. Nuisance

In Oregon, a nuisance is anything which is injurious to health, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.⁵¹ Any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, can bring a lawsuit to stop the nuisance and may also recover money damages for the effect of the nuisance. Generally, an object or activity will not be considered a nuisance if it is reasonable under the circumstances.

2. Right-to-Farm

The Oregon legislature has declared that “[f]arming practices on lands zoned for farm use must be protected.”⁵² Furthermore, persons who locate on or near an area zoned for farm use must accept the conditions commonly associated with living in that particular setting.⁵³

Oregon’s right-to-farm law invalidates any local government or special district ordinance or regulation that makes a farm practice a nuisance or trespass or provides for its abatement as a nuisance or trespass.⁵⁴

Oregon’s right-to-farm law also provides farmers with immunity from private nuisance or trespass actions based on farming practices on lands zoned for farm use occurring outside an urban growth boundary.⁵⁵ The immunity as to farming on lands zoned for farm use applies regardless of whether the farming practice has undergone any change or interruption.⁵⁶ Immunity

⁵¹ OR. REV. STAT. § 105.505 (1990).

⁵² OR. REV. STAT. § 30.933 (2) (a) (1994) (Supp. 1996).

⁵³ OR. REV. STAT. § 30.933 (2) (c) (1994) (Supp. 1996).

⁵⁴ OR. REV. STAT. § 30.935 (1994) (Supp. 1996).

⁵⁵ OR. REV. STAT. § 30.936 (1) (1994) (Supp. 1996).

⁵⁶ OR. REV. STAT. § 30.936 (3) (1994) (Supp. 1996).

is not granted, however, as to any right of action or claim for relief for damage to commercial agricultural products or death or serious physical injury.⁵⁷

Immunity from trespass and nuisance claims also extends to farming practices on lands in areas not zoned for farm use if the farm use preceded the urban growth. “[n]o farming . . . practice allowed as a preexisting nonconforming use shall give rise to any private right of action or claim for relief based on nuisance or trespass.”⁵⁸

Immunity, however, is granted as to nuisance and trespass claims only where a farming practice “. . . has not significantly increased in size or intensity from November 4, 1993, or the date on which the applicable urban growth boundary is changed to include the subject farming... practice within its limits, whichever is later.”⁵⁹ “The immunity does not apply as to actions or claims for damage to commercial agricultural products or death or serious physical injury.”⁶⁰

Oregon’s right-to-farm law specifically protects the use of pesticides by farmers from nuisance and trespass claims. Pesticide use is a farming practice if it is being used or may be used on a farm of similar nature; is a reasonable and prudent method for the operation of the farm to be profitable; is or may become customarily utilized on farms; complies with applicable laws; and, is done in a reasonable and prudent manner.⁶¹

C. Livestock Waste Management

<p>Producer Note: A common by-product of livestock operations is animal wastes which must be stored and disposed of properly. Many states are becoming more involved in the regulation of storage, treatment, handling, and land application of waste through regulations, recommendations, pollution prevention plans, and best management practices (BMPs).</p>
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Oregon has not enacted a series of laws that deal specifically with animal waste lagoons. However, animal waste is regulated under the statutes which deal with disposal of solid wastes and water quality. Producers who have lagoons or are applying waste to their land should check with the DEQ to see if there are special rules for the construction of lagoons or new rules that have been developed for the application of waste on farm lands.

⁵⁷ OR. REV. STAT. § 30.936 (2) (a) & (b) (1994) (Supp. 1996).

⁵⁸ OR. REV. STAT. § 30.937 (1) (1994) (Supp. 1996).

⁵⁹ OR. REV. STAT. § 30.937 (4) (1994) (Supp. 1996).

⁶⁰ OR. REV. STAT. § 30.937 (2) (a) & (b) (1994) (Supp. 1996).

⁶¹ OR. REV. STAT. § 30.939 (1) (a) through (e) (1994) (Supp. 1996).

Producer Note: Recommendations for land application of waste are covered by NRCS technical guidance materials. These recommendations should be followed in order to preserve the producer's potential defenses in nuisance actions or to aid the producer when defending against alleged permit violations. While these recommendations do not have the force of law that agency regulations have, compliance with them will generally aid the producer.

D. Noxious Weeds

Oregon has enacted a number of statutes to control noxious weeds.⁶² Noxious weeds are plants that the ODA determines to be especially injurious to public health, livestock, land, or other property. The ODA has the authority to promulgate and enforce rules and regulations necessary to control noxious weeds.

A county is authorized to declare the county or any portion of the county a weed control district. The county is responsible for preparing a list of all noxious weeds therein which must be eradicated. People and companies within the weed control district are responsible for destroying the noxious weeds on their property.

E. Soil and Water Conservation Districts

Oregon allows the formation of Soil and Water Conservation Districts (Districts).⁶³ The purpose of the Districts is to conserve and prevent soil erosion, control floods, and conserve and develop water resources and water quality. The Districts may be organized within a single county or may overlap into more than one county. The Districts have a number of broad powers relating to soil and water conservation, including carrying out preventive and control measures on property within the Districts, construction and operation of structures for the purpose of soil and water conservation, borrowing money, and making contracts. The Districts are created by a petition to the ODA supported by a specific percentage of the residents within the area of the District.

F. Aquaculture

Oregon has taken extensive measures to protect, restore, and enhance its public salmon fisheries. In 1995, the Oregon legislature passed the Fish Resource Protection, Restoration, and Enhancement Act.⁶⁴ To provide for viable and sustainable public salmon fisheries, salmonid,

⁶² OR. REV. STAT. § 570.010 *et seq.* (1988).

⁶³ OR. REV. STAT. § 568.210 *et seq.* (1988).

⁶⁴ OR. LAWS 1995, C.544 §§ 1 to 5 (Supp. 1996).

production strategies are to be implemented.⁶⁵ A task force was composed of representatives of the commercial fishing industry, recreational anglers, the recreational fishing industry, and private sector scientists knowledgeable of coastal salmon watershed resources and habitat restoration, to develop an appropriate fisheries-sustaining coastal salmonid restoration and production strategy plan.⁶⁶ One of the task force goals is to keep salmonid species from being listed as sensitive by the State of Oregon, or threatened or endangered as defined by the Federal Endangered Species Act.⁶⁷

The strategic plan ultimately drafted by the task force could impact farmers in watershed areas important to protecting, restoring, and enhancing coastal salmon. The act creating the task force is automatically repealed as of January 1, 1999.⁶⁸

To further protect coastal salmon populations, the State of Oregon and the National Marine Fisheries Service (NMFS) entered into a Memorandum of Agreement (MOA) in April, 1997.⁶⁹ The MOA established terms and conditions for collaboration between Oregon and the NMFS to implement the Oregon Coastal Salmon Restoration Initiative (OCSRI).⁷⁰ The OCSRI's mission is the restoration of natural coastal salmon populations and fisheries to productive and sustainable levels that will provide substantial environmental, cultural and economic benefits.⁷¹

The MOA makes specific reference to agricultural practices. According to the MOA, the NMFS expects rapid improvements of agricultural practices to protect water quality given the fact that the Oregon Department of Agriculture now has “. . . authority to develop, implement and enforce agricultural water quality management plans that are needed to achieve water quality standards under state or federal law.”⁷² In the MOA, the parties pledge to work together to identify what further standards or measures related to achieving properly functioning riparian and aquatic habitat are needed beyond those addressed in Agricultural Water Quality Management Plans to sustain Oregon coastal salmon.⁷³ (See also page OR-13.)

⁶⁵ OR. LAWS 1995, c.544 § 1 (Supp. 1996).

⁶⁶ OR. LAWS 1995, c.544 § (2)(1) through (4) (Supp. 1996).

⁶⁷ OR. LAWS 1995, c.544 § (2)(4) (Supp. 1996).

⁶⁸ OR. LAWS 1995, c.544 § 5 (Supp. 1996).

⁶⁹ MOA - OREGON/NMFS §§ 1 through 12 (April 1997)

⁷⁰ MOA - OREGON/NMFS § 1 (a) (April 1997)

⁷¹ MOA - OREGON/NMFS § 1 (b) (1) (April 1997)

⁷² MOA - OREGON/NMFS § 7 (g) (1) (April 1997)

⁷³ MOA - OREGON/NMFS § 7(g) (3) (Supp. 1996)

G. Dead Animal Disposal

It is unlawful in Oregon to leave the carcass of any domestic animal within a ½ mile radius of any house or within 1/4 mile of any running stream of water for longer than 15 hours without burying or burning it.⁷⁴

H. Regulation of Biological Products

The State of Oregon has declared the following vaccines, bacteriological or biological products to be hazardous to the state's livestock: Brucella Abortus Vaccine; Hog Cholera Vaccine; Rabies Vaccine; and, any biologic not approved for general use by the USDA.⁷⁵

The vaccines or products listed as hazardous are restricted by ODA in their use, purchase, sale or distribution. Deputy state veterinarians, assistant state veterinarians, federal veterinarians, veterinarians duly licensed by the State of Oregon, and veterinarians employed by a community college or university in Oregon can obtain and use the listed vaccines and products upon obtaining the ODA's written permission.⁷⁶

The ODA, after consultation with the Oregon Veterinarian Medical Association, has the authority to amend the list of hazardous vaccines and products. When considering whether a vaccine or product should be listed as hazardous, the ODA takes into account the possibility of disseminating a disease through the use of the vaccine or product, the vaccine or product's known effectiveness, the existence of alternate vaccines or products less hazardous to livestock, whether or not the disease for which a particular vaccine or product is intended to be used is present in the state, and any other factors related to the properties of the vaccine or product and the health hazard posed to the state's livestock.⁷⁷

I. Environmental Audits

Producer Note: Several states have passed environmental audit protection laws which give businesses an immunity from the use of environmental audit findings in administrative, civil, or criminal actions against the business for environmental problems found and corrected. In other words, businesses cannot be prosecuted, civilly or criminally, for environmental problems they found and corrected in a self-audit process. Fewer than half of the states have this type of law. Oregon has granted this type of protection.

⁷⁴ OR. REV. STAT. § 601.140 (1988).

⁷⁵ OR. REV. STAT. § 596.065(1)(a) (1994) (Supp. 1996).

⁷⁶ OR. REV. STAT. § 596.065(3)(a) (1994) (Supp. 1996).

⁷⁷ OR. REV. STAT. § 596.065(2)(a) through (e) (1994) (Supp. 1996).

In order to encourage the voluntary compliance with environmental laws, Oregon has adopted laws which allow a person to conduct a voluntary self-evaluation to determine if environmental laws are being followed in performing the activity or operation on the person's land. All of the information contained in the evaluation is legally privileged and cannot be used in any civil, criminal, or administrative proceeding unless the privilege against disclosure is being asserted for a fraudulent purpose or the person who had the evaluation performed agrees to waive the privilege.⁷⁸

Caution: Some federal courts have concluded that state environmental audit protection laws do not bind the federal government, particularly in criminal actions. All producers should confer with an attorney, consultant, or advisor before engaging in an environmental audit.

⁷⁸ OR. REV. STAT. § 468.963 (1995).

Appendix A - Agencies

Producer Note: State and federal 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 organizations which should be able to answer questions or provide materials for a producer.

Oregon Department of Agriculture

635 Capitol St., NE
Salem, OR 97310-0110
(503) 986-4550

Oregon Department of Environmental Quality

811 SW Sixth Ave.
Portland, OR 97204-1390
(503) 229-5696

Oregon Department of Fish and Wildlife

2501 SW First Ave.
P.O.Box 59
Portland, OR 97204-1390
(503) 229-5400

Oregon Environmental Quality Commission

811 SW Sixth Ave.
Portland, OR 97204-1390
(503) 229-5300

Oregon Water Resources Department

Commerce Building
158 12th St., N.E.
Salem, OR 97310
(503) 378-3739

Natural Resources Conservation Service

United States Department of Agriculture
101 S.W. Main St., Suite 1300
Portland, OR 97204-3221
(503) 414-3201

Environmental Protection Agency

U.S. EPA - Region 9

1200 Sixth Ave.
Seattle, WA 98101
(206) 753-2200

United States Department of Agriculture

14th Street and Independence Avenue, S.W.
Washington, D.C. 20250
(202) 720-2791
<http://www.usda.gov/>

Environmental Protection Agency

401 M Street, S.W.
Washington, D.C. 20460
(202) 260-2080
<http://www.epa.gov/>

Natural Resources Conservation Service

United States Department of Agriculture
14th Street and Independence Avenue, S.W.
Washington, D.C. 20250
(202) 720-4525
<http://www.ncg.nrcs.usda.gov/>

U.S. Fish and Wildlife Service

Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
(202) 208-4717
<http://www.fcs.gov/>

Headquarters United States Army Corps of Engineers

Casimir Pulaski Building
20 Massachusetts Avenue, N.W.
Washington, D.C. 20314-1000
(202) 761-0660

National Association of State Departments of Agriculture

1156 15th Street, N.W.
Suite 1020
Washington, D.C. 20005
(202) 296-9680
<http://www.nasda-hq.org/>

Appendix B - Glossary

Producer Note: The following definitions are included to further define information discussed in this document. Some variations may exist between state and federal definitions.

10-year, 24-hour storm: A rainfall event of 24-hour duration and 10-year frequency that is used to calculate the runoff volume and peak discharge.

25-year, 24-hour storm: A rainfall event of 24-hour duration and 25-year frequency that is used to calculate the runoff volume and peak discharge.

Animal unit: A standard measure based on feed requirements used to combine various classes of livestock according to size, weight, age, and use.

Aquaculture: The production of aquatic plants or animals in a controlled environment, such as ponds, raceways, tanks, or cages, for all or part of their life cycle. In the United States, baitfish, catfish, clams, crawfish, freshwater prawns, mussels, oysters, salmon, shrimp, tropical or ornamental fish, and trout account for most of the aquacultural production. Less widely established but growing species include alligator, hybrid striped bass, carp, eel, red fish, northern pike, sturgeon, and tilapia.

Aquifer: A geologic formation or structure that transmits water in sufficient quantity to supply the needs for a water development; usually saturated sands, gravel, fractures, and cavernous and vesicular rock.

Best management practice (BMP): A practice or combination of practices that are determined to be the most effective and practicable (including technological, economic, and institutional considerations) means of controlling point and nonpoint pollutants at levels compatible with environmental quality goals.

Chemigation: Any process where pesticides or other chemicals are added to irrigation water applied to land, crops, or both through an irrigation distribution system.

Composting: A controlled process of degrading organic matter by microorganisms.

Conservation: The continuing protection and management of natural renewable resources, like soil, water, wildlife, and forests, in accordance with principles that assure their optimum economic and social enjoyment.

Conservation compliance: A provision authorized by the Food Security Act of 1985 that required farmers with highly erodible cropland to implement an approved conservation plan by 1990. Implementation of the plan was tied to eligibility for federal USDA program benefits.

Conservation easement: A legal interest granted for the purpose of restricting how property is used in order to protect various environmental or natural resource values.

Conservation practices: Methods which protect or improve the soil, water, or related natural resources. Major conservation practices include conservation tillage, crop rotation, contour farming, stripcropping, terraces, diversions, and grassed waterways.

Constructed wetland: Engineered systems designed to simulate natural wetlands to exploit the water purification value for human use and benefits. Constructed wetlands consist of former upland environments that have been

modified to create poorly drained soils and wetlands flora and fauna for the primary purpose of contaminant or pollutant removal from wastewaters or runoff.

Cooperative Extension Service: In general terms, a system of state, local, and federal organizations working together to provide a practical educational network linking research, science, and technology to the needs of people where they live and work. The Cooperative Extension Service provides educational services outside the classroom on agriculture, household management, nutrition, and other topics. States participate mostly through their land grant universities, while the federal partner is the USDA's Cooperative State Research, Education, and Extensions Service. Other partners are the Extension professionals in nearly all of the nation's 3,150 counties, thousands of paraprofessionals, and nearly three million volunteers.

Diversion: A channel, embankment, or other manmade structure constructed to divert water from one area to another.

Ecosystem: The complex of a community and its environment functioning as an ecological unit in nature; a basic functional unit of nature comprising both organisms and their nonliving environment, intimately linked by a variety of biological, chemical, and physical processes.

Effluent: Solid, liquid, or gaseous wastes that enter the environment as a by-product of man-oriented processes.

Environmental audit: The process of investigating the environmental status and history of a property to determine if it complies with applicable environmental laws and whether it contains any sources of potential environmental liability.

Erosion: Wearing away of the land surface by running water, glaciers, winds, and waves. The term erosion is usually preceded by a definitive term denoting the type of erosion such as gully erosion, sheet erosion, wind erosion, or bank erosion.

Farm Bill: Major omnibus agricultural legislation, usually enacted every four or five years. The bill usually includes provisions on commodity programs, trade, conservation, credit, agricultural research, food stamps, and marketing.

Fertigation: Any process where fertilizers are added to irrigation water applied to land, crops, or both through an irrigation distribution system.

Fertilizer: Any organic or inorganic material of natural or synthetic origin that is added to a soil to supply elements essential to plant growth.

Generally Accepted Agricultural Management Practices (GAAMPs): A form of right-to-farm law which gives nuisance protection to farms using GAAMPs as established by the state or common agricultural practices in the area.

Groundwater: Water beneath the earth's surface between saturated soil and rock that supplies wells and springs.

Habitat: The place where an organism naturally lives or grows.

Hazardous waste: Any waste or combination of wastes which pose a substantial present and potential hazard to human health or living organisms.

Herbicide: A chemical substance designed to kill or inhibit the growth of plants, especially weeds.

Highly erodible land: Land that has an erodibility index of greater than eight. This index is based on a soil's inherent tendency to erode from rain or wind in the absence of cover crop or other conservation practices. The erodibility index is based on factors from the Universal Soil Loss Equation (USLE) and the Wind Erosion Equation (WEQ), along with a soil's T-value, which is a measure of the amount of erosion in tons per year that a soil can tolerate without losing productivity. For most cropland soils, T values fall in the range of three to five tons per acre per year.

Holding pond: A reservoir, pit, or pond, usually made of earth, used to retain polluted runoff water for disposal on land.

Insecticide: A pesticide compound specifically used to kill or control the growth of insects.

Irrigation: Application of water to lands, crops, or both for agricultural purposes.

Lagoon: A reservoir or pond built to contain water and animal wastes until they can be decomposed either by aerobic or anaerobic action.

Leachate: Liquids that have percolated through a soil and that contain substances in solution or suspension.

Manure: The fecal and urinary defecations of livestock and poultry; may include spilled feed, bedding, or soil.

Nonpoint source pollution: Pollution that enters the environment from diffuse areas instead of a single point of origin or a specific outlet. Examples include areas in which fertilizer, animal manure, or other chemicals have been applied.

Noxious weeds: Undesirable plant species, excepting those protected by the Endangered Species Act of 1973, that are considered harmful, exotic, injurious, or poisonous and are targeted for control management under state and federal law. The U.S. Secretary of Agriculture may provide cost sharing assistance to state and local agencies to manage noxious weeds in an area if a majority of the landowners in that area agree to participate in a noxious weed management program.

Nuisance: An offensive, annoying, unpleasant, or obnoxious thing or practice; a cause or source of annoyance, especially a continuing or repeated invasion or disturbance of another's right, or anything that works a hurt, inconvenience, or damage. Nuisances are commonly classified as public, private, or mixed.

Nutrients: Elements or compounds essential as raw materials for organism growth and development, such as carbon, nitrogen, and phosphorus.

Pesticides: Chemicals, including herbicides, insecticides, fungicides, nematicides, and rodenticides, used by farmers to control plant and animal pests, to regulate plant growth, or to simplify harvest.

Point source pollution: As defined by the Clean Water Act, a source of pollution from "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."

Pollutant: Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

Prescribed burning: Controlled application of fire to wild-land fuels in either their natural or modified state, under such conditions of weather, fuel moisture, and soil moisture as allow the fire to be confined to a

predetermined area and at the same time to produce the intensity of heat and rate of spread required to further planned objectives of silviculture, wildlife management, grazing, and fire hazard reduction.

Return flow: That portion of the water diverted from a stream that finds its way back to the stream channel either as surface or underground flow.

Right-to-Farm: Protection from nuisance suits for existing agricultural operations, so long as the agricultural operations meet specific requirements. Generally, an operation is required to have been in existence before the change in the area which resulted in the nuisance suit (the farmer/rancher was there first), and the nuisance must not have been created by the producer's actions.

Rill erosion: Erosion which leads to the land becoming scoured and soil removed so that small channels, or rills, remain.

Riparian rights: Legal water rights to banks, beds, or waters of a person owning land containing or bordering on a water course or other body of water.

Runoff: That part of precipitation, snow melt, or irrigation water that runs off the land into streams or other surface water. It can carry pollutants from the air and land into the receiving waters.

Sediment: The product of erosion processes; the solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice.

Seepage: Water escaping through or emerging from the ground along an extensive line or surface as contrasted with a spring, where the water emerges from a localized spot.

Sheet erosion: Erosion which leads to a generally uniform removal of topsoil over all of a field as a result of strong rains.

Soil: A dynamic natural body composed of mineral and organic materials and living forms in which plants grow on the surface of the earth. In the U.S. there are about 70,000 kinds of soil recognized in a nationwide system of soil classification.

Soil Conservation District: A legal subdivision of state government, with a locally-elected governing body, responsible for developing and carrying out a program of soil and water conservation within a geographic boundary usually coinciding with county lines. The nearly 3,000 districts (also called soil and water conservation districts, natural resources districts, resource conservation districts, resources districts, and conservation districts) provide assistance to producers and landowners.

Solid waste: Generally, any garbage, refuse, sludge from a waste supply treatment plant or air pollution control facility, and other discarded material.

Surface water: All water whose surface is exposed to the atmosphere.

Underground storage tank: Any one of a combination of tanks, including connected underground pipes, which is used to contain an accumulation of regulated substances, and the underground volume is 10 percent or more.

Vegetated buffer: Strips of vegetation separating a waterbody from a land use that could act as a nonpoint pollution source. Vegetated buffers are variable in width and can range in function from vegetated filter strips to wetlands or riparian areas.

Vegetated filter strip: Created areas of vegetation designed to remove sediment and other pollutants from surface water runoff by filtration, deposition, infiltration, adsorption, decomposition, and volatilization. A vegetated filter strip is an area that maintains soil aeration, in contrast to a wetland, which at times exhibits anaerobic soil conditions.

Vegetative cover: Trees or perennial grasses, legumes, or shrubs with an expected lifespan of five years or more.

Waste: Material that has no original value or no value for the ordinary or main purpose of manufacture or use; damaged or defective articles of manufacture; a superfluous or rejected matter or refuse.

Watershed: A drainage area or basin in which all land and water areas drain or flow toward a central collector such as a stream, river, or lake at a lower elevation. The United States is generally divided into 18 major drainage areas and 160 principal river drainage basins containing some 12,700 smaller watersheds.

Waterway: A natural or artificially constructed course for the concentrated flow of water.

Wetlands: Land that is characterized by an abundance of moisture and that is inundated by surface or groundwater often enough to support a prevalence of vegetation typically adapted for life in saturated soil conditions.

Zoning: The division of an area by legislative regulation into districts and the prescription and application in each district of regulations having to do with structural and architectural designs of buildings and of regulations prescribing uses to which buildings within designated districts may be put.

Appendix C - Authors

John D. Copeland was the Director of the National Center for Agricultural Law Research and Information and Research Professor at the University of Arkansas School of Law, Fayetteville. His teaching duties concentrated on insurance law, workers' compensation, agricultural law, and the regulation of agricultural lands. He received his Juris Doctor degree (J.D.) from Southern Methodist University and his Master of Laws degree (LL.M.) in Agricultural Law from the University of Arkansas, Fayetteville. He also has a Doctorate in the Administration of Higher Education (Ed. D.) from the University of Arkansas. Professor Copeland has extensive agricultural law and insurance defense litigation experience. He has authored numerous books and law review and journal articles on such topics as agricultural cooperatives, bankruptcy, employer-employee relations, environmental law, liability insurance coverage, products liability, sex discrimination, workers' compensation, and zoning. A frequent seminar speaker, Dr. Copeland is currently Director of Corporate Ethics and Compliance for Tyson Foods, Inc.

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Teena G. Gunter received a Bachelor of Arts (B.A.) degree in English from Abilene Christian University, Abilene, Texas, and received her Juris Doctor (J.D.) degree from the University of Arkansas School of Law, Fayetteville. She is licensed in the State of Arkansas and worked as a sole practitioner in Fayetteville, Arkansas. She is a staff attorney at the National Center for Agricultural Law Research and Information and teaches paralegal courses at Remington College in Fayetteville. Ms. Gunter is a member of the Arkansas Bar Association, the American Bar Association, and the American Agricultural Law Association.