

# **STATE ENVIRONMENTAL LAWS AFFECTING ARIZONA AGRICULTURE**

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

**A Project of the**

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

**through the**

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Research and Information**



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## **The Project Participants**

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

The National Association of State Departments of Agriculture (NASDA) is a nonprofit 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.

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

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

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

The background research and final documents were completed in May 2003. Updates of the information contained in the guide will occur on an annual basis and be made available on the internet.

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

## Quick Reference Guide

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

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 1-6</i>	Livestock and crop operations, depending on size	NPDES and Arizona Aquifer Protection Permit	EPA Regional Office and Arizona Dept. of Environmental Quality (DEQ)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit	U.S. Army Corps of Engineers with EPA and Arizona DEQ approval
	Aquaculture	License and permit	Arizona Department of Agriculture (ADA) and EPA or Arizona DEQ
	Dry well construction and use	Registration required, construction standards must be followed	Arizona DEQ
Air Quality <i>pp. 6-8</i>	Grain terminals, grain elevators and on-farm incinerators	Permit may be required	Arizona DEQ and EPA Regional Office
	General agricultural operations including odor, dust, or flies	Maricopa County has a dust program	Maricopa County
	Open Burning	Permit required in certain circumstances	Arizona DEQ, county government, or local fire department

<b>Regulatory Area</b>	<b>Type of Activity</b>	<b>Permit Required</b>	<b>Agency</b>
Solid Waste and Hazardous Waste <i>pp. 8-12</i>	Storage, treatment, or disposal of hazardous or solid waste	Permit required for disposal, treatment, or storage activities	
Pesticides <i>pp. 12-16</i>	Registration, application and use of pesticides	Permit or license may be required	EPA and ADA
	Groundwater Protection	Reporting requirements	Arizona DEQ
Wildlife Protection <i>pp. 15-16</i>	Taking of wildlife	Permit or license required	U.S. Fish and Wildlife Service, Arizona Department of Game and Fish

# STATE ENVIRONMENTAL LAWS AFFECTING ARIZONA AGRICULTURE

**Producer Note:** Agricultural producers are faced with many challenges in today's rapidly changing world. Changes in industrialization, use of computer-based technology, governmental involvement in market dynamics, and environmental regulation are affecting producers in a number of ways. Environmental regulation is a complex area with both federal and state government involvement. 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. 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 Federal Clean Water Act, there may be significant differences. State statutes may impose requirements that are more restrictive than the federal law. State regulatory agencies often enforce both the federal and the state laws.

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

**Producer Note:** Often the specifics of environmental laws are found in agency regulations. 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 that may occur.

### A. Environmental Quality Act

EPA has delegated the federal National Pollutant Discharge Elimination System (NPDES) Program to Arizona. NPDES permits for point source discharges in Arizona, such as concentrated animal feeding operations (CAFOs), are issued by the EPA's Region IX office in San Francisco. (See discussion of federal water quality laws in section I., A.)

However, Arizona has its own water quality program for both surface water and groundwater. Some agricultural activities may require both an NPDES permit from EPA and a permit from the Arizona Department of Environmental Quality (DEQ).

Arizona regulates water quality under its Environmental Quality Act (EQA).<sup>1</sup> The EQA was first passed in 1986 and has been amended several times since. The EQA is administered by the DEQ, which has its main office in Phoenix and regional offices in Flagstaff, Tuscon, and Nogales. DEQ has adopted a number of regulations that help implement the EQA. These regulations are found in the Arizona Administrative Code and provide additional detail on Arizona's water quality and other environmental requirements.

## **B. Water Quality Standards**

The EQA requires DEQ to adopt water quality standards for most surface water in Arizona and for all water in underground aquifers. These standards protect assigned uses of the water, such as drinking water supply or recreation, and impose numerical limitations on the amount of pollutants that may be discharged into the water. The DEQ considers water quality standards, along with other factors, in issuing permits required by the EQA.

## **C. Aquifer Protection Permits**

The EQA requires that any person who "discharges" pollutants into surface waters or aquifers, or who places pollutants on land that will enter an aquifer, obtain an aquifer protection permit from DEQ. The EQA defines discharging facilities as including:

- Surface impoundments including holding, storage, settling, treatment, or disposal pits and lagoons;
- Injection wells;
- Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine;
- Septic tank systems with a capacity of greater than 2,000 gallons per day;
- Point source discharges to navigable waters; and
- Sewage or sludge ponds.

DEQ will issue an individual aquifer protection permit for a discharging facility under the following criteria:

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<sup>1</sup> ARIZ. REV. STAT. ANN. ' 49-201 *et seq.* (Supp. 1999).

- The facility is designed, constructed and operated to obtain the greatest degree of pollutant discharge reduction achievable through application of the “best available demonstrated control technology”;
- The pollutants discharged will not contribute to a violation of aquifer water quality standards; or
- The pollutants will not further degrade water that does not already meet water quality standards.

#### **D. Exemptions**

The EQA exempts a number of activities from the requirement of obtaining an aquifer protection permit. Exempted activities include:

- Household and domestic activities;
- The use of ponds for watering livestock and wildlife;
- The maintenance of water storage facilities;
- Crop irrigation using groundwater, surface water or wastewater; and
- Surface impoundments and dry wells used to contain a combination of storm water and irrigation drainage.

#### **E. Agricultural General Permits**

The EQA provides for general aquifer protection permits as well as individual permits. A general permit may be issued for an entire class of dischargers under certain circumstances. An individual facility that meets the standardized requirements of the general permit is not required to apply for an individual permit. General permits are usually used for smaller facilities and those having less impact on the environment.

The EQA specifically requires that DEQ issue general permits for certain agricultural operations. The EQA further requires that such agricultural general permits be based on the use of agricultural best management practices (BMPs). The general permits must require those BMPs that DEQ determines to be the most practical and effective means of reducing or preventing the discharge of pollutants by the agricultural operation. Compliance with the BMPs by the agricultural operation constitutes compliance with the general aquifer protection permit requirements. However, should DEQ determine that an operation has failed to follow BMPs, DEQ can revoke the general permit for that operation and require the operation to obtain an individual aquifer protection permit.

DEQ has issued agricultural general permits for concentrated animal feeding operations (CAFOs)<sup>2</sup> and for the use of nitrogen fertilizers.<sup>3</sup> The CAFO general permit requires that such operations:

- Harvest, stockpile and dispose of animal manure to minimize discharge of nitrogen pollutants by leaching and runoff;
- Control and dispose of nitrogen contaminated water from the operation, to minimize the discharge of nitrogen pollutants, up to a 25-year, 24-hour storm event; and
- Close facilities in a manner to minimize the discharge of nitrogen pollutants.

The Nitrogen Fertilizer General Permit (NFGP) requires that:

- Application of fertilizer be limited to that amount necessary to meet crop plant needs;
- Application be timed to coincide as closely as possible to the periods of maximum crop plant uptake;
- Application be by a method designed to deliver nitrogen to the area of maximum crop plant uptake;
- Application of irrigation water to meet crop plant needs be managed to minimize nitrogen loss by leaching and runoff;
- Irrigation be timed to minimize nitrogen loss by leaching and runoff; and
- Tillage practices that maximize water and nitrogen uptake by crop plants.

In 1997, the legislature passed an amendment to satisfy federal requirements to the EQA requiring that DEQ issue a surface water quality, general grazing permit for all grazing activities.<sup>4</sup> The surface water quality, general grazing permit is to provide for voluntary grazing BMPs. DEQ must issue the permit within 180 days of receiving the recommendations of the

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<sup>2</sup> ARIZ. ADMIN. CODE ' R 18-9-203 (Supp. 1991).

<sup>3</sup> ARIZ. ADMIN. CODE ' R 18-9-202 (Supp. 1991).

<sup>4</sup> ARIZ. REV. STAT. ANN. ' 49-202.01 (Supp.1999).

grazing BMPs advisory committee. It would appear that this general permit will have limited effectiveness as it imposes voluntary, not mandatory, requirements.

## **F. General Discharge Prohibitions and Environmental Nuisances**

In addition to the permit requirements discussed above, the EQA also makes it unlawful for any person to violate a state water quality standard. A violation of this section, like violations of permit requirements, is punishable as a criminal offense. Arizona statutes authorize the Arizona Game and Fish Commission to bring suit to enjoin discharges into Arizona waters of “deleterious substances” that are injurious to fish and wildlife.<sup>5</sup>

**Producer Note:** Agricultural producers should also note that in certain circumstances, Arizona law permits counties to impose more stringent water quality requirements than are imposed by state law.

Arizona statutes also authorize DEQ to take action to abate environmental nuisances.<sup>6</sup> An environmental nuisance is defined as the creation or maintenance of a condition in the soil, air or water that causes harm to the public health or the environment and that is not otherwise subject to regulation. Environmental nuisances can include situations such as:

- A condition or place in populous areas which constitutes a breeding place for flies, rodents, mosquitoes and other insects which are capable of carrying and transmitting disease-causing organisms;
- Sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease;
- The pollution or contamination of any domestic waters;
- The use of the contents of privies, cesspools, or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of DEQ or the Department of Health Services (DHS)

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<sup>5</sup> ARIZ. REV. STAT. ANN. ' 17-237 (1995).

<sup>6</sup> ARIZ. REV. STAT. ANN. ' 49-141 *et seq.*(Supp. 1999).

- The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as authorized by law and rule.

DEQ is authorized to seek judicial enforcement of abatement orders and to recover any costs incurred in removing the nuisance. Counties and cities have similar authority to abate environmental nuisances through their local health or environmental departments.

### **G. Dry Well Requirements**

Arizona legislation imposes special requirements on dry wells.<sup>7</sup> A dry well is defined as a well that has depth greater than its width and is designed and constructed specifically for the disposal of storm water. Dry wells do not include Class I, II, III, or IV injection wells regulated under the Federal Safe Drinking Water Act.

All existing and new dry wells must be registered with the DEQ. The DEQ may adopt standards for the performance, operation, construction, design, closure, location and inspection of both new and existing dry wells. Dry wells may not be used for the disposal of oil or other hazardous substances. Dry well construction must be performed only by licensed well drillers.

### **H. Aquaculture**

Most aquaculture operations require a license from the Arizona Department of Agriculture (ADA) and are subject to inspections by that agency. Arizona law requires the ADA to impose restrictions on supply water and tailing water discharges from an aquaculture facility if detrimental to aquatic wildlife.<sup>8</sup>

## **II. AIR QUALITY**

### **A. State Air Quality Laws and Regulations**

#### ***1. Air Emissions from Agricultural Operations***

Arizona law charges the Department of Environmental Quality (DEQ) and county governments with regulating air quality in the state.<sup>9</sup> In general, stationary sources of air pollution require a DEQ air quality permit before constructing, changing, replacing, or operating

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<sup>7</sup> ARIZ. REV. STAT. ANN. ' 49-331 *et seq.* (1995).

<sup>8</sup> ARIZ. REV. STAT. ANN. ' 3-2901 *et seq.* (1995).

<sup>9</sup> ARIZ. REV. STAT. ANN. ' 49-401 *et seq.* (Supp. 1999).

any equipment or process that may cause air pollution. A permit is also required when an existing business that is a source of air pollution is sold, relocates, or changes the nature of its operations. The type of facilities requiring permits include all fuel combustion devices that are rated at greater than one million BTUs per hour and stationary rotating machinery of greater than 325 brake horsepower.

Other than open burning discussed below, few agricultural operations (other than those located in Maricopa county) will require air quality permits. On-farm incinerators and grain elevators, however, may be exceptions.

Under the federal Clean Air Act (CAA), states are required to maintain annual average particulate matter of ten or less than ten microns (PM10) in size at or below specific levels. The Arizona DEQ oversees the state's compliance program as the Agricultural PM10 General Permit program.<sup>10</sup> This program currently covers only regulated agricultural activities located in the nonattainment area,<sup>11</sup> i.e., Maricopa county. Regulated activities include all commercial farm practices for agricultural purposes on ten or more acres within Maricopa county. Regulated agricultural activities must be accompanied by a general agriculture permit. The general permit describes best management practices (BMPs) that reduce PM10 emissions.

All operators of regulated agricultural activities must implement at least one BMP from each category and maintain a record demonstrating compliance to obtain a general permit.

BMPs are listed for three separate categories:

- Tillage and harvest BMPs;
- Non-cropland BMPs; and
- Cropland BMPs.

## **2. *Open Burning Permits***

Open burning is unlawful in Arizona except as provided in regulations adopted by DEQ. A permit from either DEQ, certain other state or federal officials or a local government official is required for most allowed burning. Burning permits may be granted for weed abatement, prevention of a fire hazard, disease and pest prevention, watershed rehabilitation or control, and

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<sup>10</sup> ARIZ. ADMIN. CODE § R 18-2-609 *et seq.* (Supp. 1993).

<sup>11</sup> 40 C.F.R. § 81.303 (1999).

for the disposal of certain dangerous substances.<sup>12</sup> (It is expected that burning associated with agriculture may have some reporting requirements in the future.)

Fires for the disposal of household trash in nonurban areas may be allowed with a permit when there is no refuse collection service available and provided that the wastes are burned in an approved waste burner. Fires for the cooking of food, human warmth, recreational purposes, the branding of animals and frost protection in farming and nursery operations do not require a permit.

Open burning of the following materials is prohibited: garbage resulting from the processing, storage, service or consumption of food; asphalt shingles, tar paper, plastic and rubber products, waste crankcase oil, waste transmission oil, oil filters, transformer oils, and hazardous materials including those that contain inorganic pesticides, lead, cadmium, mercury or arsenic compounds.

### III. 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. 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.

Arizona's solid waste management laws impose requirements on solid wastes that do not otherwise qualify as hazardous waste (see discussion of hazardous waste below).<sup>13</sup> These laws give the most attention to the regulation of public and private landfills. However, they also contain a number of provisions that may affect agricultural producers.

##### 1. *Agricultural Landfills*

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<sup>12</sup> ARIZ. ADMIN. CODE ' R 18-2-602 (Supp. 1993).

<sup>13</sup> ARIZ. REV. STAT. ANN. ' 49-701 *et seq.* (Supp. 1999).

A single family residence located on a farm or ranch of more than 40 acres in an unincorporated area may operate an on-site landfill for the disposal of household solid waste generated by that residence, provided that: 1) the landfill does not violate certain floodplain or wetlands provisions; 2) the owner or operator submits a location map and a general description of the landfill to the local board of supervisors; and 3) the landfill does not create an environmental nuisance.

A person engaged in farming or ranching on at least 40 acres in an unincorporated area may operate an agricultural landfill on the property for disposal of solid waste, but not hazardous waste, generated on the property. An agriculture landfill operator must comply with the same requirements applicable to an on-farm, household waste landfill, except that the agricultural landfill cannot accept household waste, household hazardous waste or conditionally exempt small generator waste.<sup>14</sup>

Land application of sewage sludge, also referred to as biosolids, is allowed after proper registration with Arizona's DEQ. Land application projects as such are not considered solid waste facilities if the biosolids are applied in accordance with sludge application requirements.<sup>15</sup>

Farmers and ranchers need to be cautious when applying industrial waste products that do not come from a fertilizer dealer. Health risk concerns may arise if certain levels of heavy metals are present in waste products. Maximum cumulative loading rates for heavy metals may be obtained from Arizona DEQ.<sup>16</sup>

## **2. *Criminal Littering***

Littering or polluting is a criminal offense in Arizona. A person can be charged with this crime if he or she: 1) throws litter or destructive or injurious material on public property or the property of another person; 2) discharges sewage, oil or other harmful substances into waters or onto any shoreline within the state; or 3) dumps any earth, stones, soil, ores or minerals on any land, without proper authority.<sup>17</sup>

## **3. *Used Oil***

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<sup>14</sup> ARIZ. REV. STAT. ANN. ' 49-766 (1995).

<sup>15</sup> ARIZ. ADMIN. CODE § R 18-13-1504 (Supp. 1996); and 40 C.F.R. pt. 503 (1999).

<sup>16</sup> ARIZ. ADMIN. CODE § R 18-13-1505 (Supp. 1996).

<sup>17</sup> ARIZ. REV. STAT. ANN. ' 13-1603 (Supp. 1999).

Arizona bans the disposal of used oil by any of the following methods:

- Discharge into sewers or waters of the state unless pursuant to a permit;
- Incineration except at a facility authorized to incinerate hazardous wastes;
- Disposal on land except at an approved landfill; or
- Dispersal as a dust suppressant or contact herbicide.

Instead, the law requires used oil to be disposed of at registered used-oil collection centers.<sup>18</sup>

#### **4. *Waste Tires***

The Arizona Waste Tire Disposal Act places restrictions on the disposal of old tires. The law makes it illegal to throw away motor vehicle tires and requires that they be recycled through tire dealers or designated waste tire collection sites. The law does permit waste tires to be used as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site.<sup>19</sup>

#### **5. *Lead Acid Batteries***

Requirements similar to those for waste tires apply to lead acid batteries. It is unlawful to dispose of batteries at a landfill or unauthorized site. They must be recycled through an authorized dealer.<sup>20</sup>

#### **6. *Hazardous Wastes***

Wastes deemed to be hazardous are regulated to a greater extent than other solid waste, under both Arizona and federal law. The Arizona Hazardous Waste Management Act (HWMA) defines hazardous waste to include:

...solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations...which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or

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<sup>18</sup> ARIZ. REV. STAT. ANN. ' 49-801 *et seq.* (Supp. 1999).

<sup>19</sup> ARIZ. REV. STAT. ANN. ' 44-1301 *et seq.* (Supp. 1999).

<sup>20</sup> ARIZ. REV. STAT. ANN. ' 44-1321 *et seq.* (1995)

potential hazard to human health or the environment if improperly treated, stored, transported, disposed of or otherwise managed...<sup>21</sup>

Hazardous wastes are more specifically defined in regulations adopted by the DEQ and by the EPA that list specific substances determined to be hazardous.<sup>22</sup>

**Producer Note:** Arizona producers should check DEQ and EPA regulations to determine whether any chemicals or other substances used in their operations have been listed as hazardous. Producers should then consult with the DEQ as to the regulatory requirements for those substances.

Producers who generate or transport hazardous wastes are subject to extensive regulatory requirements under the Arizona HWMA. These include record keeping requirements, storage requirements; emergency planning; and personnel training. The extent of the regulation is determined by the degree of the hazard and the quantity of waste generated.

Certain substances used in agriculture have been excluded from the definition of hazardous waste. Irrigation return flows and point source discharges regulated under the Clean Water Act are specifically excluded. So are solid wastes generated from growing and harvesting crops and raising animals (manure) that are returned to the soil as fertilizer. Pesticides are subject to special rules.

## 7. *Underground Storage Tanks*

Underground storage tanks (UST) are regulated by Arizona as well as federal law.<sup>23</sup> A UST is defined as a tank, or combination of tanks, used to contain regulated substances, the volume of which is located at least ten percent below the ground. Regulated substances include petroleum.

Home heating oil tanks and septic tanks are not covered by the law. Also not covered are tanks located on farms and at residences that are used to store motor fuel for noncommercial purposes and that are not more than 1,100 gallons in size.

For tanks that are covered, the law imposes a number of requirements. These include:

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<sup>21</sup> ARIZ. REV. STAT. ANN. ' 49-901 *et seq.* (1995); ARIZ. REV. STAT. ANN. ' 49-921(5) (1995).

<sup>22</sup> ARIZ. ADMIN. CODE ' R 18-8-26 (Supp. 1999); 40 C.F.R. ' 261 (1999).

<sup>23</sup> ARIZ. REV. STAT. ANN. ' 49-1001 *et seq.* (Supp. 1999).

- Reporting releases and spills from the tanks;
- Implementing leak detection requirements;
- Record keeping;
- Meeting tank design and performance standards;
- Remediation requirements;
- Closure requirements; and
- Financial assurance requirements.

Requirements differ for new versus existing tanks.

**Producer Note:** Producers should consult with the Arizona Department of Environmental Quality (DEQ) regarding requirements for any of their tanks which may be covered by the law.

#### **8. *Emergency Planning and Community Right-to-Know Regulation***

Arizona has enacted a statute that closely parallels the Federal Emergency Planning and Community Right-to-Know Act (See discussion of the Federal Act above in section V., D.). The provisions of the state law are virtually identical to the federal act.<sup>24</sup> However, Arizona farmers and ranchers must prepare and submit an emergency plan along with a notification of extremely hazardous substance storage. Contact the Arizona Emergency Response Commission for more information (see Appendix A).

### **IV. 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. State Pesticide and Chemigation Laws and Regulations**

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<sup>24</sup> ARIZ. REV. STAT. ANN. ' 26-341 *et seq.* (1995).

**Producer Note:** Arizona, 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. Contact the Arizona Department of Agriculture (ADA) or the Arizona Structural Pest Control Commission (SPCC) for the most current requirements.

The application and licensing of agricultural use pesticides is regulated by the Arizona Department of Agriculture (ADA).<sup>25</sup> Agriculture use pesticides means the use of pesticides for commercial production of plants and animals but not the use of pesticides with animal eartags and not the use of pesticides within or around confined structures.

Commercial pesticide application and licensing is regulated by the Arizona Structural Pest Control Commission (SPCC).<sup>26</sup> Commercial pesticide application includes the pest control industry and application of pesticides around structures including: household pests, wood destroying pests, weeds, pests of ornamental plants, aquatic pests, and pests affecting public health.

Licensing requirements depend on the pesticide, use, location, method, application, and the applicator. Various fees, degrees of training, standards of financial responsibility, and continuing education are required depending on the type pesticide license sought. Contact either ADA for agriculture use pesticides or SPCC for commercial (structural) pesticide applications for the most current licensing requirements.

A producer disposing of hazardous pesticides as a result of their own use of those pesticides is not required to comply with most hazardous waste law requirements, provided they triple rinses each emptied pesticide container and disposes of the pesticide residues on their own farm in a manner consistent with the disposal instruction on the pesticide label.<sup>27</sup> In addition, the producer must comply with DEQ and ADA regulations concerning the disposal of pesticide containers.<sup>28</sup> Those regulations provide that containers may be disposed of only at an approved sanitary landfill or other DEQ approved sites or by burning combustible bags and packages in isolated areas where permitted by state and local regulation. No more than 50 pounds of empty containers may be burned in one day, and no containers may be burned that contained inorganic

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<sup>25</sup>ARIZ. REV. CODE ANN. § 3-361 *et seq.* (1995); and ARIZ. ADMIN. CODE § R3-3-201 *et seq.*, 301 *et seq.*, 401 *et seq.*, 501 *et seq.*, and 701 *et. seq.* (Supp. 1998).

<sup>26</sup>ARIZ. REV. CODE ANN. § 32-2300 *et seq.* (Supp. 1999).

<sup>27</sup> 40 C.F.R. ' 262.70 (1999).

<sup>28</sup> ARIZ. ADMIN. CODE ' R 18-8-513 (Supp. 1987).

pesticides or organic mercury, lead, cadmium or arsenic compounds. Prior to disposal in a landfill, bags must be tied in bundles and enclosed in secondary containers, and liquid containers must be triple rinsed.

**Producer Note:** Producers should review DEQ and ADA regulations for additional details concerning the disposal of pesticide containers.

Arizona also regulates pesticides in other ways. Arizona law requires registration with the Arizona Department of Agriculture (ADA) of all pesticides that are distributed, sold, transported or offered for sale within the state. It is illegal to sell, distribute or transport unregistered pesticides. ADA enforces pesticide labeling requirements as part of the registration process.<sup>29</sup>

ADA also enforces other pesticide rules.<sup>30</sup> These include:

- Prohibition or restriction of the use of certain pesticides;
- Restriction of areas in which pesticides may be used;
- Prescription of minimum requirements and certification requirements for persons who apply pesticides;
- Record keeping requirements regarding pesticide use; and
- Permits or licenses for the use of certain pesticides.

Arizona law prohibits odoriferous and other pesticides from being applied within a quarter mile of a school, day care center, health care institution or residential subdivision (defined as containing at least 25 units), except by soil injection. Highly toxic pesticides and paraquat in liquid form cannot be applied within one-quarter mile of a health care institution, except by soil injection (See 3-365 D of Arizona statutes for an exception). They cannot be applied within 100 feet of a residential subdivision by aircraft or within 50 feet of a residential subdivision by ground equipment. Highly toxic pesticides cannot be applied in dust form by aircraft within 300 feet of a residential subdivision.

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<sup>29</sup> ARIZ. REV. STAT. ANN ' 3-341 *et seq.* (1995).

<sup>30</sup> ARIZ. REV. STAT. ANN. ' 3-361 *et seq.* (Supp. 1999).

**Producer Note:** Producers should consult with ADA as to other rules governing pesticide use.

Arizona law also regulates the effects of pesticides on groundwater quality. Any person who registers a pesticide with ADA must also submit to the Department of Environmental Quality (DEQ) information on the pesticide's impact on groundwater.<sup>31</sup> DEQ in turn maintains a Groundwater Protection List (GWPL) of pesticides with the potential to pollute groundwater. DEQ is required to notify ADA not to register, or to cancel registration of a pesticide, if insufficient data has been submitted to DEQ concerning the pesticide's pollution potential. DEQ will require permanent cancellation of a pesticide registration if it determines the pesticide is in groundwaters at levels that are carcinogenic, mutagenic, teratogenic or toxic to humans and that modified application procedures cannot assure that the pesticide will not pollute groundwater. Any person who uses soil applied pesticides on the GWPL must report such use to DEQ.

## V. 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. 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. Arizona has laws protecting wildlife.

The Arizona Department of Game and Fish regulates the taking, selling and transportation of wildlife in the state. It sets seasons for fishing and hunting and administers hunting and fishing license requirements.<sup>32</sup>

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<sup>31</sup> ARIZ. REV. STAT. ANN ' 49-301 *et seq.* (1995).

<sup>32</sup> ARIZ. REV. STAT. ANN. ' 17-101 *et seq.* (Supp. 1999).

Arizona law contains special provisions concerning damage done by wildlife to land and to agricultural operations. One specific section of the law authorizes the taking of bear and mountain lions that are preying on livestock. This is subject, however, to certain requirements.

**Producer Note:** Producers should check with state or local game officials if they are in doubt about their obligations to wildlife on their property.

## **VI. Enforcement of State Environmental Laws**

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

## 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.

State Agencies:

**Arizona Department of Agriculture**

1688 West Adams  
Phoenix, AZ 85007  
(602) 542-4373  
<http://www.agriculture.state.az.us/front.html>

**Arizona Department of Environmental Quality**

1110 W. Washington  
Phoenix, AZ 85007  
(800) 234-5677 toll free in AZ  
(602) 771-2300  
<http://www.adeq.state.az.us>

North Office  
1515 E. Cedar Avenue, Suite F  
Flagstaff, AZ 86004

South Office  
400 W. Congress, Suite 433  
Tucson, AZ 86004  
(520) 779-0313

Border Office  
1860 N. State Street  
Nogales, AZ 85621  
(520) 379-9077

**Arizona Department of Health Services**

3008 N. 3<sup>rd</sup> Street, Suite 207  
Phoenix, AZ 85012  
(602) 230-5912  
<http://www.hs.state.az.us/index.html>

**Arizona Game and Fish Department**

2221 W. Greenway Road  
Phoenix, AZ 85023  
(602) 942-3000  
<http://www.gf.state.az.us/frames/bod-main.htm#top>

**Arizona Emergency Response Commission**

5636 E. McDowell Road  
Phoenix, AZ 85008  
(602) 231-6346  
<http://www.dem.state.az.us/azserc/>

**Arizona Structural Pest Control Commission**

9535 E. Doubletree Ranch Road  
Scottsdale, AZ 85258-5514  
(602) 255-3664  
<http://www.sb.state.az.us/>

**University of Arizona Cooperative Extension**

University of Arizona  
Forbes 301  
P. O. Box 210036  
Tucson, AZ 85721-0036  
(520) 621-7205  
<http://ag.arizona.edu/extension/>

Or see the "County Government" section of your local phone book