

STATE ENVIRONMENTAL LAWS AFFECTING ARKANSAS AGRICULTURE

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

A Project of the

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

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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 (the 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, the development of its 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 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 consult with their own attorneys, 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 Natural Resources Conservation Service or the United States Environmental Protection Agency.

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 makes 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 December 2002. Updates of the information contained in the guide will occur on an annual basis and be made available on the internet.

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

Quick Reference Guide

Producer Note: The following chart is intended as a quick reference guide to permits which may be necessary for a particular operation. If a permit is necessary, refer to the page numbers listed referencing this document for further information and contact the agencies listed in the final column 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. 1-3</i> | Livestock and aquaculture operations, depending on size | NPDES and Regulation 5 state general permit or land disposal permit | EPA Regional Office and Arkansas Department of Environmental Quality (ADEQ) |
| | Wetlands dredge and fill activity or dam, dike, or bridge building activities | Section 404 permit | U.S. Army Corps of Engineers with EPA and Arkansas approval |
| | Water usage | Registration and required for non-domestic withdrawals capable of 50,000 or more gallons per day | Arkansas Soil and Water Conservation Commission (ASWCC) |
| | Water well construction and use | License required and construction standards must be followed | Arkansas Well Water Construction Commission (AWWCC) |
| Groundwater <i>pp. 3-5</i> | Groundwater protection | No permit, but BMPs must be followed | ASWCC |
| Air Quality <i>pp. 5-7</i> | Grain terminals and grain elevators | Permit required or APPP | ADEQ |
| | General agricultural operations including odor, dust, or flies | No permit, but may be subject to nuisance suits | ADEQ |
| | Burning | Permit required in certain circumstances | ADEQ; or local fire marshall |

| Regulatory Area | Type of Activity | Permit Required | Agency |
|--|---|---|--|
| Solid Waste and Hazardous Waste <i>pp. 7-10</i> | Storage, treatment, or disposal of hazardous or solid waste | Permit required for disposal, treatment, or storage activities | ADEQ |
| | Public notice of hazardous waste | No permit, must apply for EPA ID number | Local Emergency Planning Committee |
| Pesticides <i>pp. 10-13</i> | Application and use of pesticides | No permit, but a license may be required | Arkansas State Plant Board |
| | Use of pesticides around farmworkers | No permit, but training and notification is required | EPA; Arkansas State Plant Board |
| | Record keeping | No permit, but all requirements must be met | EPA; Arkansas State Plant Board |
| Wildlife Protection <i>pp. 13</i> | Taking of wildlife | Permit required if endangered or threatened species may be affected | U.S. Fish and Wildlife Service & Arkansas Game and Fish Commission |
| Waste Lagoons <i>pp. 15</i> | Storage of animal waste | Permit required | ADEQ Water Division |
| Land Application of Waste <i>p. 15</i> | Land application of animal waste to cropland | Permit required | ADEQ Water Division |
| Dead Animal Disposal <i>p. 16</i> | Disposal of animal carcasses | No permit, but regulations must be followed | ADEQ Solid Waste Division; Arkansas Livestock & Poultry Commission |

STATE ENVIRONMENTAL LAWS AFFECTING ARKANSAS 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. WATER QUALITY

A. 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.

Arkansas has established a water quality control program through the Arkansas Water and Air Pollution Control Act. The program is administered by the Arkansas Department of Environmental Quality under rules promulgated by the Arkansas Pollution Control and Ecology Commission.

1. *Arkansas NPDES Permit Program*

The Arkansas Department of Environmental Quality (hereinafter "ADEQ") is charged with issuing, denying, revolving, and modifying ADEQ permits. Applications must be filed with ADEQ to receive a water quality permit. Notice of each application is published in a newspaper in the county in which the proposed facility is to be located. This notice lets interested people in the county know that they can request a public issuance of the applied for permit. Furthermore, whenever ADEQ makes a proposal to either grant or deny a permit application, this proposal is published in a newspaper in the relevant county so that interested people in the county can comment upon ADEQ's proposal before ADEQ makes a final decision on the permit application.

ADEQ may revoke, suspend, or modify a permit in whole or in part whenever conditions in the permit are violated, when a permit is obtained through misrepresentation of facts to ADEQ, or when state laws or regulations have changed requiring current specifications for that permit to be altered. Any person who has his permit revoked, denied, or modified may, upon written application to the Arkansas Pollution Control and Ecology Commission (hereinafter "APCEC") request an appeal on such action.

Each application for a water quality permit is to be accompanied by a "disclosure statement." A disclosure statement gives ADEQ administrative information about the applicant as well as a environmental and legal history of the applicant. Certain government entities, applicants for NPDES permits regarding storm water discharge, and publicly held corporations required to file periodic reports with the Security Exchange Commission are not required to file disclosure statements with their permit applications. Any applicant for a transfer of a permit should notify ADEQ 30 days before receiving the permit and should accompany such application/notice with a disclosure statement.

2. *Applications*

All records, reports, permits, applications, and other related documentation relating to the Arkansas Water Quality Control Program are available to the public for inspection and copying unless ADEQ has determined that such information is confidential and would disclose trade secrets.

It is the responsibility of those in charge of facilities or operations that come under guidelines of ADEQ and the Arkansas Water Quality Program to keep records, make reports, maintain monitoring equipment, and/or take samples as ADEQ requires. Agents of ADEQ may enter upon private or public property to obtain such information or to make inspections as they deem unnecessary.

3. *Penalties*

The Arkansas legislature has deemed the following acts to be unlawful unless a permit has first been obtained from ADEQ: to construct, install, modify, or operate any disposal system or addition to it; to increase in amount and strength the wastes allowed to be discharged under an existing permit; to discharge sewage or wastes in the waters of the state or to construct any facility that would discharge such wastes as sewage.

Persons, companies, or organizations that violate rules and regulations promulgated by APCEC regarding the Arkansas Water Quality Control Program can be assessed criminal and civil penalties. Civil administrative fines of \$10,000 per violation per day can be assessed by ADEQ. In addition, ADEQ can recover costs of cleanup and for damages caused by the violation and private civil suits may be brought. Hefty criminal fines and jail time are available to the state as well.

4. *Underground Salt Water Disposal Systems*

The Arkansas Oil and Gas Commission and APCEC have promulgated rules and regulations regarding the operation of systems that deal with salt water produced in the production of oil. Any person, company, or organization wishing to operate such a system must send an application to both the Oil and Gas Commission and ADEQ in order to be issued a permit for the salt water disposal system.

5. *Variances*

If good cause can be shown to the director of ADEQ, the director is authorized to grant temporary variances from the requirements of a permit or to construct or operate a facility during the notice period of an applied for permit. A variance will last for only 90 days unless the director justifies an extension of the variance because of circumstances beyond the permit holder or applicant's control. In addition an aggrieved party may go through the third party rulemaking process to try and amend a local water quality standard.

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 of the changes which may occur.

II. GROUNDWATER

A. State Groundwater Laws and Regulations

Arkansas has consolidated its Department of Agriculture. Animal husbandry is regulated by the Livestock and Poultry Commission; and horticulture is regulated by the State Plant Board.

1. *The Arkansas Public Water System Service Act*

The Arkansas Department of Health (ADH) has the authority to implement the Federal Safe Drinking Water Act. Through the "public water system supervision program," ADH oversees activities such as collecting and analyzing water samples, investigating complaints, and conducting sanitary surveys to ensure that the standards of the Federal Safe Drinking Water Act are being met.

2. *Arkansas Groundwater Protection and Management Act*

The Arkansas legislature enacted the Arkansas Groundwater Protection and Management Act because although Arkansas has an abundance of good quality groundwater, water is being mined to such an extent that in some critical areas within the state, it is necessary to reduce

groundwater use. The Act is administered by the Arkansas Soil and Water Conversation Commission (hereinafter "ASWCC").

The Act provides for the designation of parts of the state where the ASWCC determines that there is significant ground water depletion and/or degradation as Critical Ground Water Areas. Commission designation carries no regulatory power. If designation does not succeed in encouraging progress toward reduction of groundwater use, the ASWCC may, following public hearings in each county within the Area, institute a regulatory program. "Water rights" would be issued under the regulatory program for ground water withdrawal from non-domestic wells with a maximum potential daily withdrawal rate of 50,000 gallons or more. Some pre-regulatory programs would be "grandfathered" into the program at pre-regulatory withdrawal rates. A regulatory program may also include other ground water criteria and standards.

Though two Critical Ground Water Area designations have been made - one in South Arkansas, one in East Arkansas - the ASWCC has not instituted the regulatory program.

3. *Water Well Construction Act*

The Arkansas Water Well Construction Act was promulgated by the Arkansas legislature in order to preserve the health, safety, and welfare of citizens of the state by implementing procedures and standards by which persons engaged in water well drilling must comply. The Act is administered through the Arkansas Water Well Construction Commission (AWWCC).

It is unlawful under the Act: (i) for any person to engage in the construction, alteration, repair, or installation of a pump or water well, unless the work is performed under the supervision of an individual licensed or certified by the commission; (ii) for any water well contractor to fail to deliver to the commission, within 90 days after completion of the construction of a water well, a report on the water well construction; (iii) for any person to install, construct, repair, or alter a water well or water well pumping equipment which is not in compliance with the appropriate rules and regulations of the commission or is a health hazard; and (iv) for any person to operate a water well "rig" without a permit.

The commission may grant an exemption from any of its requirements if the commission finds that if a person is required to comply with all of its requirements, undue hardship would result to that person. Furthermore, a license is not required to be gotten by a person who is constructing, altering, or repairing a water well or repairing a pump or pumping equipment for use by him on his land.

Persons engaged in water well drilling must be issued a certificate of registration as a certified water well driller or certified pump installer. Each person who wishes to be engaged in water well drilling or pump installation must apply to the commission for certification and must pass a certification test given by the commission.

Any person who wants to be engaged in the business of being a water well contractor must seek and obtain a license from the ASWCC. A land owner installing pumping equipment in a water well owned by him for his own use is exempted from this licensing requirement. Also, those who operate water well “rigs” must obtain a permit from the ASWCC. These permits are not transferable.

4. *Water Resource Conservation and Development Incentives Act*

Under the Arkansas Water Resource Conservation and Development Incentives Act, state tax credits are available to encourage water users to invest in: (1) the conversion from ground water use to surface water use, (2) the construction of impoundments to reduce dependence on ground water, and (3) land leveling to reduce agricultural irrigation water use. The tax credit per year varies with the particular activity. Contact ASWCC for additional information and application details before beginning a project for tax credit.

III. AIR QUALITY

A. State Air Quality Laws and Regulations

The Arkansas legislature has declared that it is the public policy of the state to maintain a reasonable degree of purity of air resources so that the least possible injury is done to the humans, plants, animals, and property while keeping in mind the economic and industrial well-being of the state. Arkansas has established an air quality control program through the Arkansas Water and Air Pollution Control Act. The program is administered by both the Arkansas Pollution Control and Ecology Commission (APCEC) and the ADEQ.

The term “air-contaminant” includes any solid, liquid, gas, or vapor or any combination of these substances.

1. *Unlawful Actions*

It is unlawful in Arkansas to: (i) knowingly cause air pollution; (ii) construct, install, or operate any source capable or emitting air contaminants without first getting a permit from ADEQ when ADEQ requires a permit; (iii) act contrary to the conditions contained in permits granted by ADEQ.

It is not a violation if air contaminants are released into the air because of an act of nature or accidental breakdown of equipment if the equipment is promptly repaired.

2. *Exceptions To Complying With the Arkansas Air Quality Control Program*

The following activities generally do not have to comply with Arkansas air quality laws and ADEQ regulations: (i) agricultural operations in the growing or harvesting of crops and the raising of fowl or animals (producers); (ii) using agricultural equipment for growing crops or raising fowl or animals; (iii) road construction operations; (iv) incinerators and heating equipment used for domestic residential purposes; (v) fires set or permitted to beset by any public officer, board, council, commission when the fire is set for weed abatement purposes, or for the prevention or elimination of fire hazards. However, agricultural business must still comply with the air regulations.

Those involved in agriculture in Arkansas should check with ADEQ to make sure they are exempted from the air quality laws and regulations of the state.

3. *Permits*

ADEQ is charged with issuing, denying, revoking, and modifying air pollution control permits. Applications for permits must be filed with ADEQ Air Division. The threshold for air pollution control is 100 tons/year of emissions. In addition, an applicant may apply for, and comply with, an Air Pollution Protection Plan, again from the ADEQ Air Division.

Public notice of each application will be given to those people who may be effected by the issuance of a permit may request a public hearing on the matter. ADEQ may revoke, suspend, or modify a permit in whole or in part - whenever conditions in the permit are violated, a permit is obtained through misrepresentation of facts to ADEQ, or state laws or regulations have changed requiring current specifications for that permit to be altered. Any person who has his permit revoked, denied, or modified may upon written application to APCEC to request an appeal on such action taken.

Like applications submitted for water quality permits, applications for air quality control permits are to be accompanied with a “disclosure statement.”

4. *Variances*

ADEQ may grant a variance from compliance with any law or regulation regarding air pollution control if conditions exist which are beyond the control of the person trying to comply with air quality laws or regulations and if this person would overly or unreasonably burdened in having to comply with such laws or regulations. Any person seeking a variance should file a petition for a variance with the Director of ADEQ.

5. *Open Burning*

It should be noted that in addition to state laws and regulations concerning open burning local governments or municipalities may have their own ordinances, rules, or regulations. Therefore, those involved in agriculture who wish to do open burning, should not only contact ADEQ, but also their local fire marshals.

6. *Small Business Stationary Source Technical and Environmental Compliance Assistance Programs*

The Small Business Stationary Source Technical and Environmental Compliance Assistance Program is a program set up to help small businesses comply with air quality requirements. The program is run through a Compliance Advisory Panel. Owners of businesses should contact ADEQ in order to see if they qualify to receive assistance under the program.

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. 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 EPD officials concerning the definitions of solid waste to determine whether an operation's activities could be regulated under state solid and hazardous waste statutes.

The Arkansas legislature has declared it to be the policy of the state to regulate the collection and disposal of solid and hazardous wastes in a manner that will:

- Protect the public health and welfare;
- Prevent water or air pollution;
- Prevent the spread of disease and the creation of nuisances;
- Conserve natural resources; and
- Enhance the beauty and quality of the environment.

ADEQ is the agency which administers both the Arkansas Solid Waste Management Act and the Arkansas Hazardous Waste Management Act. ADEQ is responsible for developing and maintaining the state comprehensive plan and for assuring that Arkansas is in compliance with the federal Act.

“Solid wastes” include garbage, rubbish, ashes or incinerator residue, street refuse, dead animals, demolition wastes which include pathological wastes, chemical wastes, herbicide and pesticide wastes, and other waste materials resulting from industrial, commercial, agricultural, community, and residential activities.

Violators of the Arkansas Solid Waste Management Act and its regulations are subject to criminal penalties which may include jail time and fines of up to \$25,000. Civil penalties may also be assessed against violators with fines of up to \$10,000 for each penalty and every day the violation is allowed to continue. Furthermore, violators are responsible for all expenses and damages resulting from the violation. Violators of the Arkansas Hazardous Waste Management Act are subject to similar fines, costs, and damages.

1. Arkansas Solid Waste Management Act

It is unlawful for any person coming under the Act and its regulations to:

- Construct, install, alter, modify, or operate any solid waste processing or disposal facility or disposal site without a permit from ADEQ; and
- Dispose of solid wastes at any disposal site or facility which does not operate under a permit issued by ADEQ.

Anyone applying for a solid waste landfill permit must obtain what is called a “certificate of need” from the applicable regional solid waste management board before even applying for a permit from ADEQ. Those interested in the disposal of solid wastes should always check with their regional solid waste management board to make certain that mandatory procedures are followed.

Any person who engages in the business of hauling solid waste must obtain a license from the regional solid waste management board in which the disposal of the solid wastes is to take place, or where the solid waste is collected for transport.

2. Arkansas Hazardous Waste Management Act

“Hazardous materials” are all materials and substances which are defined as hazardous by either state law or regulation.

The Arkansas Department Environmental Quality is responsible for issuing permits for the establishment, construction, operation, or maintenance of hazardous waste treatment, storage, or disposal facilities or sites. The Arkansas Highway Police issues highway transporter and HAZMAT permits for the transportation of hazardous wastes. Variances from the rules regarding the Arkansas Hazardous Waste Management Act may be sought upon application to ADEQ.

A hazardous waste landfill cannot be located within a half mile of any occupied dwelling unless it is demonstrated and the ADEQ finds that the landfill can be operated in a safe manner at a distance of less than a half mile. Construction at a hazardous site and the use of the site for residential, business, or recreational purposes is strictly prohibited unless the Department finds otherwise.

3. *Storage Tanks*

“Aboveground storage tank” is defined as containers and enclosures located aboveground whose capacity is greater than 1,320 gallons and not more 30,000 gallons and is used to contain or dispense motor fuels, distillate special fuels or other petroleum products. It does not include mobile storage tanks used to transport petroleum from one location to another.

“Underground storage tank” is defined as tanks, including the connecting pipes, which is or has been used to contain regulated substances and that has a volume which is ten percent or more beneath the ground. It does not include the following:

- Form or residential tanks having 1,100 gallons or less of capacity used for storing motor fuels for noncommercial purposes;
- Tanks used for storing heating oil for domestic use on the premises stored;
- Septic tanks;
- Pit, pond, or lagoon;
- Stormwater or wastewater collection system; and
- Storage tanks situated in an underground area such as a basement, cellar, or tunnel if the tank is situated on or above the surface of the floor.

ADEQ administers, issues, and enforces the state and federal rules regarding above-ground and underground storage tanks. An owner or operator should immediately contact the Arkansas Department of Pollution Control whenever a regulated storage tank releases a regulated substance. In addition, storage tanks need to be registered with the LUST Fund so that

they may receive state monies in case of emergency containment actions. The applicant should file with the ADEQ Hazardous Waste Division.

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. State Pesticide Laws and Regulations

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

The Arkansas legislature has stated that although pesticides are valuable in protecting people, the environment, and agricultural products from insects, rodents and weeds, it is necessary that they be used properly so that they do not harm people or the environment.

The Arkansas Pesticide Control Act and the Arkansas Pesticide Use and Application Act are administered by the Arkansas State Plant Board. These Acts regulate the labeling, storage, distribution, transportation, use, and disposal of pesticides in Arkansas. Pesticide container disposal assistance is available through cooperation with Agricultural Container Research Council, phone (501) 225-2598 or (877) 952-2272 toll free or send E-mail to info@acrecycle.org.

The Arkansas State Plant Board has the authority to issue regulations limiting methods of pesticide use with regard to the time, place, amounts, concentration, or manner of application. The Board may also prohibit the application of pesticides in any area at certain times to prevent damage to plants wildlife, fish, or aquatic life, humans or beneficial insects. The Board may restrict the use of pesticides in the state more stringently than the EPA does under the federal Act.

In addition to adopting restricted-use pesticides classifications as determined by the federal EPA, the Board may declare certain pesticides or their uses to be state-restricted. It is prohibited to sale or use these pesticides in the state except in accordance with the Board's regulations.

1. Registration

A pesticide must be registered with both the EPA and the State Plant Board before it is sold or distributed. Registration is not required if a pesticide is shipped from one facility to another operated by the same person and used only for making a pesticide that is registered by the Board.

2. Licenses

No one can use or supervise the use of any restricted-use pesticide which is restricted to use by certified applicators without first meeting the State Plant Board's licensing requirements.

a. Commercial Applicators

Someone who falls under the definition of a "commercial applicator" cannot be in the business of applying restricted use, other pesticides, or the aerial application of seed or fertilizer to someone else's land without first receiving a commercial applicator's license from the State Plant Board. To receive this license, each applicant must pass an examination given by the State Plant Board. The Board may limit the license so that it can be used for only certain pesticides, areas, or types of equipment.

A license is not required for someone applying pesticides for his neighbors if he operates the pesticide application equipment for his own use, is in the business of applying pesticides, and he operates the equipment only in the vicinity of his owned or rented land or his neighbors. However, if this person uses or supervises the use of restricted-use pesticides, he must get a license.

b. Noncommercial Applicators

Someone who is defined as a "noncommercial applicator" must obtain a license from the State Plant Board before using or supervising the use of a restricted-use pesticide.

c. Private Applicators

"Private applicators" as defined under Arkansas law as certified applicators who use or supervise any restricted use pesticides must also get a license from the Board before using or supervising the use of a restricted-use pesticide.

d. Pilots

It is unlawful in Arkansas for any pilot to apply pesticides, seed, or fertilizer with a plane unless the pilot gets a license to do so from the Board.

e. Pesticide Dealers

Those who deal in restricted-use pesticides must get a license from the Board. Also, a licensed dealer can only distribute restricted-use pesticides to those having a current commercial applicator, noncommercial applicator, private applicator, or dealer's license. However, commercial applicators who do sell restricted-use pesticides only as an integral part of his pesticide application service are not required to get a dealer's license when the pesticides are dispensed only through equipment used for the pesticide application.

3. *Records*

Those having a commercial and noncommercial applicator license must keep records for two years from the date of the application of a pesticide, which contain information on the kinds, amounts, dates, and places of application of the pesticides.

4. *Pesticide Containers*

Farmers should contact the State Plant Board regarding the proper methods for transporting, storing, or disposing of any pesticide or its container.

5. *Accidents and Claims*

Any person who claims to have been damaged from a pesticide application needs to file with the State Plant Board a written statement claiming the damage. This report needs to be filled within 45 days after the damage occurred. If a growing crop is alleged to have been damaged, the report must be filed prior to the time that 25 percent of the crop has been harvested.

6. *Penalties*

Anyone who violates any provision of the Arkansas Pesticide Control Act or the Arkansas Pesticide Use and Application Act is guilty of a misdemeanor. Fines, possible jail time, and civil causes of actions may be brought against all violators.

7. *Hand-harvesting by Children*

Children under twelve years of age and older may be employed to hand-harvest short-season crops, provided that:

- School is not in session;
- Written parental consent has been obtained by the employer;

- An employment certificate has been obtained from the Director of the Department of Labor;
- No pesticide or other agricultural chemical has been used on the crop except those approved by the Department of Health;
- Any pesticide or other agricultural chemical used on the crop has been applied and utilized in compliance with the worker protection standards established by the federal EPA and the Department of Health.

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. 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. Arkansas Game and Fish Commission has laws protecting wildlife.

The Arkansas Game and Fish Commission has the authority to pass more stringent laws than the U.S. Fish and Wildlife Association, but the Commission must at least comply with the federal guidelines.

VII. 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 Arkansas.

A. Farmland Preservation

Foreign parties investing in agricultural lands in Arkansas must register with the circuit clerk in the county where property is located within 60 days of acquiring the property.

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.

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.

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 not specifically an area where the state or federal authorities may become involved, court actions brought against the operation can occur. These actions are usually based on a nuisance theory, and in some cases, a right-to-farm defense may apply.

1. Nuisance

An action or operation may be wither a public or private nuisance. A private nuisance occurs when the actions of an operation or facility unreasonably interferes with the reasonable use and enjoyment of another's property. Public nuisance occurs when one's actions interfere with the rights of the public to reasonably use their property. Either action can be brought in state court.

The Arkansas legislature has found that an agricultural facility or operation of that facility may be found to be a nuisance if it changes the conditions in the surrounding area after the facility has been in operation for a long time, even if previously determined not to be a nuisance when established. If the facility is determined to be detrimental to the economic growth and development of the state.

2. Right-to-Farm

It has been declared the policy of the state by the Arkansas legislature to conserve, protect, and encourage the development and improvement of agricultural land and facilities used for food production. Arkansas has limited the circumstances when agricultural operations are nuisances.

Ordinances adopted by municipalities or counties which make agricultural facilities nuisances are void.

An agricultural facility, its appurtenances, or operation is not a nuisance, private or public, as a result of any changed conditions around the locality of the facility after it has been in operation for a period of one year or more when the facility, its appurtenances, or operation was not a nuisance when the agricultural operation began.

C. Livestock Waste Management

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).

ADEQ requires a person to obtain an animal waste management plan, which includes any necessary permit applications, prepared by a registered professional engineer. The person may substitute such a plan for one supervised by a registered engineer from one of the following: a conservation district, ASWCC, Natural Resources Conservation Commission, or the University of Arkansas Cooperative Extension Service. In addition a permit must be obtained from ADEQ Water Division in order to operate animal waste lagoons and to apply animal waste to farmlands.

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 aide 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 aide the producer.

D. Pest Control

1. *Plant Act of 1917*

Under the Arkansas Plant Act of 1917, the State Plant Board has, by regulation, stated how certain insect pests, diseases, and noxious weeds should be treated and eradicated. The Board has a list of insects, disease, and noxious weeds that should be prevented from entering the state. Those with knowledge of things within the state that are on the list should immediately contact the Board. The Board has also, by regulation, stated how infested plants or plant products should be cut, treated, or destroyed.

Note: In compliance with the 1958 federal fire ant quarantine, all Arkansas soil, hay, sod, plants, and used soil-moving equipment must be inspected and/or treated before being moved out

of a fire ant quarantine area. About 35% of Arkansas' southern counties are quarantine areas. Check with you local plant board or USDA/APHIS agency for additional information.

2. *Emergency Plant Act of 1921*

Under the Arkansas Emergency Plant Act of 1921, the State Plant Board can recommend to the Governor that an emergency exist as to certain areas or zones of the state whereby plants have been infected by harmful pests or weeds. It is unlawful for a person to grow certain plants, as recommended by the Board, in these areas or zones where a danger of infectious pests or weeds exists.

E. *Soil and Water Conservation Districts*

Soil and Water Conservation Districts are political subdivisions of the state. They provide financial, technical and other needs to landowners. They also have the power to erect improvement works to prevent flooding, erosion and sediment damage. They may also provide machinery, seeds, fertilizer, and other equipment to the member landowners. The districts may also acquire lands, lease lands, sell lands, or run agricultural operations on the land for profit as long as the profit is used for natural resource conservation purposes for which the district was established..

F. *Aquaculture*

The Arkansas legislature has classified aquaculture under the same heading as farming and ranching. Therefore the regulatory authority over aquaculture falls within the powers of the Department of Agriculture. The Livestock and Poultry Commission has the authority to regulate the manner in which such operations are carried out.

G. *Dead Animal Disposal*

1. *Fowl Disposal*

Farmers engaged in poultry production or the raising of fowl in Arkansas should check with the Arkansas Livestock and Poultry Commission for acceptable methods of disposal. The Commission has established regulations for the following: (i) composting of canvases; (ii) cremation or incineration; (iii) extrusion; (iv) on-farm freezing; (v) rendering; and (vi) cooking for swine feed.

2. *Large Animal Disposal*

“Large animal” is defined as cattle, horses, hogs, sheep, goats, cervidae, bison, llamas, alpacas, ostriches, emus, rheas, and other native or nonnative animals, excluding dogs and cats.

“Large animal carcasses” is defined as carcasses of large animals which died as the result of sickness, suffocation, accident, or from any cause other than intentional slaughter.

All large animal carcasses must be disposed in a manner proscribed by the Arkansas Livestock and Poultry Commission. Farmers should check with the Commission for specifics on how to dispose of large animal carcasses. No large animal carcass can be buried or disposed of in a landfill operated under a permit issued by the Department of Pollution Control and Ecology. A person who farms at more than one location does not have to have a disposal ditch or facility at each location unless the state Veterinarian says so.

H. Regulation of Biological Products

The regulation of biological products is covered depending upon the exact biological elements which make up the products themselves. For example, fertilizers made from animal wastes would be regulated under the solid waste laws of both the state and federal agencies and also under the state and federal laws concerning pesticides and fertilizers.

I. Environmental Audits

The Arkansas legislature has created incentives to encourage owner’s and operator’s of facilities under both state and federal regulation to provide voluntary environmental audits. The facility in question will receive privilege of nondisclosure if they voluntarily cooperate with the prosecuting authority. This privilege may be waived and may not interfere with state or federal laws to the contrary. In addition it may not interfere with rules or regulations or permits requirements under authority of the ADEQ or APCEC. In addition, a prosecuting authority may, if he has probable cause, obtain an audit via subpoena, search warrant or through discovery. An environmental audit may be prepared by the owner or operator of the facility or by an independent contractor.

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| <p>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.</p> |
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J. ASWCC Dam Safety Program

No person has the right to construct or own a dam (But see state tax credit information for impoundments on page 12?) which impounds more than fifty acre-feet of water or is twenty-five feet high or higher without a permit from the ASWCC unless the Commission finds that the dam poses a significant threat to life or property. The ASWCC regulates the design and operation of all permitted dams.

K. Water Use Registration

A person who diverts water from any stream, lake, or pond except for natural lakes or ponds exclusively owned by one person, must register the diversion with the ASWCC or his local water conservation district.

Every person who withdraws underground water for agricultural uses, except for individual household wells and wells having a maximum potential flow rate of less than 50,000 gallons per day, must register the withdrawal and report the following to their local water conservation district or the Commission the following:

- Number and size of the wells;
- Crops and acreage irrigated; and
- Legal description of the lands irrigated.

Registration is required annually, and a \$10 fee is collected.

L. Unlawful Acts Relating to Timber Removal from Streams

The following acts are unlawful in Arkansas:

- Poisoning any lake or stream;
- Removing trees below the normal high-water mark of stream or river which has been deemed to be navigable by the state or United States government;
- Cutting or destroying timber standing on any of the swamp and overflowed lands granted by Congress to the state unless that person resides on the swamp or overflowed lands;
- Leave tree tops, limbs, or trunks in any navigable stream, drainage ditch, or streambed;
- Obstruct any natural drain; and
- Damage any public levee.

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:

(501) 682-0910 fax

Arkansas Cooperative Extension Service

2301 South University
P.O. Box 391
Little Rock, AR 72203
(501) 671-2001
(501) 671-2251 fax

Arkansas Department of Health

4815 W. Markham
Little Rock, AR 72205
(501) 661-2000
(501) 661-1450 fax

Arkansas Department of Environmental Quality

8001 National Drive
Little Rock, AR
(501) 682-0744
(501) 682-0798 fax
<http://adeq.state.ar.us>

Arkansas Forestry Commission

3821 West Roosevelt Road
Little Rock, AR 72204
(501) 296-1940
<http://forestry.state.ar.us>

Air Division:

(501) 682-0752
(501) 682-0753 fax

Construction Assistance Division:

(501) 682-0547
(501) 682-0561 fax

Environmental Preservation Division:

(501) 682-0023
(501) 682-0010 fax

Hazardous Waste Division:

(501) 682-0831
(501) 682-0565 fax

Legal Division:

(501) 682-0884
(501) 682-0891 fax

Regulated Storage Tanks Division:

(501) 682-0988
(501) 682-0880 fax

Mining Division:

(501) 682-0809
(501) 682-0880 fax

Solid Waste Division:

(501) 682-0600
(501) 682-0611 fax

Technical Service Division:

(501) 682-0937
(501) 682-0891 fax

Water Division:

(501) 682-0654

Arkansas Game and Fish Commission

2 Natural Resources Dr
Little Rock, AR 72205
(501) 223-6300
<http://www.agfc.com>

Fisheries Division:

(501) 223-6371

Information and Education Division:

(501) 223-6331

Legal Counsel Division:

(501) 223-6327

Wildlife Division:

(501) 223-6359

Arkansas Geology Commission

Vardelle Parham Geology Center
3815 West Roosevelt Road
Little Rock, AR 72204
(501) 296-1877
(501) 663-7360 fax

Arkansas Livestock & Poultry Commission

1 Natural Resources Dr
Little Rock, AR 72205
(501) 907-2400

Poultry and Egg Division:

(501) 907-2455

Arkansas Dairy Committee:

(501) 225-5138

Arkansas Oil and Gas Commission

2215 West Hillsboro
El Dorado, AR 71731
(870) 862-4965

District Office - Ft. Smith

(501) 646-6611
(501) 646-8526 fax

**Arkansas Pollution Control and Ecology
Commission**

101 E. Capital, Suite 205
Little Rock, AR 72201
(501) 682-7890
(501) 682-7891 fax
<http://adeq.state.ar.us/commission/main.htm>

Arkansas State Plant Board

1 Natural Resources Dr
P.O. Box 1069
Little Rock, AR 72205
(501) 225-1598

**Arkansas Soil and Water Conservation
Commission**

101 E. Capitol, Suite 350
Little Rock, AR 72201
(501) 682-1611