

**STATE ENVIRONMENTAL LAWS  
AFFECTING MASSACHUSETTS  
AGRICULTURE**

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

**A Project of the**

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

**through the**

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

**!!!**

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

# STATE ENVIRONMENTAL LAWS AFFECTING MASSACHUSETTS AGRICULTURE

## Table of Contents

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

The Project Participants .....	MA-iii
Disclaimer .....	MA-iv
Quick Reference Guide .....	MA-v
I. Water Quality .....	MA-1
A. Massachusetts Water Quality Laws and Regulations .....	MA-1
1. Massachusetts Water Quality Overview .....	MA-1
2. Massachusetts Surface Water Discharge Permit Program .....	MA-2
3. Massachusetts Watershed Protection Act .....	MA-3
4. Massachusetts Wetland and Riverfront Protection Acts .....	MA-4
5. Massachusetts Protection of Fisheries .....	MA-5
6. Massachusetts Agricultural Environmental Enhancement Program .....	MA-5
7. Massachusetts Cranberry Production .....	MA-6
II. Groundwater .....	MA-6
A. Massachusetts Groundwater Laws and Regulations .....	MA-6
1. Massachusetts Groundwater Discharge Permit Program .....	MA-6
2. Massachusetts Water Management Act .....	MA-7
3. Massachusetts Underground Water Source Protection Program .....	MA-9
4. Other Massachusetts Regulations of Groundwater .....	MA-10
III. Air Quality .....	MA-10
A. Massachusetts Air Quality Laws and Regulations .....	MA-10
IV. Solid Waste and Hazardous Waste .....	MA-11
A. Massachusetts Solid Waste and Hazardous Waste Laws and Regulations .....	MA-11
1. Massachusetts Solid Waste Facilities Laws .....	MA-12
2. Massachusetts Hazardous Waste Management Act .....	MA-13
3. Massachusetts Oil and Hazardous Material Release Prevention and Response Act (State Superfund Law) .....	MA-14
4. Massachusetts Underground Storage Tank Petroleum Product Cleanup Fund .....	MA-16

V.	Pesticides and Chemigation .....	MA-16
A.	Massachusetts Pesticide and Chemigation Laws and Regulations .....	MA-16
1.	Massachusetts Pesticide Control Act .....	MA-16
2.	Massachusetts Commercial Fertilizer and Lime .....	MA-18
VI.	Protection of Wildlife .....	MA-19
A.	Massachusetts Wildlife Protection Laws and Regulations .....	MA-19
1.	Massachusetts Endangered Species Act .....	MA-19
2.	Massachusetts Trapping and Poisoning of Animals and Birds .....	MA-20
VII.	Enforcement of State Environmental Laws .....	MA-21
VIII.	Other Massachusetts Statutes Affecting Agriculture .....	MA-21
A.	Massachusetts Environmental Policy Act (MEPA) .....	MA-21
B.	Massachusetts Conservation Commission Act .....	MA-22
C.	Massachusetts Open Burning .....	MA-22
D.	Massachusetts Noise Nuisance .....	MA-23
E.	Massachusetts Drought Program .....	MA-23
	Appendix - Agencies .....	MA-24

## **The Project Participants**

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

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

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

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

### **Natural Resources Conservation Service**

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

### **U.S. Environmental Protection Agency**

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

## **Disclaimer**

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

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 December 2000.

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

## Quick Reference Guide

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

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 1-6</i>	Livestock and aquaculture operations, depending on size	NPDES and state general permit or land disposal permit	Environmental Protection Agency (EPA) and MA Department of Environmental Protection (DEP)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit; local/state permit required for some activities	U.S. Army Corps of Engineers with EPA and MA DEP; designated local authorities
	Water usage	Permit required for withdrawal of more than 100,000 gallons per day	MA DEP
	Water well construction and use	Permit required in some circumstances	MA DEP
Groundwater <i>pp. 6-10</i>	Groundwater protection	Permit required for point source discharges, and Best Management Practices (BMPs) must be followed	MA DEP

<b>Regulatory Area</b>	<b>Type of Activity</b>	<b>Permit Required</b>	<b>Agency</b>
Air Quality <i>pp. 10-11</i>	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance suits	EPA or MA DEP
	Burning	Permission required in certain circumstances	MA DEP; local fire chief
Solid Waste and Hazardous Waste <i>pp. 11-16</i>	Storage, treatment, or disposal of hazardous or solid waste	Permit required for disposal, treatment, or storage activities	EPA and MA DEP
	Public notice of hazardous waste	No permit	Local Emergency Planning Committee and MA DEP, MA Department of Labor (DOL), and MA Department of Public Health (DPH)
Pesticides and Chemigation <i>pp. 16-19</i>	Application and use of pesticides	No permit, but a license or certification may be required	EPA and MA Department of Food and Agriculture (DFA)
	Use of pesticides around farmworkers	No permit, but training and notification are required	MA DEP, DOL, and DPH
	Record keeping	No permit, but all requirements must be met	MA DFA
Wildlife Protection <i>pp. 19-21</i>	Taking of wildlife	Permit required if listed species may be affected	U.S. Fish and Wildlife Service; MA Department of Fisheries and Wildlife and Environmental Law Enforcement

## STATE ENVIRONMENTAL LAWS AFFECTING MASSACHUSETTS 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. Massachusetts 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 since they 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 including Massachusetts.

**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.

#### 1. *Massachusetts Water Quality Overview*

In Massachusetts, the water quality program is managed by the Department of Environmental Protection (DEP). The DEP is charged with the responsibility of preventing, controlling, and abating water pollution within the commonwealth. To that end, it has assumed responsibility for jointly administering the NPDES and Groundwater Discharge Permit programs governing the discharge of pollutants into waters of the commonwealth.

Regarding any river, stream, lake, pond, spring, impoundment, estuary, coastal water, wetland, or groundwater,<sup>1</sup> a permit is required for any person to:

---

<sup>1</sup> MASS. ANN. LAWS ch. 21, § 43; MASS. REGS. CODE tit. 314, § 2.

- ! Discharge pollutants;
- ! Construct, install, modify, operate, or maintain an outlet for the discharge of pollutants; or
- ! Engage in any activity that may reasonably be expected to result, directly or indirectly, in the discharge of pollutants.

Pollutants include agricultural wastes, runoff, and other matter whether originating from point or nonpoint sources. Separate permit programs are established for surface water discharges,<sup>2</sup> groundwater discharges,<sup>3</sup> and sewer extensions and connections.<sup>4</sup>

Injunctions and civil or criminal penalties may be imposed for directly or indirectly throwing, draining, running, discharging, or allowing the discharge of any pollutant into any waters without a permit; for violating any regulation, permit, or order; or for knowingly making false representations with respect to covered discharges. Penalties for each day of continuing violation may include fines from \$2,500 to \$25,000 and imprisonment up to one year.<sup>5</sup>

## ***2. Massachusetts Surface Water Discharge Permit Program***

All discharges of pollutants into waters other than groundwater, unless exempted, require a permit. Agricultural activities specifically mentioned in the regulations as requiring permits include discharges from concentrated aquatic animal production operations (including fish hatcheries and fish farms), silvicultural point sources, and concentrated animal feeding operations along with discharges into aquaculture projects. Several other agricultural activities are specifically exempted including the introduction of pollutants from non-point source agricultural and silvicultural activities (such as runoff from orchards, cultivated crops, pastures, range lands, and forest lands) and return flows from irrigated agriculture.

Permitted discharges must conform to effluent limitations specified in the Massachusetts Surface Water Quality Standards.<sup>6</sup> Permits may be modified, suspended, or revoked on a variety of grounds including noncompliance with conditions, misrepresentation of facts, omission of facts, or changed conditions. The DEP further has the authority to issue orders and to initiate civil

---

<sup>2</sup> MASS. REGS. CODE tit. 314, § 3.

<sup>3</sup> MASS. REGS. CODE tit. 314, § 5.

<sup>4</sup> MASS. REGS. CODE tit. 314, § 7.

<sup>5</sup> MASS. ANN. LAWS ch. 21, § 42.

<sup>6</sup> MASS. REGS. CODE tit. 314, § 4.

or criminal proceedings against anyone in violation of the statute or out of compliance with permit conditions.

### 3. *Massachusetts Watershed Protection Act*

Many aspects of land use and land development affect the types of pollutants and the quality of nearby streams which flow into reservoirs and other sources of water supply. Massachusetts' Watershed Protection Act (WPA) regulates land use and activities within critical areas of the Quabbin Reservoir, Ware River, and Wachusett Reservoir watersheds for the purpose of protecting the quality of drinking water. The WPA is administered by the Division of Watershed Management within the Bureau of Resources Protection of the DEP.

The WPA is different from many other environmental regulations because it ties jurisdiction to topography. The WPA applies only to watersheds areas. Some areas within the watersheds are protected zones with restrictions. No alterations are allowed in the primary zone which is delineated as the area within 400 feet of each of the reservoirs and within 200 feet of any surface waters and tributaries of the reservoir. Restricted alteration activities include actions such as construction, excavation, paving, grading, and dumping. Discharge, disposal, storage, or generation of pollutants are also prohibited in the primary zone.

Secondary zones are also restricted and are identified as:

- ! Areas more than 200 feet but less than 400 feet from tributaries and surface waters;
- ! Land within flood plains;
- ! Land over some aquifers; and
- ! Land within bordering vegetated wetlands.

Activities that are prohibited in the secondary zone include storage, alteration of bordering vegetated wetlands, dense development, use or disposal of toxic, hazardous, and certain other materials.<sup>7</sup> Producers should take note that restricted activities include the storage and use of pesticides, fertilizers, and manure in these protected watersheds.<sup>8</sup>

There are a number of exemptions to the restrictions under the WPA. The most common exemptions include:

---

<sup>7</sup> See MASS. REGS. CODE tit. 350, § 11.05 for a complete list.

<sup>8</sup> MASS. ANN. LAWS ch. 92, § 107A(b)(2)(vii)-(ix).

- ! Uses, structures, and facilities lawfully existing as of July 1, 1992;
- ! Construction of a single-family dwelling on an existing vacant lot;
- ! Minor changes to an existing structure; and
- ! Division of an owner-occupied existing parcel to create one additional building lot.

An activity variance may be granted if it can be demonstrated that the proposed activity will not impair water quality, and an exemption of a tributary or portion of one may be approved if it is determined there is no significant risk to water quality.

#### **4. *Massachusetts Wetland and Riverfront Protection Acts***

In general, under the Riverfront Protection Act as amended by the Wetland Protection Act,<sup>9</sup> a permit ("order of conditions") is required for excavating, dredging, filling, or altering any wetland or riverfront area.<sup>10</sup> This law was enacted to safeguard floodplains, wetlands, and associated resource areas from the impacts of overdevelopment. Wetlands are defined by the statute. Associated areas include a 100 foot buffer zone surrounding the area. Riverfront areas generally include 200 feet on either side of a river; however, with respect to agricultural and aquacultural activity restrictions, the area is limited to only 100 feet on either side of the river.<sup>11</sup>

Permits are issued by designated local authorities after a hearing which has been initiated by filing notice, plans, and a statement of the project's effect on the environment with the local authorities and the state DEP. In order to be approved, the project must meet established environmental criteria and established performance standards. Additionally, the benefits of the project must outweigh the environmental damages. The order of permit conditions may restrict or modify the project plan in any way that will contribute to the protection of private or public water supplies, shellfish beds, wildlife habitat, or fisheries; the prevention of storm damage or pollution; or the provision for flood control. The DEP has full authority to amend or repeal any order of conditions issued pursuant to this program and may even require subsequent structural changes, e.g., where ecological alterations become evident after the development is completed.<sup>12</sup> Even activities such as removal of trees and bushes and vista pruning are regulated activities that require prior approval. Producers should contact DEP in advance of conducting activities in floodplain, wetland, and associated areas in order to avoid time consuming complications.

---

<sup>9</sup> MASS. ANN. LAWS ch. 131, § 40; MASS. REGS. CODE tit. 310, § 10.

<sup>10</sup> MASS. ANN. LAWS ch. 131, § 40; MASS. REGS. CODE tit. 310, § 10.

<sup>11</sup> MASS. REGS. CODE tit. 310, § 10.58(2).

<sup>12</sup> MASS. ANN. LAWS ch. 131, § 40A.

Many, but not all, ongoing agricultural activities are exempt from the permit requirements. Expanded or new uses or activities are generally not included in the exemptions. Among those activities specifically exempted are:

- ! Maintenance of drainage and flooding systems in cranberry bogs;
- ! Work performed for normal maintenance or improvement of land in agricultural or aquacultural use;<sup>13</sup> and
- ! Work performed in response to designated agricultural emergencies.<sup>14</sup>

Violations of the regulations or permit conditions may include civil penalties up to \$25,000 per violation and criminal penalties up to \$25,000 and imprisonment up to 2 years..

### **5. *Massachusetts Protection of Fisheries***

It is unlawful to put, throw, discharge, or allow discharge or escape into inland waters any substance which may directly or indirectly injure or kill fish or fish spawn therein.<sup>15</sup> The penalty in a civil judgment for violating this provision is double the amount of damages. In addition, the DEP has the authority to prohibit or regulate the discharge of any substance which, in the judgment of the Director of Fisheries and Wildlife, directly or indirectly may injure fisheries in inland waters.<sup>16</sup>

### **6. *Massachusetts Agricultural Environmental Enhancement Program***

The Massachusetts Department of Food and Agriculture (DFA) administers the Agricultural Environmental Enhancement Program (AEEP) which addresses environmental concerns on farmland and provides funding to farmers to install a variety of water quality protection practices.<sup>17</sup> The primary focus is to improve water quality. Eligible practices include the installation of buffers, animal waste systems, pesticide storage facilities, fencing, culverts, seed and gutters. All farmers who actively farm five acres or more of land which could potentially impact a water resource are eligible. The program dovetails with sister state agencies within the Executive Office of Environmental Affairs as well as with federal agencies in the United States Department of Agriculture.

---

<sup>13</sup> MASS. ANN. LAWS ch. 131, § 40(24); MASS. REGS. CODE tit. 310, § 10.04.

<sup>14</sup> MASS. REGS. CODE tit. 310, § 10.06(6).

<sup>15</sup> MASS. ANN. LAWS ch. 131, § 42.

<sup>16</sup> MASS. ANN. LAWS ch.131, § 41.

<sup>17</sup> The value to Massachusetts' farmers in 1999 and 2000 was funding totaling over 1.8 million.

## 7. *Massachusetts Cranberry Production*

Cranberry operations require vast amounts of water, and the operations typically use surface water from existing sources (lakes, streams, drainage ditches) or from reservoirs. Access to water from lakes or streams may require permits. Construction of reservoirs may require permits especially if they are located on existing wetlands. In addition, discharges of water into drainage ditches, streams or lakes may require permits since the temperature and chemistry of receiving waters can be affected.

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

## II. GROUNDWATER

### A. Massachusetts Groundwater Laws and Regulations

#### 1. *Massachusetts Groundwater Discharge Permit Program*

The DEP Groundwater Discharge Permit Program<sup>18</sup> is intended to assure that groundwaters are protected for their highest potential use. All discharges of pollutants into groundwaters in the commonwealth, unless specifically exempted, require a permit. Agricultural activities mentioned in the regulations as requiring permits include:

- ! Point source discharges from concentrated animal feeding operations (CAFOs);
- ! Discharges of silvicultural process water;
- ! Facilities which discharge liquid effluent onto or below the land surface or into a percolation pit, pond, lagoon, or leaching facility;
- ! Facilities which discharge liquid effluent into a Class V injection well; and
- ! Facilities with unlined pits, ponds, lagoons, or surface impoundments in which wastewaters or sludge are collected, stored, treated, or disposed and which seep a liquid portion into the ground.

---

<sup>18</sup> MASS. REGS. CODE tit. 314, § 5.

Specifically exempted is the introduction of pollutants from non-point source agricultural, silvicultural, land management, and right-of-way maintenance activities (including runoff from orchards, cultivated crops, pastures, range lands, forest lands, and rights-of-way).

The DEP will not issue a permit where it will cause or contribute to a condition contravening minimum water quality standards for the applicable class of groundwater as defined by the Massachusetts Groundwater Quality Standards.<sup>19</sup> Effluent limitations, recordkeeping, monitoring, and reporting requirements are incorporated as conditions in any permit issued.

Permits may be modified, suspended, or revoked on a variety of grounds including noncompliance with conditions, misrepresentation of facts, omission of facts, or changed conditions. The DEP also has the authority to issue orders and to initiate civil or criminal proceedings against anyone in violation of the statute or out of compliance with permit conditions.

## **2. *Massachusetts Water Management Act***

Recognizing that water is a valuable resource, the Massachusetts Water Management Act<sup>20</sup> aims to ensure its quality and an adequate volume groundwater within the Commonwealth. The DEP administers the Massachusetts Water Resources Management Program<sup>21</sup> which provides for the determination of safe levels of maximum usage for each water source and further provides for allocation, registration, permitting, and monitoring of significant water usage.

Since 1988, every person withdrawing an average of more than 100,000 gallons of water per day from a single source was required to file a registration statement with the DEP documenting the water withdrawals, uses, and discharges. The registration, once accepted, is valid for a period of 10 years and eligible for renewal thereafter. Registration carries with it a variety of obligations, including metering, recordkeeping, and reporting, and compliance with conditions imposed by the DEP. Registration statements and the rights to withdraw water as described on the registration statements may in most cases be wholly or partially transferred to other persons upon notice to the DEP and payment of a fee, however, certain registrations for cranberry cultivation are subject to additional restrictions on transfer.

Since 1988, every person proposing to make a new withdrawal of more than 100,000 gallons per day or proposing to withdraw more water than is designated in an approved registration statement must apply for a permit. "Nonconsumptive uses" (uses the DEP determines return the same quantity and quality of water to its source) are exempt from both the registration and permit requirements.

---

<sup>19</sup> MASS. REGS. CODE tit. 314, § 6.

<sup>20</sup> MASS. ANN. LAWS ch. 21G.

<sup>21</sup> MASS. REGS. CODE tit. 310, § 36.

Permit conditions include at a minimum:

- ! Metering, recording, and reporting water usage;
- ! Accurate recordkeeping;
- ! Filing an annual report;
- ! DEP access to the property, operations, facilities, equipment and records for inspection and monitoring (information gathered may be kept confidential upon request);
- ! Water conservation measures;
- ! Limits on withdrawal volume;
- ! Limits on types of water uses; and
- ! Operation and maintenance requirements.

The DEP may impose any further conditions on a permit it deems necessary to the statutory or regulatory scheme or that would minimize the impact of the proposed withdrawals on preexisting users, state and local water resources management plans, or various specified interests affected by the availability and quality of groundwater. Permit applicants must notify abutting property owners and local water resources management officials, provide for public notice and comment on their proposed withdrawals, and meet the requirements of the Massachusetts Environmental Policy Act (see pg. MA-23) including--if required--an environmental impact report.

Permit applications may be denied if:

- ! The withdrawal would not conform to the regulations;
- ! The withdrawal would negatively affect any of a list of specified interests affected by groundwater quality and availability;
- ! The application is incomplete, contains false information, or misleading information;
- ! The withdrawal alone or in combination with other existing or proposed withdrawals would exceed the safe yield of the water source;
- ! The withdrawal would conflict with other existing or proposed withdrawals; or

- ! The city or town in which the withdrawal would be used does not have an approved water resources management plan.

Permits are subject to review every five years, and they may be transferred to another person only with the written authorization of the DEP. A permit may be amended at any time upon a showing that a change in the terms of the permit is necessary and consistent with the regulations. Decisions of the DEP may be reviewed by requesting an administrative hearing. Unsatisfactory outcomes may be reviewed through the judicial system.

The DEP may order compliance with any regulatory or permit condition, and it may modify, suspend, or revoke a permit for failure to comply. Failure to comply with an administrative order may also result in the imposition of civil or criminal penalties, and the Commonwealth may seek injunctive relief. Civil penalties range from \$250 up to \$25,000 per violation per day depending on the violation and the procedures invoked by the Commonwealth. Violations of the statute or regulations (including the conditions of any permit or registration), failure to comply with administrative orders, unauthorized withdrawals, and misrepresentations or omissions in permit applications are all criminal offenses subject to fines of \$1,000 to \$10,000 and imprisonment up to 180 days for each offense. Each day of a continuing violation constitutes a separate offense.

### **3. *Massachusetts Underground Water Source Protection Program***

Injection wells are used to dispose of wastes underground. The Massachusetts DEP has issued regulations<sup>22</sup> explicitly subjecting underground injection wells to the permit requirements of the DEP Groundwater Discharge Permit Program.<sup>23</sup> Underground injections are prohibited when the well causes or allows movement of fluid containing any pollutant into underground sources of drinking water and is likely to either violate the state's drinking water regulations<sup>24</sup> or adversely affect human health. Penalties for violating the regulations or orders issued under the regulations include civil penalties up to \$25,000 per violation per day and criminal fines up to \$25,000 plus imprisonment up to one year.<sup>25</sup>

---

<sup>22</sup> MASS. REGS. CODE tit. 310, § 27.

<sup>23</sup> MASS. ANN. LAWS ch. 21, § 43.

<sup>24</sup> MASS. REGS. CODE tit. 310, § 22.

<sup>25</sup> MASS. ANN. LAWS ch. 111, § 160.

#### 4. *Other Massachusetts Regulations of Groundwater*

The Massachusetts DFA has issued regulations to protect groundwater sources of public drinking water supplies from nonpoint source pesticide contamination.<sup>26</sup> These regulations provide that any pesticide listed on the DFA Groundwater Protection List may not be applied within a "primary recharge area" -- an area designated by the commonwealth as a source or contributing groundwater to a public drinking water supply well -- unless the DFA first approves both an integrated pest management program and a pesticide management plan.

A primary recharge area is an area underlain by surficial geologic deposits including glaciofluvial or lacustrine stratified drift deposits or alluvium or swamp deposits, and an area in which the prevailing direction or groundwater flow is toward the cone of depression or area of influence of water supply wells.<sup>27</sup>

### III. AIR QUALITY

#### A. Massachusetts Air Quality Laws and Regulations

Massachusetts has vested its DEP with broad regulatory and enforcement authority over air pollution.<sup>28</sup> Any substance or phenomenon in the air including (among others) smoke, pollen, dust, or odors may be deemed pollution if it:

- ! Causes a nuisance;
- ! Has potential to cause injury to human or animal life, vegetation, or property; or
- ! Unreasonably interferes with the comfortable enjoyment of life and property or the conduct of business.

Open burning of combustible materials is generally prohibited. However, a number of agricultural open burning activities have been specifically exempted from this prohibition including:

---

<sup>26</sup> MASS. REGS. CODE tit. 333, § 12.

<sup>27</sup> When a well is pumping, groundwater flow changes direction in a portion of the watershed. Instead of moving toward the natural discharge area, the groundwater within the influence of the pump flows toward the well from every direction. The pumping well creates an artificial discharge area by drawing down (lowering) the water table around the well. This area of drawdown is called the cone of depression or the area of influence.

<sup>28</sup> MASS. ANN. LAWS ch. 111, §§ 142A *et seq.*; MASS. REGS. CODE tit. 310, § 7.

- ! Activities associated with the normal pursuit of agriculture for purposes such as pruning and disease control which the DEP has determined are necessary; and
- ! Open burning of brush and trees resulting from agricultural land clearing operations.

These agricultural burning activities must be conducted pursuant to permission of the local fire chief and must not cause a nuisance.<sup>29</sup>

The regulations also contain several broad prohibitions relevant to agricultural producers. Accordingly, violations include:

- ! Failure to take necessary precautions to prevent the discharge or release of contaminants that cause air pollution;
- ! Permitting emissions from dust or odor generating operations such as agricultural or land clearing operations that cause or contribute to air pollution; or
- ! Causing or allowing the handling, transportation, or storage of any material in a manner that results or may result in emissions which cause or contribute to air pollution.

Any violation of the regulations or an order issued pursuant to the regulations is subject to civil and criminal penalties which may result in fines up to \$25,000 and imprisonment up to one year per violation per day.

The DEP has authority to issue emergency orders and impose further restrictions to protect the public health during an air pollution control emergency. Violations of these emergency orders may be enjoined and may result in fines up to \$10,000 per violation per day.<sup>30</sup>

#### IV. SOLID WASTE AND HAZARDOUS WASTE

##### A. Massachusetts 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.

---

<sup>29</sup> MASS. ANN. LAWS ch. 111, § 142L; MASS. REGS. CODE tit. 310, § 7.07; *see also* MASS. ANN. LAWS ch. 48, § 13.

<sup>30</sup> MASS. ANN. LAWS ch.111, § 2B.

## **1. Massachusetts Solid Waste Facilities Laws**

State solid waste facilities regulations<sup>31</sup> govern the storage, transfer, processing, treatment, disposal, use, and reuse of solid waste in Massachusetts in order to prevent pollution and promote material reuse and energy conservation.

Solid waste is defined<sup>32</sup> as:

- ! Useless, unwanted, or discarded solid, liquid, or contained gaseous material resulting from industrial, commercial, mining, agricultural, municipal, or household activities that is abandoned by being disposed or incinerated or that is stored, treated, or transferred pending such disposal, incineration, or other treatment, but does not include:
- Hazardous wastes regulated by the Massachusetts Hazardous Waste Management Act;
  - Solid or dissolved materials in irrigation return flows; or
  - Recyclable or compostable materials when recycled or composted in an agricultural composting operation registered with the DFA.<sup>33</sup>

The use or application of agricultural manures in normal farming operations is exempt from solid waste management and site assignment regulations. Also exempt are certain registered agricultural composting operations provided they incorporate good management practices, prevent pollution, and do not create a public nuisance.<sup>34</sup>

All other "facilities" for managing solid waste require a permit, a site assignment, and written authorization from the DEP.<sup>35</sup> A "facility" is any place where solid waste will be deposited, dumped, stored, transferred, or treated.<sup>36</sup> The DEP will evaluate the suitability of the site and the proposed plans for managing solid waste and preventing pollution. The site

---

<sup>31</sup> MASS. REGS. CODE tit. 310, § 19.

<sup>32</sup> MASS. REGS. CODE tit. 310, § 16.02.

<sup>33</sup> *See* MASS. REGS. CODE tit. 330, § 25.

<sup>34</sup> MASS. REGS. CODE tit. 310, §§ 16.05, 19.013.

<sup>35</sup> MASS. REGS. CODE tit. 310, §§ 19.020 et seq.; see also MASS. ANN. LAWS ch.111, § 150A.

<sup>36</sup> MASS. ANN. LAWS ch. 21H, § 2.

assignment regulations<sup>37</sup> require, among other criteria, a 100 foot buffer between any site and active farmland.

The DEP may impose conditions on any permit, site assignment, or other authorization. Failure to comply with any such condition is a violation of the statute. Penalties for violating the statute or regulations may be administrative, civil, or criminal with fines ranging from \$100 to \$25,000 per violation per day and imprisonment up to two years. In addition, whenever the DEP finds a threat to public health, safety, or the environment; it has broad authority to order remedial action<sup>38</sup> and to modify, suspend, or revoke a permit or site assignment.<sup>39</sup>

## **2. *Massachusetts Hazardous Waste Management Act***

The Massachusetts Hazardous Waste Management Act<sup>40</sup> and its regulations<sup>41</sup> govern the generation, storage, collection, transport, treatment, disposal, use, reuse, and recycling of hazardous waste in Massachusetts.

Hazardous waste is defined as a waste or combination of wastes which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

- ! Cause an increase or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or
- ! Pose a substantial present or potential hazard to human health, human safety, human welfare, or the environment when improperly treated, stored, transported, used, disposed, or otherwise managed.

Irrigation return flows and agricultural crop and animal wastes returned to the soil as fertilizer are exempt from the hazardous waste regulations.<sup>42</sup>

A license from the Massachusetts DEP is required for collecting, transporting, storing, treating, using, or disposing hazardous waste.<sup>43</sup>

---

<sup>37</sup> MASS. REGS. CODE tit. 310, § 16.

<sup>38</sup> MASS. ANN. LAWS ch. 21H, § 4; MASS. REGS. CODE tit. 301, § 11, § 19.081.

<sup>39</sup> MASS. ANN. LAWS ch. 111, § 150A; MASS. REGS. CODE tit. 301, § 11, §§ 19.040, 19.081.

<sup>40</sup> MASS. ANN. LAWS ch. 21C.

<sup>41</sup> MASS. REGS. CODE tit. 310, § 30.

<sup>42</sup> MASS. REGS. CODE tit. 310, § 30.104.

<sup>43</sup> MASS. REGS. CODE tit. 310, § 30.800 et seq.

Agents of the Massachusetts DEP have authority to enter and inspect any premises and any records on the premises to monitor compliance with license conditions and regulations. Additionally, the DEP may issue orders to prevent or abate violations. The statute is enforceable by means of license suspension or revocations, injunctions, civil penalties, and criminal penalties. Penalties include fines up to \$100,000 and imprisonment up to twenty years for each day of continuing violation. In addition, property used illegally in the transportation of hazardous waste is subject to forfeiture.

### **3. *Massachusetts Oil and Hazardous Material Release Prevention and Response Act (State Superfund Law<sup>44</sup>)***

The Massachusetts Oil and Hazardous Material Release Prevention and Response Act<sup>45</sup> is intended to prevent releases into the environment and to respond to releases or threatened releases of oil or other hazardous materials. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. However, the normal application of fertilizer and pesticides consistent with the labeling is exempted and is not considered a release under the Act.

In the event of a release or threatened release of oil or other hazardous material, the Act:

- ! Requires immediate notification of the Massachusetts DEP;<sup>46</sup>
- ! Authorizes the DEP to take any actions it reasonably deems necessary to assess, contain, or remove threats to health, safety, welfare, or the environment; and
- ! Imposes substantial civil and criminal liability, without regard to fault, on site owners and other responsible parties.<sup>47</sup>

In order to prevent releases, the Act authorizes the DEP to identify and assess existing disposal sites, conduct inspections of sites and records, and impose reasonable requirements on sites where releases of hazardous material might occur.

---

<sup>44</sup> Commonly referred to as Chapter 21E; see also MASS. REGS. CODE tit. 310, § 40 known as the Massachusetts Contingency Plan or MCP.

<sup>45</sup> MASS. ANN. LAWS ch. 21E; MASS. REGS. CODE tit. 310, § 40.

<sup>46</sup> After notification to DEP, DEP's subsequent regulatory role is usually filtered through a private Licensed Site Professional (LSP) who serves as an independent environmental consultant. The LSP usually fills out the reports required under the MCP.

<sup>47</sup> DEP may shift responsibility for cleanup to cities and towns if notice of a release is determined to have not been made upon discovery or knowledge of the release.

A release of oil or hazardous material may leach from soil into groundwater or migrate in groundwater. Conditions that require one to notify the DEP of a release or threat of release<sup>48</sup> include:

- ! Releases that have resulted in the discharge of separate-phase oil and/or hazardous material to surface waters, subsurface structures, underground utilities or underground conduits;
- ! Releases to the ground surface or to the vadose zone that, if not promptly removed or contained, are likely to significantly impact the underlying groundwater or significantly exacerbate an existing condition of groundwater pollution;
- ! Releases to the groundwater that have migrated or are expected to migrate more than 200 feet per year;
- ! Releases to the groundwater that have been detected or within one year are likely to be detected in a public or private water supply well;
- ! Releases to the groundwater that have been or are within one year likely to be detected in a surface water body, wetland, or public water supply reservoir; or
- ! Releases to the groundwater that have resulted or within one year are likely to result in the discharge of vapors into school buildings or occupied residential dwellings.

A new tool devised to identify and respond to contaminants leaking on one's property is Downgradient Property Status (DPS). The intent of DPS is to suspend environmental time frames and fee requirements for a downgradient property that is unable to control an upgradient source of contamination. The suspended timeframe allows for the upgradient source and responsible party to be discovered and brought into compliance with the Massachusetts Contingency Plan (MCP).<sup>49</sup> Where there is a clear migration of contamination onto the property, DEP contacts those upgradient parties to bring them into the MCP system. Thus, the responsibility for assessment and cleanup of the contamination can be shifted to the proper parties.

---

<sup>48</sup> MASS. REGS. CODE tit. 310, § 40.0006.

<sup>49</sup> Mass. Regs. Code tit. 310, § 40.0180.

#### 4. *Massachusetts Underground Storage Tank Petroleum Product Cleanup Fund*

In order to encourage owners or operators of underground storage tanks to take voluntary and expeditious remedial action when there is a release of petroleum products<sup>50</sup> from their tanks, the Commonwealth provides partial reimbursement for costs, expenses, and other obligations (including third party claims) incurred as the result of both the release and the response action.<sup>51</sup> The Underground Storage Tank Petroleum Product Cleanup Fund is supported by fees levied on dispensing facilities. Producers should take note that regulatory compliance includes testing, recordkeeping, overflow protection, upgrading, and other requirements. Owners and operators of underground storage tanks, otherwise in compliance with applicable regulations, may seek reimbursement by filing claims with the Underground Storage Tank Petroleum Product Cleanup Fund Administrative Review Board located within the Massachusetts Department of Revenue.

### 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 around those workers and by those workers.

#### A. *Massachusetts Pesticide and Chemigation Laws and Regulations*

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

##### 1. *Massachusetts Pesticide Control Act*

The Massachusetts Pesticide Control Act<sup>52</sup> and its accompanying regulations<sup>53</sup> contain provisions that both implement and supplement the requirements of the Federal Insecticide,

---

<sup>50</sup> The release of petroleum products includes any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes the normal application of fertilizers and pesticides from the definition of a release when their application is consistent with their labeling; *see* MASS ANN. LAWS ch. 21K, § 1.

<sup>51</sup> MASS. ANN. LAWS ch. 21J, §§ 1 et seq.; MASS. REGS. CODE tit. 503, § 2.00.

<sup>52</sup> MASS. ANN. LAWS ch. 132B, §§ 1 et seq.

<sup>53</sup> MASS. REGS. CODE tit. 333, §§ 2.01 et seq.

Fungicide, and Rodenticide Act (FIFRA) with respect to labeling, distribution, sale, storage, transportation, use, application, and disposal of pesticides. The Act is administered by the Pesticide Board (Board) of the Massachusetts DFA. The Act provides that:

- ! All pesticides distributed, used, or purchased within the Commonwealth must be registered unless the DFA has approved them for experimental use;<sup>54</sup> registered pesticides must be classified as being for general use, restricted use, state limited use, or special local need;
- ! Anyone using or supervising the use of pesticides must undergo annual licensing (to apply general use pesticides) or certification (to apply restricted use pesticides); among other things, licensing or certification may require testing, continuing education, liability insurance coverage, and comprehensive recordkeeping; specialized certifications are required for commercial applicators and pesticide dealers;<sup>55</sup>
- ! Most uses of new chemicals, new products, and experimental ("unregistered") uses of federally registered pesticide products require a state experimental use permit;<sup>56</sup>
- ! Restricted use pesticides may be distributed only to certified or licensed applicators<sup>57</sup> and may be used only by or under the direct supervision of certified applicators;
- ! Pesticide products posing special risks to groundwater may be listed on the DFA Groundwater Protection List; these products may not be applied within designated areas that may affect underground sources of public drinking water unless the DFA approves both an integrated pest management program and a pesticide management plan;<sup>58</sup>
- ! All pesticides must be used in a manner consistent with their labeling;<sup>59</sup>

---

<sup>54</sup> MASS. ANN. LAWS ch. 132B, § 6A; MASS. REGS. CODE tit. 333, §§ 8 and 13.

<sup>55</sup> MASS. ANN. LAWS ch. 132B, § 6; MASS. REGS. CODE tit. 333, § 10.

<sup>56</sup> MASS. REGS. CODE tit. 333, § 7.

<sup>57</sup> MASS. ANN. LAWS ch. 132B, § 10.

<sup>58</sup> MASS. REGS. CODE tit. 333, § 12.

<sup>59</sup> The normal application of fertilizer and pesticides consistent with the labeling are not considered hazardous releases under the Massachusetts Oil and Hazardous Material Release Prevention and Response Act; *see* MASS. ANN. LAWS ch. 21E; MASS. REGS. CODE tit. 310, § 40.

- ! Distributed pesticides must conform to the Act's labeling, packaging, and safety requirements plus any additional requirements imposed by the pesticide registration or permit;
- ! Tampering with labels or contents of pesticides are violations of the Act;
- ! Improper use, distribution, disposal, and storage of pesticides and pesticide containers are violations of the Act;
- ! Pesticide applicators must comply with all terms and conditions in the pesticide license, certification, or experimental use permit as well as all standards for application outlined by the DFA regulations.<sup>60</sup>

Violations of the Act, its regulations, or any terms or conditions of a license, certification, or permit may result in suspension, revocation, or a bar to reapplication for a specified period. The DFA may order production of samples or records or order any action or restraints it deems necessary whenever it appears there is a potential for violation or harm under the Act.<sup>61</sup> Violations of the Act, its regulations, or orders issued by the DFA may be punished by civil penalties up to \$25,000 or by criminal fines up to \$25,000 and imprisonment for up to two years per offense with each day of continuing violation constituting a separate offense. Injunctive relief is also available.<sup>62</sup> Persons aggrieved by certain determinations of the DFA may request hearings before the Pesticide Board and, thereafter, seek judicial review.<sup>63</sup>

The issue of local regulation of pesticides in Massachusetts has frequently arisen especially when localities want to prohibit farmers from applying pesticides to cranberry bogs or other areas. However, producers should note that local regulation is preempted by the Pesticide Control Act.

## 2. *Massachusetts Commercial Fertilizer and Lime*

The Massachusetts DFA regulates the distribution and content of commercial fertilizers in a number of ways:<sup>64</sup>

---

<sup>60</sup> MASS. REGS. CODE tit. 333, § 13.

<sup>61</sup> MASS. ANN. LAWS ch. 132B, § 12.

<sup>62</sup> MASS. ANN. LAWS ch. 132B, § 14.

<sup>63</sup> MASS. ANN. LAWS ch. 132B, § 13.

<sup>64</sup> MASS. ANN. LAWS ch. 128, § 64 et seq.; MASS. REGS. CODE tit. 330, § 15.00 et seq.

- ! Anyone manufacturing or distributing fertilizer in the Commonwealth must be licensed annually;
- ! Soil conditioners, agricultural liming materials, and nonfarm fertilizers must be registered; and
- ! All commercial fertilizers, soil conditioners, and agricultural liming materials must be properly and truthfully labeled, subject to analysis by government inspectors, and meet minimum requirements as to their composition.

Violations of the statute and regulations may result in fines ranging from \$25 to \$500 per offense, and any fertilizers or other materials not in compliance with the law are subject to seizure.

## 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. Massachusetts 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. Massachusetts has several laws protecting wildlife.

#### 1. *Massachusetts Endangered Species Act*

The Massachusetts Endangered Species Act<sup>65</sup> and its regulations<sup>66</sup> provide state protection to species listed as endangered or threatened under the federal Endangered Species Act, and it further protects species of animals and plants listed by the state Department of Fisheries and Wildlife and Environmental Law Enforcement (DFW) as endangered, threatened, or of special concern.

Under the Act, it is a criminal offense to take, possess, transport, export, process, sell, offer for sale, buy, offer to buy, transport, ship, or receive for shipment any state or federally listed

---

<sup>65</sup> MASS. ANN. LAWS ch. 131A.

<sup>66</sup> MASS. REGS. CODE tit. 321, § 10.

species except as authorized by permit. The "taking" of a species is defined more broadly in the state Act than the in the federal statute. The state definition additionally includes "to hound, ... process, disrupt the nesting, breeding, feeding, or migratory activity, ... and in reference to plants, to collect, pick, kill, transplant, cut, or process," or to attempt or assist such conduct. Penalties for a first offense may include a minimum fine of \$500 and imprisonment up to ninety days for each individual animal or plant affected.

Without a permit, it is an offense to alter significant habitat of endangered or threatened species. Significant habitats are so designated by the DFW and notice is provided to the affected landowner when present on that property. Many activities on land primarily and directly in agricultural or aquacultural use are exempt from this prohibition.<sup>67</sup> For those activities that are not exempted, however, the criminal penalties are substantial: a fine of \$1,000 to \$10,000 and imprisonment up to ninety days for each individual animal or plant affected.

The Act directs all state agencies to take steps to ensure that programs and projects avoid or minimize damage to endangered, threatened, and special concern species.

## **2. *Massachusetts Trapping and Poisoning of Animals and Birds***

Farmers may obtain permits from the DFW to trap and subsequently destroy house sparrows, starlings, and common pigeons if they are destroying crops or endangering the health of livestock, poultry, or fur-bearing animals.<sup>68</sup>

A permit is generally required to use poisons or frightening agents to kill or frighten wild birds or mammals.<sup>69</sup> Owners or agents of forest plantations or orchards who are certified pesticide applicators may obtain permits for the extermination of rodent pests with poison. Permits may also be obtained for the use of Avitrol ® Super for repelling or frightening crows, blackbirds, pigeons, and gulls. Exposure of poisons pursuant to a permit requires compliance with numerous conditions including reporting, cleanup, and safe methods of application.

The DFW administers the Wildlife Protection Act which governs the trapping of furbearing animals. Permitted problem animal controllers (PACs) must undergo trapper education and testing before being licensed.<sup>70</sup> Licenses must be renewed annually.<sup>71</sup> PACs are allowed to harass, disturb, trap, and remove problem wildlife for their clients. PACs must have a trap tag on

---

<sup>67</sup> MASS. REGS. CODE tit. 321, §§ 10.02, 10.32.

<sup>68</sup> MASS ANN. LAWS ch. 129, § 8A and ch. 131, §§ 37- 38 and 76; MASS. REGS. CODE tit. 321, § 2.09.

<sup>69</sup> MASS. ANN. LAWS ch. 131, § 43; MASS. REGS. CODE tit. 321, § 2.10.

<sup>70</sup> MASS. ANN. LAWS ch. 131, § 4; MASS. REGS. CODE § 2.14.

<sup>71</sup> MASS. ANN. LAWS ch. 131, § 11.

every trap.<sup>72</sup> PACs can only release problem wildlife on the property where it was captured. PACs cannot relocate wildlife. If wildlife is taken off a property, the animal must be destroyed. Transporting any wildlife to a new location is illegal in Massachusetts.

PACs cannot use footholds or Conibear traps<sup>73</sup> without experiencing unsuccessful trapping with cage traps for 15 days. Under these conditions, the PAC can apply for a permit for the Conibear trap.<sup>74</sup> The Conibear permit is only good for a specific location and only for 30 days.

Penalties for violations of trapping laws result in a fine of \$300 up to \$1000 or imprisonment of not more than six months or both for each trap and each day of violation. A life-time surrender of license is required for a subsequent conviction.

## **VII. ENFORCEMENT OF STATE ENVIRONMENTAL LAWS**

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

## **VIII. OTHER MASSACHUSETTS STATUTES AFFECTING AGRICULTURE**

### **A. Massachusetts Environmental Policy Act (MEPA)**

Whenever a permit is required from a state agency, the Massachusetts Environmental Policy Act (MEPA)<sup>75</sup> and its regulations<sup>76</sup> may require that the potential environmental impact of the proposed project be evaluated before the permit is granted. Similarly, MEPA may require a review of the potential environmental impact before receiving financial assistance from the commonwealth. MEPA is administered by the MEPA Office within the commonwealth's Executive Office of Environmental Affairs. Ordinarily, the guidelines for preparing a complete

---

<sup>72</sup> MASS. REGS. CODE tit. 321, § 3.02(5).

<sup>73</sup> MASS. ANN. LAWS ch. 131, § 80A.

<sup>74</sup> MASS ANN. LAWS ch. 131, § 30A.

<sup>75</sup> MASS. ANN. LAWS ch. 30, §§ 61-62H.

<sup>76</sup> MASS. REGS. CODE tit. 301, §. 11.

application will alert the applicant to the need to demonstrate compliance with MEPA. Depending on the nature of the proposed project, compliance may involve simply filing a notice with the MEPA Office, or it may involve preparation of an extensive environmental impact report.

## **B. Massachusetts Conservation Commission Act**

The Massachusetts Conservation Commission Act (CCA)<sup>77</sup> was enacted in 1957 to enable municipalities to establish Conservation Commissions through a vote of the local legislative body (town meeting or city council). Today, every city and town in Massachusetts has a Conservation Commission. The duties and responsibilities of a Conservation Commission are specifically set forth in the CCA. The commissions are charged with the “promotion and development of natural resources ...and protection of watershed resources.” Commissions manage open spaces, encourage conservation, and monitor agriculture preservation. Commissions also prepare relevant maps and plans and advise other municipal officials and boards on conservation issues that relate to their areas of responsibility.

## **C. Massachusetts Open Burning**

The DEP and local fire departments limit open burning for public health and safety reasons. The DEP regulations<sup>78</sup> have the full force of law; they are not merely guidelines. Open burning is prohibited in twenty-two of the state's largest cities and towns due to the density of population.<sup>79</sup> Only burning activities associated with the normal pursuit of agriculture (defined as the raising of crops and livestock for commercial uses) which are determined as necessary by the DEP are allowed. Before burning, producers should check with their local fire department or fire warden to obtain a permit. Any burning must be always be attended until completely out. Other restrictions on open burning include:

- ! Burning only between the dates of January 15 and May 1 and the hours of 10 A.M. and 4 P.M.;<sup>80</sup>
- ! Burning when the air is circulating well but winds are light (To check conditions, phone the Daily Ozone Report Hotline (800) 822-1497);

---

<sup>77</sup> MASS. ANN. LAWS ch. 40, § 8C.

<sup>78</sup> MASS. REGS. CODE tit. 310, § 7.07.

<sup>79</sup> The twenty-two cities include Arlington, Belmont, Boston, Brookline, Cambridge, Chelsea, Chicopee, Everett, Fall River, Holyoke, Lawrence, Lowell, Malden, Medford, New Bedford, Newton, Somerville, Springfield, Waltham, Watertown, West Springfield, and Worcester.

<sup>80</sup> Some allowances are made for Christmas tree burning (from December 26 to January 7), the 4th of July holiday recreational fires (from July 2 to July 6), and ceremonial bonfires(for certain special municipal, state, or national events).

- ! Burning no less than 75 feet away from dwellings;
- ! Burning only on one's own property and as close as possible to the source of material(s) to be burned; and
- ! Burning without causing a nuisance.
- ! Burning no grass, hay, leaves, stumps, or tires (Most brush, cane, driftwood, forestry debris, tree prunings, dead raspberry stalks, blueberry patches, and infected bee hives are allowed.)

#### **D. Massachusetts Noise Nuisance**

Massachusetts has restrictions on industrial or commercial noise pollution and vibration,<sup>81</sup> however, neither noise nor odor from normal farming procedures may be deemed a nuisance. This includes noise from livestock or farm equipment on agricultural land or farmland.

Massachusetts has a state drought program that includes emergency loans to farming operations for losses resulting from disasters. This program is coordinated through the Farm Service Agencies. The triggering events or circumstances are a presidential declaration of a major disaster or emergency under the Stafford Act or the designation by the U.S. Secretary of Agriculture or by the U.S.D.A. administrator. These loans are structured to fulfill unmet needs at federal, state, local, and tribal levels.

#### **E. Massachusetts Drought Program**

In 1999, a Drought Management Plan was developed to guide state responses to drought. The plan outlines the responsibilities and powers of various state and federal agencies and the general sequence of actions to be followed based on the severity of the situation and outlines the powers available to local and state agencies. A method for assigning drought levels was developed that uses multiple data and indices. Data includes precipitation, groundwater levels, and streamflow levels. Indices used include the Palmer Drought Index, the Crop Moisture Index, and the Fire Danger Level. Drought levels are defined based on the severity and duration of the situation and on the data and indices. Drought levels are determined by the DEM.

---

<sup>81</sup> MASS. ANN. LAWS ch. 214, § 7B; MASS. REGS. CODE tit. 974, § 4 and MASS. REGS. CODE tit. 310 § 7.10.

## Appendix - Agencies

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

### STATE AGENCIES:

#### **Executive Office of Environmental Affairs**

251 Causeway Street, Suite 900  
Boston, MA 02114  
(617) 626-1020  
(617) 626-1181 fax  
<http://www.state.ma.us/envir/>

#### Departments (4) within EOEa:

##### **Department of Environmental Management**

(617) 973-8700  
(617) 973-8798 fax  
<http://www.state.ma.us/dem/dem.htm>

#### Divisions (2) within DEM:

Division of Forests and Parks  
(617) 626-1250  
(617) 626-1449 fax  
Division of Resource Conservation  
(617) 973-8780  
(617) 973-8799 fax

##### **Department of Environmental Protection**

1 Winter Street, 2nd Floor  
Boston, MA 02108  
(617) 292-5856  
(617) 574-6880 fax  
Contacts by Topic:  
(617) 292-5609 Air Quality Permitting  
(888) 283-3757 Complaints  
(617) 292-5834 Composting  
(800) 882-1497 Daily Ozone Report  
(888) 846-5283 Environmental Crimes  
(800) 462-0444 Infoline  
(800) 343-3420 Hazardous Waste Hotline  
(617) 292-5974 Solid Waste Hotline  
(888) 304-1133 Spills Hotline  
(617) 556-1022 Used Oil Hotline  
(800) 266-1122 Title 5 River Protection Hotline  
<http://www.magnet.state.ma.us/dep/dep/home.htm>

#### Bureaus (3) within DEP:

Bureau of Resource Protection  
(Watershed Management in BRP)  
(617) 292-5500  
(617) 292-5696 fax  
<http://www.magnet.state.ma.us/dep/brp/wm/wmhome.htm>  
(Municipal Services in BRP)  
(617) 292-5632  
Bureau of Waste Prevention  
Bureau of Waste Site Cleanup

##### **Department of Fisheries, Wildlife, and Environmental Law Enforcement**

(617) 626-1500  
(617) 626-1505 fax  
<http://www.magnet.state.ma.us/dfwele/dfw/dfw/toc.htm>

##### **Department of Food and Agriculture**

(617) 626-1700  
(617) 626-1850 fax  
<http://www.massdfa.gov>

#### Divisions (4) & Bureaus within DFA:

Administrative Services Division  
(617) 626-1702  
Agricultural Development Division  
(617) 626-1750

#### Bureaus (4) in ADD:

Bureau of Land Use  
(617) 626-1704  
Bureau of Markets  
(617) 626-1754  
Bureau of Fairs & Equine Activities  
(617) 626-1740  
Bureau of Aquaculture  
(617) 626-1730

Dairy Sciences Division  
(617) 626-1801

Regulatory Services Division  
(617) 626-1771

Bureaus (3) within RSD:  
Bureau of Animal Health  
(617) 626-1792  
Bureau of Farm Products &  
Plant Industries  
(617) 626-1801  
Pesticide Bureau  
(617) 626-1784

<http://www.massdfa.org/pesticide.htm>

**Department of Public Health**

305 South Street  
Jamaica Plain MA 02130  
(617) 983-6700  
(617) 983-6770 fax

<http://www.state.ma.us/dph/>

**Underground Storage Tank Program**

(Department of Revenue)

P.O. Box 7055  
Boston, MA 02204  
(617) 887-5970  
(617) 887-5989 fax

<http://www.magnet.state.ma.us/ust/>