

STATE ENVIRONMENTAL LAWS AFFECTING TEXAS AGRICULTURE

*(See NASDA's Website for Federal Environmental Laws
Affecting Agriculture)*

A Project of the

**National Association of State Departments
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The Project Participants

National Association of State Departments of Agriculture Research Foundation

The National Association of State Departments of Agriculture (NASDA) is a nonprofit association of public officials representing the Commissioners, Secretaries, and Directors of Agriculture in the fifty states and four territories. The NASDA Research Foundation is a 501(c)(3) nonprofit, tax-exempt corporation for education and scientific purposes.

National Center for Agricultural Law Research and Information

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

Natural Resources Conservation Service

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

U.S. Environmental Protection Agency

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

Disclaimer

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

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

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

The background research and final documents were completed in August 2003.

Anyone with comments concerning the guide should contact the NASDA Research Foundation at 1156 15th Street, N.W., Suite 1020, Washington, D.C. 20005.

Quick Reference Guide

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

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 1-6</i>	Livestock and aquaculture operations, depending on size	TPDES and/or state general permit	Texas Commission on Environmental Quality (TCEQ) and EPA
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit	US Army Corps of Engineers with EPA and TCEQ
Groundwater <i>pp. 6-8</i>	Groundwater discharge	Permit for underground injection well	TCEQ
Air Quality <i>pp. 8-10</i>	Grain terminals and grain elevators	Permit required	TCEQ & EPA
	Livestock operations	Permit or registration	TCEQ & EPA
	Burning	Permit or notification required in certain circumstances	TCEQ, Texas Forest Service
Solid Waste and Hazardous Waste <i>pp. 11-15</i>	Storage, treatment, or disposal of solid waste	Permit and/or notice	TCEQ
	Storage, treatment of disposal of hazardous waste	Permit required	TCEQ & EPA

Regulatory Area	Type of Activity	Permit Required	Agency
Pesticides and Chemigation <i>pp. 15-17</i>	Sale, distribution & transport	Registration, license	Texas Department of Agriculture (TDA) and EPA
	Application of pesticides	License, permit in some cases	TDA & EPA
	Disposal of pesticide containers	Special requirements	TDA & EPA
Wildlife Protection <i>pp. 17-18</i>	Taking of wildlife	Permit required if endangered or threatened species may be affected	U.S. Fish and Wildlife Service, Texas Parks and Wildlife Department (TPWD)

STATE ENVIRONMENTAL LAWS AFFECTING TEXAS 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. Texas 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.

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

1. *Texas State Agencies*

The Texas Commission on Environmental Quality (TCEQ) administers the majority of Texas environmental laws including those addressing water quality, air quality and hazardous wastes. The Texas State Soil and Water Conservation Board (TSSWCB) administers programs for the abatement of agricultural and silvicultural nonpoint source pollution. The Texas Parks and Wildlife Department (TPWD) is responsible for the management of game and non-game fish and wildlife. The Texas Department of Agriculture (TDA) enforces state pesticide laws and manages the Texas Prescribed Burn Board.

2. *Texas Water Quality Laws*

The Texas Water Code¹ is the principal water quality law in the state. It implements portions of the federal Clean Water Act (CWA). EPA has delegated the NPDES permit program to Texas. Unlike the federal act, the Texas Water Code applies to groundwater as well as surface water and to nonpoint source as well as point source pollution.

3. *Water Quality Standards*

The Water Code requires TCEQ to adopt both a general state water quality plan and water quality standards for state surface waters. Water quality standards are required by the federal CWA. These standards protect beneficial uses of the water, such as domestic supply, industrial supply, livestock watering, irrigation, wildlife, and recreation. TCEQ considers water quality standards along with effluent limitations and other factors in issuing permits required by the code.

4. *Antidegradation Policy*

Texas law sets out an antidegradation policy for state surface waters. In general, the policy prohibits pollutant discharges that would lower the quality of existing, high quality waters.

5. *General Discharge Prohibition*

Texas law prohibits the discharge of sewage, municipal waste, recreational waste, agricultural waste or industrial waste into or adjacent to any water in the state. It further prohibits the discharge of other waste which in itself or in conjunction with any other discharge or activity causes pollution of any water in the state. Finally, it prohibits any other act which causes pollution of any water in the state. However, certain discharges are exempt from this general prohibition. These include discharges authorized by permit, discharges in compliance with a certified water quality management plan as provided under the state agriculture code, and activities under the jurisdiction of the Parks and Wildlife Department, the General Land Office or the Texas Railroad Commission.

6. *Texas Pollutant Discharge Elimination System Permits*

The NPDES program in Texas is called the Texas Pollutant Discharge Elimination System (TPDES). Under the delegated permit program, most point source discharges of pollutants into state surface waters require an NPDES permit from TCEQ. Certain discharges may also require a separate state permit under the Texas Water Code. Agricultural operations that may require permits include concentrated animal feeding operations and concentrated aquatic animal feeding facilities, depending on their size and whether they discharge into state waters (see discussion below).

¹ Ch. 26, Texas Water Code; *see generally* Tit. 30, Texas Administrative Code (TAC).

7. *Agricultural Exclusions from the TPDES Permit Program*

The following agricultural activities generally do not require a TPDES permit:

- Crop cultivation, grazing, orchard production and similar agricultural activities that may cause nonpoint source pollution;
- Return flows from irrigated agriculture; and
- Discharges of dredged or fill materials that are regulated under Section 404 of the federal Clean Water Act.

Please note, however, that these activities may be regulated under other state laws that address nonpoint source pollution, groundwater contamination or modification of streams, lakes, coastal areas, or wetlands (see discussion below).

8. *Concentrated Animal Feeding Operations*

TCEQ regulations² define a concentrated animal feeding operation (CAFO) as follows:

1. Any animal feeding operation which the TCEQ executive director designates as a significant contributor of pollution.
2. Any operation which confines and feeds for a total of 45 days or more in any 12-month period:
 - 1,000 slaughter or feeder cattle;
 - 700 mature dairy cattle;
 - 2500 swine weighing over 55 pounds;
 - 500 horses;
 - 10,000 sheep;
 - 55,000 turkeys;
 - 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;

² Ch. 321, Tit. 30, TAC.

- 30,000 laying hens or broilers when the facility has a liquid waste handling system;
 - 5,000 ducks; or
 - 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.
3. Any operation which discharges pollutants into waters in the state either through a man-made ditch, flushing system, or other similar man-made device or directly into the waters of the state, and which confines and feeds for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:
- 300 slaughter or feeder cattle;
 - 200 mature dairy cattle;
 - 750 swine weighing over 55 pounds;
 - 150 horses;
 - 3,000 sheep;
 - 16,000 turkeys;
 - 30,000 laying hens or broilers when the facility has unlimited continuous flow watering system;
 - 9,000 laying hens or broilers when the facility has a liquid waste handling system;
 - 1,500 ducks; or
 - 300 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.

A CAFO must either obtain an individual TPDES permit or be authorized to operate under the CAFO general permit promulgated by TCEQ. In either case, the CAFO must comply with the permit requirements. These requirements include:

- a no-discharge provision prohibiting wastes from being directly discharged into state waters except during periods of rainfall that exceed a 25-year, 24-hour storm event;

- a requirement that facility be operated so as not to create nuisance or air pollution;
- specific operation and maintenance requirements;
- implementation of a pollution prevention plan;
- use of best management practices;
- registration;
- monitoring and reporting requirements;
- waste facility construction standards;
- other requirements set forth in TCEQ regulations; and
- buffer zones around new facilities.

Producer Note: Producers should consult with the Texas Commission on Environmental Quality to determine if any of their operations require TPDES or other permits, either individual or general. Prior to delegation of the NPDES permit system to Texas, most CAFOs in the state were governed by the terms of an NPDES general permit issued by the Environmental Protection Agency's Region VI office in Dallas. Animal feeding operators covered by EPA CAFO General Permit must determine whether they must apply to TCEQ for an individual permit. Operators must also determine whether they are subject to any new permit provisions and conditions under the TPDES program. Producers who intend to expand their operations should consult with TCEQ.

There are several special CAFO provisions worth noting. First, new CAFOs are prohibited on the Edwards Aquifer recharge zone. Second, CAFOs are prohibited from using playa lakes as wastewater retention facilities. However, CAFOs that began using playa lakes or prairie potholes for this purpose prior to September 1, 1993 are grandfathered. They may continue to use the lakes unless TCEQ determines a CAFO is the source of pollution. TCEQ must then require the CAFO to take action to correct the problem. Finally, any animal feeding facility operating under a certified water quality management plan from the Texas State Soil and Water Conservation Board is not considered a CAFO for permitting purposes, unless the Board refers the facility to TCEQ for water quality violations (see discussion below).

9. *Water Quality Management Plan Certification*

The Texas State Soil and Water Conservation Board (TSSWCB) is the lead agency for programs to address agricultural nonpoint source pollution.³ Texas law requires the TSSWCB to establish a water quality management plan certification program in areas the Board identifies as having agricultural or silvicultural nonpoint source water quality problems and in areas designated as coastal zones by the Texas Coastal Coordination Council. In these areas, local soil and water conservation districts supervise the implementation of individual water quality management plans by producers.

Complaints about violations of certified water quality management plans or other rules related to nonpoint source pollution are referred to the TSSWCB. The TSSWCB, with the assistance of the conservation district, investigates such complaints and, if necessary, develops a corrective action plan. The TSSWCB requests the person responsible for the violation to implement the corrective action plan. If the violator fails to do so, the TSSWCB refers the complaint to TCEQ for enforcement action under provisions of the Texas Water Code.

10. *Aquaculture*

Aquaculture operations must obtain a license from the Texas Department of Agriculture.⁴ This license is in addition to any TPDES permit that TCEQ may require.

Producer Note: Dairy products in the counties that are part of the Dairy Outreach Program are subject to different requirements than other animal feeding operations (AFO's). These may include animal waste management training programs in lieu of certain permit requirements. The current Dairy Outreach counties are: Bosque, Comanche, Erath, Hamilton, Hopkins, Johnson, Rains and Wood. Producers in these counties should consult with TCEQ as to applicable requirements.

II. **GROUNDWATER**

A. **Texas Groundwater Programs**

In addition to the general provisions of the Water Code discussed above, Texas has three additional programs that address groundwater pollution. They are:

³ § 26.1311, Texas Water Code; § 201.026. Texas Agriculture Code.

⁴ § 16.1 *et seq.*, TAC.

1. *Edwards Aquifer*

The first is the Edwards Aquifer Protection Program.⁵ TCEQ has established regulations to protect groundwater quality in this central Texas aquifer. The regulations apply only to this aquifer. They impose substantial restrictions on development activities and wastewater discharges within the aquifer's recharge zone and more limited restriction within a transition zone.

The following activities are prohibited in the recharge zone:

- New or increased discharges that would create additional loading of treated wastewater and land application systems that depend or rely on percolation for wastewater disposal;
- Underground injection wells;
- New concentrated animal feeding operations;
- Land disposal of Class I wastes; or
- The use of sewage collection tanks as parts of organized collection systems.

The following activities are prohibited in the transition zone:

- Underground injection wells; and
- Land disposal of Class I waste.

2. *Groundwater Management Districts*

Texas law authorizes the creation of local groundwater management districts.⁶ Each district is managed by a board of trustees. The primary function of the districts is to address groundwater production and water conservation problems. However, districts also have the authority to regulate the discharge of pollutants into groundwater. Groundwater management districts have not been established in all areas of the state.

⁵ Ch. 313, Tit. 30, TAC.

⁶ Ch. 35, 36, Texas Water Code.

3. *Underground Injection Well Control*

EPA has delegated authority to Texas to implement the underground injection control program under the federal Safe Drinking Water Act (SDWA). The Texas Injection Well Act⁷ sets forth requirements for injection wells in the state. TCEQ administers the program.

TCEQ regulations⁸ provide detailed program requirements. In general, no person may use or construct or convert an injection well for disposal of wastes or the extraction of materials without a permit, order, or rule.

Most agricultural injections wells are considered Class V wells. Large capacity (5000 gal/day or greater) septic system wells are included in this class. Most class V wells are authorized by rule. However, an individual permit is required for a large capacity septic system or a septic system that accepts industrial waste.

III. AIR QUALITY

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

A. Texas Air Quality Laws and Regulations

1. *Air Emissions from Agricultural Operations*

The Texas Clean Air Act⁹ charges the Texas Commission on Environmental Quality (TCEQ) with regulating air quality in the state. TCEQ adopts and enforces air quality standards, emission control requirements and other regulations. The Texas clean air program follows the requirements of the federal Clean Air Act. EPA and TCEQ work cooperatively to enforce these requirements.

In general, stationary sources of air pollution require a permit from TCEQ before constructing, operating, replacing or relocating any equipment or process that may cause air pollution. New sources require both a construction permit and an operating permit while existing sources require just an operating permit. There are special requirements for hazardous and toxic air emissions.

With the exception of concentrated animal feeding operations (CAFOs) and open burning discussed below, agricultural activities have few special air quality requirements. Most

⁷ Ch. 27, Texas Water Code.

⁸ Ch. 331, TAC.

⁹ Ch. 382, Texas Health & Safety Code.

agricultural operations will not require air quality permits. On-farm incinerators and grain elevators may be exceptions.¹⁰

2. *Concentrated Animal Feeding Operations (CAFOs)*

TCEQ regulations¹¹ provide that a CAFO shall be operated in such a manner as to prevent the creation of a nuisance or a condition of air pollution as defined by state law. The regulations set forth the following additional air quality requirements.

- A CAFO must develop and implement a pollution control plan that addresses air pollution as well as surface and groundwater pollution.
- Any CAFO that qualifies as a major new source or modification of an existing source under the Texas Clean Air Act must obtain a new source air quality permit under that act. This requirement should apply to relatively few operations.
- Any new or existing, non-major source CAFO that satisfies the requirements of TCEQ's CAFO regulations is entitled to an air quality standard permit authorization in lieu of an air quality permit. If a facility cannot comply with the CAFO regulations, however, it must apply for an air quality permit.
- Special requirements apply to CAFOs in Dairy Outreach Program areas.

Producer Note: Texas CAFO and air quality regulations are complex. Producers should consult with TCEQ before constructing any new facility or modifying any existing facility to make sure that they are in compliance with state and federal law. Air pollution issues facing CAFOs are likely to receive greater regulatory attention in the future.

3. *Open Burning*

Texas law prohibits any outdoor burning except as permitted by regulations, permits, and orders adopted or issued by TCEQ. The following types of agricultural burning are permitted by the regulations¹²:

- Diseased animal carcass when burning is the most effective means of controlling the spread of disease.
- On-site burning of trees, brush, and other plant growth for right-of-way maintenance, land clearing operations, and water canal maintenance when there is

¹⁰ Ch. 111, Subch. A, Tit. 30, TAC.

¹¹ Ch. 321, Tit. 30, TAC.

¹² Ch. 111, Subch. B, Tit. 30, TAC.

no practical alternative to burning and when the materials to be burned are generated only from that property.

- Crop residue burning for agricultural management when no practical alternative exists.
- Prescribed burning for forest, range and wildland/wildlife management purposes.
- Coastal salt-marsh management burning.

All permitted burning must be conducted in accordance with standards set forth in the regulations. Notice of the burning should be given to the appropriate TCEQ regional office. Notice is required in the case of salt-marsh burning and recommended for the other categories of burning. Notice of burning for forest management purposes must be given to the Texas Forest Service.

Certain materials may never be burned. These include: electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, furniture, carpet, appliances, and tires and other items containing natural or synthetic rubber.

Producer Note: The 76th session of the Texas legislature passed HB 2599, which created the Texas Prescribed Burn Board. The board has the authority to create a curriculum to certify prescribed burn managers. With passage of the course of study and proof of sufficient insurance, an individual can be certified to conduct prescribed burns and relieve a landowner of liability for damages incurred by such activity. To date (August, 2003), no company has offered to underwrite (insure) this activity. Consequently, even though the course work is available, no prescribed burn managers have been certified because insurance is not currently available.

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.

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

A. Texas Solid Waste and Hazardous Waste Laws and Regulation

1. Solid Waste

Texas's solid waste management laws impose requirements on solid wastes that do not otherwise qualify as hazardous waste (see discussion of hazardous waste below). These laws give the most attention to the regulation of public and private landfills, but they contain provisions that apply to agriculture as well. The principal solid waste law in Texas is the Texas Solid Waste Disposal Act (TSWDA).¹³ The Texas Commission on Environmental Quality (TCEQ) administers the act.

The TSWDA provides that solid waste generally may not be dumped or disposed of except in a permitted solid waste handling facility. Open dumps are prohibited. The TSWDA defines solid waste as follows.

[a]ny garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities,

TCEQ regulations¹⁴ further classify solid waste as either "industrial solid waste" or "municipal solid waste." Industrial solid waste specifically includes solid waste resulting from or incidental to any agricultural operation.

TCEQ regulations impose a number of general requirements on the disposal of solid waste. The regulations specifically prohibit:

- The discharge or imminent threat of discharge of industrial solid waste into or adjacent to waters of the state except with specific authorization by TCEQ;
- The creation or maintenance of a nuisance; or

¹³ Ch. 361, Texas Health & Safety Code.

¹⁴ Ch. 335, Tit. 30, TAC.

- The endangerment of the public health and welfare.

The regulations also require that any person disposing of industrial solid waste record notice of the disposal in the county deed records in the county where the disposal occurs. Any person who intends to store, process, or dispose of solid waste without a permit must also give notice to TCEQ 90 days prior to engaging in the activity.

The TSWDA and TCEQ regulations require a permit for many solid waste disposal activities. However, a permit is not required for any on-site storage, processing, or disposal facility that handles only non-hazardous solid waste if:

- The waste is disposed of on property owned or controlled by the owner or operator of the facility where the waste is generated;
- The property on which the waste is disposed is located within 50 miles of the facility or the operations; and
- The waste is not commingled with waste from any other source.

Most agricultural operations disposing of agricultural waste on their own property should not require a permit, but notice requirements will still apply.

2. *Biosolids*

The land application of sewage sludge for agricultural purposes is subject to a special set of TCEQ regulations called the Sludge Rules.¹⁵ The Sludge Rules prescribe general requirements, pollutant limits, management practices, and operational standards for the use and disposal of sewage sludge from domestic sewage treatment plants and for the use and disposal of domestic septage.

3. *Hazardous Wastes*

Wastes deemed to be hazardous are regulated to a greater extent than other solid waste under both Texas and federal law. The Texas Solid Waste Disposal Act (TSWDA) has similar provisions to the federal Resource Conservation and Recovery Act (RCRA) for regulating hazardous wastes. Texas has received federal authorization to enforce RCRA within the state.

TCEQ regulations defined hazardous waste as any solid waste identified or listed as hazardous waste by EPA.¹⁶ EPA regulations in turn contain lists of hazardous wastes and standards for determining whether substances not on the lists should nevertheless be considered as hazardous.¹⁷

¹⁵ § 312.1, Tit. 30, TAC.

¹⁶ § 335.1, Tit. 30, TAC.

¹⁷ 40 C.F.R. pts. 260, 261.

Persons who generate or transport hazardous wastes are subject to extensive regulatory requirements under Texas law. These include record keeping requirements, storage requirements, equipment, container and building standards, disposal restrictions, permit requirements, emergency planning and personnel training. The degree of the hazard and the quantity of waste generated determine the extent of the regulation.

Certain wastes generated by agricultural operations have been excluded from the definition of hazardous waste. These include wastes from the growing and harvesting of crops and from the raising of animals that are returned to the soil as fertilizer, irrigation return flows and point source discharges regulated under the federal Clean Water Act and the Texas Water Code. Pesticides are subject to special rules (see discussion below).

Producer Note: Texas producers should check with TCEQ to determine whether any chemicals or other substances used in their operations have been listed or might otherwise be considered as hazardous and as to the regulatory requirements for any such substances.

4. *Underground Storage Tanks*

Texas law imposes requirements on underground storage tanks (USTs) that parallel the federal requirements for USTs under RCRA.¹⁸ A UST is defined as a tank, or combination of tanks, used to contain regulated substances, the volume of which is located at least 10% below the ground. The definition also includes underground pipes that are connected either to underground or aboveground storage tanks. Regulated substances include petroleum products as well as hazardous substances.

However, the law exempts certain tanks from complying with the law. Farm and residential storage tanks with a capacity of 1100 gallons or less that store motor fuel for noncommercial purposes are exempt. Also exempt are tanks that store home heating oil for consumptive use on the premises. Septic tanks are exempt.

The law imposes a number of requirements on non-exempt tanks. Both new and existing USTs must be registered with TCEQ. Other requirements include:

- Reporting releases and spills from the tanks;
- Implementing leak detection systems;
- Record keeping;
- Meeting design and performance standards;

¹⁸ § 26.341 *et seq.*, Texas Water Code; Ch. 334, Tit. 30, TAC.

- Remediation requirements;
- Closure requirements; and
- Financial assurance requirements.

Requirements differ for new versus existing tanks. USTs may also be subject to additional local regulations in some jurisdictions.

5. *Aboveground Storage Tanks*

Texas law imposes requirements on aboveground storage tanks (ASTs) similar to those imposed on USTs.¹⁹ The law regulates aboveground tanks that contain a petroleum product and that are not exempted either under the Texas Water Code or by TCEQ regulations.

6. *Spill Reporting Requirements*

Spills of hazardous and other polluting substances must be reported to TCEQ. The Texas Water Code provides:

...whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the commission as soon as possible, and not later than 24 hours after the occurrence.²⁰

Notice must be given of both spills on land and spills in or near water. Failure to report a spill is a violation of the law.

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.

¹⁹ Ch. 334, Tit. 30, TAC.

²⁰ § 26.039(b), Texas Water Code.

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

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

A. Texas Pesticide and Chemigation Laws and Regulations

Producer Note: Texas, 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. *Texas Pesticide Control Act*

The Texas Pesticide Control Act²¹ (TPCA) requires that all pesticides that are distributed, sold, transported or offered for sale within the state be registered with the Texas Department of Agriculture (TDA). It is illegal to sell, distribute, or transport unregistered pesticides. TDA enforces pesticide labeling requirements as part of the registration process.

The TPCA requires that pesticides be used and applied in a manner consistent with their labeling. Pesticides and pesticide containers must be used, stored, transported and discarded in a manner that does not cause injury to humans, vegetation, crops, livestock, wildlife or pollinating insects or cause pollution of any water supply or waterway. Some pesticide waste and pesticide containers are considered hazardous waste and thus subject to special handling requirements. Restricted use pesticides, as well as certain other pesticides and herbicides, must be applied by a licensed commercial, noncommercial, or private pesticide applicator.

²¹ Ch. 76, Texas Agriculture Code; Ch. 7, Tit. 4, TAC.

Other pesticide rules include:

- Standards, prohibitions, and restrictions on the distribution, purchase, use of certain pesticides;
- Minimum requirements and license requirements for pesticide applicators;
- Record keeping requirements regarding pesticide use;
- Pesticide dealer licenses;
- Pesticide container disposal requirements; and
- Special requirements for herbicides.

Producer Note: Producers should refer to TDA regulations and consult with TDA representatives to determine the specific use and disposal requirements applicable to the pesticides they use.

2. *The Agricultural Hazard Communication Act*

The Agricultural Hazard Communication Act²² is sometimes referred to as the Farmworker-Right-To-Know Act. The law requires agricultural employers to provide their employees with risk and safety information concerning the chemicals they work with and to furnish employees with required protective clothing and devices.

The law applies to employers who annually use or store any one of the chemicals covered by the law in excess of 55 gallons or 500 pounds, or who use certain other specified amounts of highly toxic or dangerous chemicals, and who: 1) hire agricultural workers for seasonal or migrant work and whose gross annual payroll for such workers is \$15,000 or more, or 2) hire agricultural laborers for other than seasonal or migrant work and whose gross annual payroll for such workers is \$50,000 or more.

The law covers chemicals labeled under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and fertilizers listed as hazardous in Title 29 of the Code of Federal Regulations. TDA administers the law.

²² Ch. 125, Texas Agriculture Code.

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. Texas 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. Texas has laws protecting wildlife.

Texas has enacted a variety of laws to protect wildlife and to regulate their harvesting in the state. These laws may affect agricultural activities. The Texas Parks and Wildlife (TPWD) administers these laws.

1. *Game Laws*

TPWD administers state hunting and fishing laws. These include laws regarding hunting and fishing licenses, hunting and fishing seasons and other requirements for the taking of game species. There are special requirements for taking animals that are causing damage to crops or livestock.²³

2. *Endangered Species*

Two Texas laws seek to protect endangered and threatened species. The first authorizes TPWD to establish a list of endangered and threatened animals in Texas.²⁴ Endangered animal species are those that TPW has determined to be threatened with statewide extinction. Threatened animal species are those likely to become endangered in the future.

The second law authorizes TPWD to establish a list of endangered and threatened plant species in the state.²⁵ An endangered plant species is one that is in danger of extinction throughout all or a significant portion of its range. A threatened plant species is one likely to become endangered in the foreseeable future.

TPWD regulations prohibit the taking, possession, transportation, or sale of any animal species listed as endangered or threatened without a permit issued by TPWD. The regulations

²³ Ch. 43, Subch. G, Texas Parks and Wildlife Code.

²⁴ Ch. 67, 68, Texas Parks and Wildlife Code; §§ 65.171 - 65.184, Tit. 31, TAC.

²⁵ Ch. 88, Texas Parks and Wildlife Code; §§ 69.01 - 69.14, it. 31, TAC.

prohibit commerce in endangered or threatened plants and the collection of such plants from public land without a TPWD permit.

The protection afforded endangered and threatened species under Texas law is in addition to that provided by federal law. In some cases, the federal Endangered Species Act may provide greater protection than state law.

VII. ENFORCEMENT OF TEXAS ENVIRONMENTAL LAWS

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

Appendix A - Agencies

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

Texas Department of Agriculture

P. O. Box 12847
Austin, TX 78711-2847
(512) 463-7476
(512) 463-1104 (fax)
<http://www.agr.state.tx.us>

Texas Forest Service Headquarters

John B. Connally Bldg.
301 Tarrow, Suite 364
College Station, Texas 77840-7896
(979) 458-6600
(979) 458-6610 (fax)
<http://www.txforestservation.tamu.edu/>

Texas State Soil & Water Conservation Board

P.O. Box 658
Temple, TX 78503
(234) 773-2250
<http://www.tsswcb.state.tx.us>

Texas Commission on Environmental Quality

P.O. Box 13087
Austin, TX 78711-3087
(512) 239-1000
<http://www.tceq.state.tx.us>

Texas Parks and Wildlife Department

4200 Smith School Road
Austin, TX 78744
(512) 389-4800
(512) 389-4814 (fax)
<http://www.tpwd.state.tx.us>

Environmental Protection Agency

1445 Ross Ave.
Suite 1200
Dallas, TX 75202
(214) 665-2200
<http://www.epa.gov/earth1r6>

Natural Resources Conservation Service

United State Department of Agriculture
101 South Main
Temple, TX 76501-7682
(254) 742-9800
<http://www.tx.nrcs.usda.gov>

National Association of State Departments of Agriculture

1156 15th Street, N.W.
Suite 1020
Washington, D.C. 20005-1711
(202) 296-9680
<http://www.nasda.org/>