

**STATE
ENVIRONMENTAL LAWS AFFECTING
WASHINGTON 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**

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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, nonpartisan association of public officials comprised of the Commissioners, Secretaries, and Directors of the fifty State Departments of Agriculture in the fifty states and four territories of Puerto Rico, Guam, American Samoa, and the Virgin Islands. NASDA's mission is to represent 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 education and scientific purposes.

National Center for Agricultural Law Research and Information

The National Center for Agricultural Law Research and Information (NCALRI) was created in 1987 under Public Law 100-202, 101 Stat. 1329-30 to address the complex legal issues that affect American agriculture. The NCALRI focuses its efforts on research, writing, publishing, development of library services, and the dissemination of information to the public. The NCALRI 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 agricultural producers, landowners, and their consultants in understanding the effect environmental laws have on agricultural operations. It is not a substitute for individual legal advice. Agricultural 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 use 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 July of 2001. Updates of the information contained in the guide will occur on an as needed basis and be available on the internet.

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

Quick Reference Guide

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

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 1-3</i>	Point source discharges into surface waters as well as concentrated animal feeding operations (CAFOs) and other livestock and aquaculture operations depending on size and discharge status, i.e., whether discharge might occur and the source of the discharge, point or nonpoint	National Pollutant Discharge Elimination System (NPDES) permit or statewide general permit or land disposal permit	Environmental Protection Agency (EPA) Regional Office and Washington Department of Ecology (DOE)
	Wetlands dredge and fill activity (including ocean dumping) or dam, dike, or bridge building activities	Section 404 Clean Water Act (CWA) permit	U.S. Army Corps of Engineers (Corps) with EPA and DOE approval
	Constructing, modifying, or repairing any dam or dam-type works for storage of 10 or more acre-feet of water, waste, or mine tailings	Dam safety construction permit	DOE
	Creating a reservoir; activity that uses, diverts, obstructs, or changes natural flow or bed of state waters	Reservoir permit for stream, channel, or water course barriers; hydraulic project approval	DOE; Washington Department of Fish and Wildlife (DFW)

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality (cont'd)	Discharging industrial, commercial, or municipal waste to groundwater or to municipal sanitary sewer systems or using reclaimed water from sewage treatment plants; disposal of sewage through septic tanks and drainfields	Waste discharge permit; on-site sewage disposal permit	DOE or Washington Department of Health (DOH) or local DOH
	Using aquatic herbicides or pesticides to control noxious and non-noxious aquatic plants	Short term water quality modification	DOE
	Water usage, surface and groundwater	Permit to withdraw or divert, annual reports required for withdrawal of more than 100,000 gallons per day	DOE and DOH
	Providing water for human consumption and domestic use and water well construction for any purpose	Drinking water operating permit if ≥ 15 service connections or >15 served/day for 60 days, water system construction and operation approval, certification, and license if ≥ 2 service connections	DOH and DOE
	Activities on shorelines, public use interference of water, variances; developments in floodplain; projects authorized by Corps; using state owned aquatic lands, e.g. harbors, shorelands, navigable water beds	Shoreline permit under Shoreline Management Act; floodplain development permit; coastal zone management certification; aquatic use authorization	Local authority; DOE or Corps; Washington Department of Natural Resources (DNR)
Groundwater <i>pp. 4-6</i>	Changing water right, certificate, or claim	Change of water right application	DOE
	Water well, construction and use	No permit, but driller must be certified and driller's log may be required to be submitted	DOE

Regulatory Area	Type of Activity	Permit Required	Agency
Groundwater (cont'd)	Groundwater protection	Generally no permit, but Best Management Practices (BMPs) must be followed in capacity use areas	DOE
Air Quality <i>pp. 6-7</i>	Grain terminals and grain elevators	Permit required	EPA Regional Office or DOE
	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance lawsuits, local odor abatement plan may be required for certain operations	EPA Regional Office or DOE
	Burning and incineration of dead animals	Permit required in certain circumstances	DOE
	Open burning	Air quality permit; burning permit if forest slash fire	Local air authority; DNR
	Emitting air pollutants	Air contaminant source registration, new source review, notice of construction, or prevention of significant deterioration; air quality impact determinations are based on reasonably available control technology; air operating permits for 100 T/yr. air pollutants, 10 T/yr. if hazardous, or 25 T/yr. if combination	DOE

Regulatory Area	Type of Activity	Permit Required	Agency
Solid Waste and Hazardous Waste <i>pp. 7-11</i>	Storage, treatment, or disposal of hazardous or solid waste; hazardous waste generators and transporters; facility operators	Solid waste permit required for disposal, treatment, or storage activities; hazardous waste identification number and reporting requirements; facility operator certification and dangerous waste permit	EPA Regional Office and local authority (usually DOH); DOE
	Spilling or releasing hazardous waste; remedial actions	Hazardous waste release notification; remedial action report	DOE
	Underground storage tank (UST), installing or existing	UST notification	DOE
Pesticides and Chemigation <i>pp. 11-12</i>	Application and agricultural use of pesticides; application of pesticides to land of another	Private applicator license for restricted-use pesticides (private commercial license for non-agricultural use); commercial applicator license	EPA and Washington Department of Agriculture (DOA)
	Use of pesticides around farmworkers	No permit, but training and notification are required	EPA and DOA
	Record keeping	No permit, but all requirements must be met	EPA and DOA
Wildlife Protection <i>pp. 12-13</i>	Taking of wildlife	Permit required if endangered or threatened species may be affected	U.S. Fish and Wildlife Service and DFW

STATE ENVIRONMENTAL LAWS AFFECTING WASHINGTON AGRICULTURE

Producer Note: Agricultural producers are faced with many challenges in today's rapidly changing world. Changes in industrialization, computer-based technology, 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. Staying informed is the producer's most useful instrument for meeting the challenges of today's agriculture. This information on environmental regulation is provided to educate producers on the breadth and scope of environmental laws which may impact daily production activities.

Introduction to Washington State Agencies

Various state agencies administer the environmental laws applicable to Washington citizens. The State Washington Department of Ecology (DOE) administers the majority of such laws including those addressing water quality, air quality, pesticides, solid waste, hazardous waste, and wildlife. Other than the central DOE office, there are several regional offices in the state.

The responsibilities of the Washington Department of Health (DOH) encompass drinking water, food including shellfish, and on-site sewage systems. The local health districts administer most of the solid waste permit programs in the state.

The state Department of Agriculture (DOA) enforces Washington pesticide laws, and the Washington Department of Fish and Wildlife (DFW) is responsible for the management of non-game fish and wildlife as well as game fish and wildlife.

The Washington Department of Natural Resources (DNR) serves as the state's public lands agency and administers programs governing forestry, mining, and aquatic lands.

I. WATER QUALITY

A. Washington Water Quality Laws and Regulations

Most states have enacted clean water legislation under the federal Clean Water Act (CWA).¹ 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, federal CWA requirements must be followed and enforced along with the state enacted statutes and regulations implemented by the state's administrative agencies. Under the CWA, the Environmental Protection Agency (EPA) has delegated administration of the National Pollutant Discharge

¹ 33 U.S.C. § 1251 *et seq.* (1994).

Elimination System (NPDES) permit program to many states, and Washington is one of those states that has assumed responsibility of that program. The Washington Clean Water Act² (WCWA) is the principal water quality law in the state. It implements portions of the federal CWA.

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

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

1. Washington Water Quality Standards

The WCWA requires the DOE to adopt water quality standards for surface water bodies in the state. These standards are established to protect designated beneficial uses of the water. Beneficial uses are types or categories of use including domestic supply, industrial supply, livestock watering, irrigation, wildlife, and recreation. In the state approved program, the DOE considers water quality standards and other parameter and conditions established by the WCWA when it establishes effluent limitations for discharge permits.

2. Washington Antidegradation Policy and General Discharge Prohibition

Washington law sets forth an antidegradation policy for the state's surface waters. In general, the policy prohibits discharges that would lower the established quality which is based on the beneficial use of waters. All discharges require a permit unless exempted by law.

Washington law also contains a general prohibition that no discharge may enter into any waters of the state unless it first receives "all known, available, and reasonable methods of waste water treatment," referred to as AKART, regardless of the quality of the receiving water. Citizens are not considered to have a right to discharge pollutants, and violators of permit terms or water quality standards are subject to civil and criminal penalties.

3. Washington Pollutant Discharge Elimination System Permits

Under the delegated NPDES permit program, most point source discharges of pollutants into state surface waters require a discharge permit from DOE. Although there are some exclusions, state law defines pollutants to include agricultural waste discharged into water.

² WASH. REV. CODE §§ 90.48 *et seq.* (West 1992 & Supp. 1998).

Agricultural operations that may require permits include concentrated animal feeding operations (CAFOs) and concentrated aquatic animal feeding operations (CAqFOs) depending on the size of the operation and whether or not a discharge into state waters occurs.

a. Agricultural Exclusions from the NPDES Permit Program

The following agricultural activities generally do not require a NPDES 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 covered by general permits and regulated under Section 404 of the federal CWA.

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

b. General Permits under NPDES Program

Some agricultural discharges that ordinarily would require a NPDES permit are covered by a general permit. When this is the case, these agricultural producers need not apply for individual permits. However, an agricultural producer seeking to conduct an activity under a general permit must nevertheless apply to DOE for authorization. General permits are available for fish hatcheries, fruit packers, and dairies. If DOE denies the authorization under a general permit, the producer must apply for an individual permit.

Producer Note: Agricultural producers should consult with the Washington DOE to determine if any of their activities require a NPDES permit, either individual, or a state waste discharge (SWD) permit.

Producer Note: Nonpoint sources of pollution are defined as pollution from diffuse sources in nature. An example of nonpoint source pollution is runoff from a field. Point source pollution, on the other hand, enters water bodies through discrete conveyances like pipes. The NPDES permit program, with limited exceptions, applies to only to point source pollution. However, separate federal and state programs address nonpoint source pollution. Many of these nonpoint source pollution programs are voluntary and incentive based. A few programs, however, impose mandatory requirements. Agricultural producers should always check with DOE to determine what nonpoint source pollution programs and requirements may apply to their production activities.

II. GROUNDWATER

A. Washington Groundwater Standards and State Waste Discharge Permits

Washington has adopted groundwater standards for all underground waters in the state.³ The groundwater standards, like the water quality standards, incorporate the antidegradation and the AKART policy. These groundwater standards apply to any activity, including both point and nonpoint sources, that has the potential to adversely affect groundwater quality.

State Waste Discharge (SWD) permits regulate the discharge of pollutants into the state's groundwaters, the discharge of wastes into municipal sanitary sewers, and the use of waters reclaimed from sewage treatment plants. The groundwater standards apply regardless of whether the activity is required to have a NPDES or SWD permit. The groundwater standards allow the application of agricultural chemicals, fertilizers, and manure if they:

! Are applied at agronomic rates; and

! Do not migrate below the root zone.⁴

A SWD permit is required for any waste water lagoon, whether lined or unlined, unless the lagoon has been permitted under the NPDES program for a surface water discharge.

B. Washington Dairy Nutrient Management Plans

Washington has enacted the Dairy Nutrient Management Act that requires all dairy farms to develop a nutrient waste management plan by July 1, 2002.⁵ Dairy operations must receive local conservation districts approval of the management plan, and dairy operations must implement the plan by December 31, 2003. This legislation also requires the DOE to inspect all dairy operations on a minimal two-year cycle and sets forth fines for violators and noncompliance.⁶ Financial assistance may be available through local conservation districts for management plan implementation. Agricultural producers are advised to check with local districts for details.

³ WASH. ADMIN. CODE § 173.200 *et seq.* (1998) (Washington Administrative Code).

⁴ IMPLEMENTATION GUIDANCE FOR THE GROUNDWATER QUALITY STANDARDS, WASHINGTON STATE DEPARTMENT OF ECOLOGY PUBLICATION #96-02, April 1996.

⁵ WASH. REV. CODE §§ 90.64.005 *et seq.* (West 1992 & Supp. 1998).

⁶ WASH. REV. CODE §§ 90.64 *et seq.* (West 1992 & Supp. 1998).

C. Washington Short-Term Water Quality Modification Permit

Any person intending to use aquatic herbicides or pesticides to control noxious or non-noxious aquatic plants must first obtain a Short-Term Water Quality Modification (SWQM) permit from DOE before beginning such activities.⁷

D. Washington Shoreline Management Act Permit

A Shoreline Management Act (SMA) permit is required for any development or activity valued at \$2500 or more that is located on the water or on a shoreline area. Permits are issued by local governments.⁸ Shorelines include those areas adjoining marine areas, lakes in excess of 20 acres, reservoirs, and streams with a flow of 20 cubic feet per second or more. The permit requirement also applies to land within 200 feet from any shoreline, floodways, floodplains within 200 feet of the floodways, wetlands, and river deltas associated with the shorelines. A permit is not required, however, for ordinary construction that is normal or necessary to agricultural irrigation and production activities.

E. Washington Hydraulic Project Approvals

Any type of work that uses, diverts, obstructs, or changes the natural flow or bed of any fresh water or saltwater of the state requires a Hydraulic Project Approval (HPA) from the DFW.⁹

F. Washington Local Regulation of Wetlands

The Washington Growth Management Act (GMA)¹⁰ provides for open spaces and protects sensitive lands. The GMA encourages traditional uses of rural lands while fostering a steady, healthy growth of existing cities and towns along developed boundaries. The GMA also requires all cities and counties in the state to designate and protect wetlands within their jurisdictions.¹¹ Regulatory requirements and restrictions on wetland activities vary substantially from jurisdiction to jurisdiction.

⁷ WASH. REV. CODE § 90.48.445 (West 1992 & Supp. 1998).

⁸ WASH. REV. CODE §§ 90.58 *et seq.* (West 1992 & Supp. 1998).

⁹ WASH. REV. CODE §§ 75.20 *et seq.* (West 1994 & Supp. 1998).

¹⁰ WASH. REV. CODE §§ 36.70A.01 *et seq.* and 36.70B.01 *et seq.* (West 1991 & Supp. 1998); and also WASH. ADMIN. CODE § 365.190 (1998).

¹¹ WASH. REV. CODE §§ Ch. 36.70A and Ch. 36.70B (West 1991 & Supp. 1998).

Producer Note: Agricultural producers must consult with local government authorities to determine what local requirements apply to their operations. Local requirements may include requirements pertaining to shorelines, wetlands, floodplains, geologically hazardous areas, aquifer recharge zones, and conservation areas for fish and wildlife. These requirements may be authorized by state laws such as the SMA and the GMA that are implemented at the local level or may be included in city and county zoning or health ordinances.

G. Washington Aquaculture

Aquaculture operations must register with the Washington DFW.¹² This includes operations that culture food fish, shellfish, and certain aquatic animals. Certain aquaculture operations may also require a NPDES or SWD permit (see discussion above).

III. AIR QUALITY

Producer Note: While most agricultural operations are not air pollution sources under the Clean Air Act (CAA),¹³ complaints concerning odor and dust resulting from agricultural operations may occur. These complaints may arise in the form of a lawsuit based on a claim of nuisance under state law and filed against an agricultural producer.

A. Washington Air Quality Laws and Regulations

1. Washington Air Emissions from Agricultural Operations

The Washington Clean Air Act (WCAA) charges the Washington DOE with regulating air quality in the state. The DOE adopts and enforces air quality standards, emission control requirements, and other regulations.¹⁴ The Washington clean air program follows the requirements of the federal CAA. The EPA and DOE work cooperatively to enforce these requirements.

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

¹² WASH. REV. CODE §§ 75.58 *et seq.* (West 1994 & Supp. 1998).

¹³ 42 U.S.C. § 7401 *et seq.* (1994).

¹⁴ WASH. REV. CODE §§ 70.94 *et seq.* (West 1992 & Supp. 1998).

With the exception of open burning discussed below, agricultural activities have few special air quality requirements. Most agricultural operations will not require air quality permits, however, on-farm incinerators and grain elevators may be exceptions and, thus, require a permit.

Producer Note: Agricultural producers should be aware that air emissions from CAFOs may be the subject of air quality regulations in the future.

2. *Washington Open Burning*

Most open burning in Washington requires a permit from DOE, the local air control agency, or a local government unit.¹⁵ This includes agricultural field burning. Open burning is completely prohibited in cities with more than 10,000 people, in cities with an urban growth boundary, and in air quality nonattainment areas (where prescribed air quality has not been attained).

The DOE generally prohibits burning to rid fields of crop residues including grass-seed field burning. Burning permits are more readily granted for weed and insect control. Burning permits may carry restrictions on the area to be burned, the timing of the burn, and the atmospheric conditions at the time of the burn. The burn permit may also require the use of best management practices (BMPs) to reduce the amount of smoke.

IV. SOLID WASTE AND HAZARDOUS WASTE

Producer Note: There are several laws which control the use, disposal, and cleanup of hazardous wastes. Agricultural producers who use hazardous chemicals, petroleum, or other products stored in storage tanks must be aware of the requirements governing their actions.

A. *Washington Solid Waste and Hazardous Waste Laws and Regulations*

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

1. *Washington Solid Waste Laws and Regulations*

Washington'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

¹⁵ WASH. ADMIN. CODE §§ 173.425 *et seq.* and 173.430 *et seq.* (1998).

provisions that apply to agriculture. The principal solid waste law in Washington is the Washington Solid Waste Management Act (SWMA).¹⁶ The Washington DOE together with local health districts administer the SWMA.

In general, the SWMA provides that solid waste may not be dumped or disposed except in a permitted solid waste handling facility. There is a rebuttable presumption that if a person's name appears on three items found in illegally dumped waste, then the named person is duly presumed to have committed the dumping.

The SWMA also establishes a permit program for solid waste disposal that applies Minimum Functional Standards (MFS) for solid waste handling.¹⁷ Agricultural waste is, however, specifically exempted from complying with MFS standards.

a. Lead Batteries and Used Tires

Washington has special programs for lead acid batteries and used tires. Lead acid batteries must be disposed either by returning them to the retailer or wholesaler where they were purchased or by delivering them to an approved transfer station or permitted lead smelter. Only persons licensed by the DOE may collect, store, or transport used tires.

b. Biosolids

Biosolids, or sewage sludge, are subject to the MFS. The MFS govern the disposal of sewage sludge including application to agricultural land. A permit for the application of biosolids to agricultural land must be obtained either from the DOE or the local health district prior to conducting the activity.¹⁸

2. Washington Hazardous Waste Laws and Regulations

Wastes deemed to be hazardous are regulated to a greater extent than other solid wastes under both state and federal law. Washington has enacted the Hazardous Waste Management and Cleanup Act (HWMCA) that has similar provisions to the federal Resource Conservation and Recovery Act (RCRA).¹⁹ Washington has also received federal authorization to enforce the RCRA within the state.

The state law definition of hazardous waste is similar, but not identical to the federal law definition. The HWMCA definition reads:

¹⁶ WASH. REV. CODE §§ 70.95 *et seq.* (West 1992 & Supp. 1998).

¹⁷ WASH. ADMIN. CODE §§ 173.304 *et seq.* (1998).

¹⁸ WASH. ADMIN. CODE §§ 173.308 *et seq.* (1998).

¹⁹ WASH. REV. CODE §§ 70.105 *et seq.* and 70.105D *et seq.* (West 1992 & Supp. 1998).

Hazardous waste means and includes all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.

Dangerous waste means any discarded, useless, unwanted, or abandoned substance including but not limited to certain pesticides, residues, or containers of such substances which are disposed in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes are constituents or combinations of such wastes:

- (a) [H]ave short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or
- (b) [A]re corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

Extremely hazardous waste means any dangerous waste which:

- (a) Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form:
 - (i) [P]resents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of man or wildlife, and
 - (ii) [I]s highly toxic to man or wildlife.
- (b) [I]f disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment.²⁰

Hazardous wastes are more specifically defined in DOE and EPA regulations that list specific substances determined to be hazardous.²¹

Producer Note: Washington agricultural producers should check with the DOE to determine whether chemicals or other substances used in their operations are listed as hazardous waste and whether there are regulatory requirements for such substances.

Persons who generate or transport hazardous wastes are subject to extensive regulatory requirements under Washington law. These include permit requirements, emergency planning, personnel training, record keeping requirements, storage requirements, disposal restrictions, plus

²⁰ WASH. REV. CODE § 70.105.010 (West 1992 & Supp. 1998).

²¹ 40 C.F.R. § 261, Subpart D; WASH. ADMIN. CODE § 173.303.9903 to 9905 (1998).

equipment, container, and building standards. The degree of the hazard and the waste quantity generated determine the extent of the regulation.

Spills and releases of hazardous substances with the potential to impact human health or the environment must be reported promptly to the DOE.

By law, certain wastes generated by agricultural operations are excluded from the definition of hazardous waste. Excluded agricultural wastes include wastes from growing and harvesting of crops, livestock production, and irrigation return flows. Point source discharges that are otherwise regulated under the CWA and the WCWA are also excluded from the definition of hazardous waste. (Pesticides are subject to separate regulation. See discussion beginning on page 11.)

3. *Washington Underground Storage Tanks*

Washington law imposes requirements on underground storage tanks (USTs) that parallel the federal requirements for USTs under RCRA.²² An UST is defined as a tank, or combination of tanks including the associated pipes, used to contain regulated substances where the volume is at least 10% below the ground. Regulated substances include hazardous substances as well as petroleum products.

By law, certain tanks are excluded from compliance. All USTs with a capacity of 110 gallons or less are exempt. Farm storage tanks and residential storage tanks with a capacity of 1100 gallons or less that store motor fuel for noncommercial purposes as well as tanks that store home heating oil for consumptive use on the premises and septic tanks are exempt.

Regulations of non-exempt USTs address:

- ! Design and performance standards;
- ! Leak detection systems;
- ! Operation permits from the DOE;
- ! Financial liability assurance;
- ! Record keeping;
- ! Spill or release reports;

²² WASH. REV. CODE §§ 90.76 *et seq.* (West 1992 & Supp. 1998).

- ! Closure requirements; and
- ! Remediation requirements.

Requirements differ for new tanks versus existing tanks. USTs may also be subject to local regulations in addition to state and federal regulation in some jurisdictions.

V. PESTICIDES AND CHEMIGATION

Producer Note: Pesticide use is regulated by federal and state statutes. Most states have some form of licensing or certification requirements controlling pesticide users. Additionally, if an agricultural producer employs agricultural workers, there are regulations which address safety concerns about pesticide use by those workers and around those workers.

A. Washington Pesticide Laws and Regulations

Producer Note: Washington, 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.

The Washington Pesticide Control Act (PCA)²³ requires that all pesticides that are distributed, sold, transported, or offered for sale within the state be licensed with the Washington Department of Agriculture (DOA). It is illegal to sell, distribute, or transport unlicensed pesticides. The DOA enforces pesticide labeling requirements through the registration and licensing process.

The PCA requires that pesticides be used and applied in a manner consistent with their labeling. Pesticide containers must be stored, transported, and discarded in a manner that does not have unreasonable adverse effects on the environment. Some pesticide waste and pesticide containers are considered hazardous waste and are subject to special handling requirements. Restricted-use pesticides must be applied by a certified commercial or private pesticide applicator.

Pesticide regulations include:

- ! Prohibitions, restrictions, and permit requirements on the use of certain pesticides;
- ! General handling requirements and certification requirements for pesticide applicators;

²³ WASH. REV. CODE §§ 15.58 *et seq.* (West 1993 & Supp. 1998).

- ! Record keeping requirements regarding pesticide applications; and
- ! Licensing requirements for pesticide dealers.

Producer Note: Agricultural producers should refer to DOA regulations and consult with DOA representatives to determine specific use and disposal requirements applicable to the pesticides actually used.

VI. PROTECTION OF WILDLIFE

A. Washington Wildlife Protection Laws and Regulations

Producer Note: Agricultural producers have responsibilities concerning wildlife and migratory birds which may have habitat located on the producer's property. Federal and state laws contain measures designed to protect or enhance wildlife and wildlife habitat.

Producer Note: Many states have additional measures which either address issues peculiar to wildlife found within the state or enhance wildlife protections under federal laws. These states also may address common problems caused by wildlife. Washington has laws protecting wildlife.

Washington has enacted a variety of laws to protect wildlife and to regulate their harvesting in the state, and these laws may affect agricultural activities. The Department of Fish and Wildlife (DFW) administers wildlife laws in Washington.²⁴

1. *Washington Game Laws and Regulations*

The DFW also 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.²⁵

2. *Washington Endangered Species*

Washington law protects species of concern within the state. Species of concern are those species of plants and animals listed by DFW as state endangered, state threatened, or state

²⁴ WASH. REV. CODE §§ 77.12 *et seq.* (West Supp. 1998).

²⁵ WASH. REV. CODE § 77.36.030 (West Supp. 1998).

sensitive²⁶ as well as species listed or proposed for listing by the U.S. Fish and Wildlife service or the national Marine Fisheries Service under the federal Endangered Species Act.²⁷ State law prohibits the taking, possessing, transporting, or selling of any endangered or threatened species listed by DFW except in limited circumstances when expressly permitted by DFW. Sensitive species may also be protected under certain circumstances.

Producer Note: Protection of endangered and threatened species in Washington is a major issue of public concern. Recent initiatives have addressed dwindling salmon stocks. New state and federal programs to address salmon and other threatened species may be implemented in the future. Endangered and threatened species programs may have significant effects on many agricultural activities. Producers should consult both the DFW and DOE on a regular basis to keep abreast of changes in the law that may affect their activities and operations.

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 of violation. For severe or repeated violations, imprisonment may be imposed. State agencies may bring proceedings either in court or before an administrative tribunal to enjoin an agricultural producer's activities and force compliance with the statute. In some cases, citizens may also file lawsuits to enforce compliance of environmental laws. As with the federal statutes, state laws afford producers the right to administrative and/or judicial review of agency decisions.

²⁶ WASH. REV. CODE § 77.12.020 (West Supp. 1998); WASH. ADMIN. CODE § 232.12.297 (1998).

²⁷ 16 U.S.C. § 1531 *et seq.* (1994).

Appendix A - Agencies

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

State Agencies:

Department of Agriculture

1111 Washington Street, S.E. or
P.O. Box 42560
Olympia, WA 98504-2560
(360) 902-1800
(360)902-2092 fax
<http://www.wa.gov/agr/>

5 Divisions within DOA:

1. Agency Operations/Market Development

(360) 902-1813 general
(360) 902-2150 fax
(360) 902-1976 Admin. Support
(360) 902-1809 Agricultural Fairs
(360) 902-1940 Agric. Statistics Service
(360) 902-1809 Commodity Comm.
(360) 902-1915 International Marketing
(360) 902-1813 Public Information

2. Commodity Inspection

(360) 902-1828
(360) 902-2085 fax
(360) 902-1833 Fruit & Vegetable Inspect.
(360) 902-1921 Grain Inspection
(509) 533-2488 Grain Warehouse Audit
(509) 255-2630 Seed Inspection/Certif.

3. Food Safety and Animal Health

(360) 902-2087
(360) 902-2150 fax
(360) 902-1881 state veterinarian
(360) 902-2087 fax
(360) 902-1878 Animal Health
(360) 902-1854 Commission Merchants
(360) 902-1830 Egg Inspection
(360) 902-1875 Food Safety
(360) 902-1855 Livestock Identification
(360) 902-1877 Organic Food Certification
(360) 902-1856 Weights & Measures Inspect.

4. Laboratory Services

(360) 902-1908 general
(360) 902-2094 fax
(360) 753-2228 Microbiology Lab.
(509) 225-2626 Chemical and Hop Lab.
(360) 902-2070 Pest Program
(360) 902-1922 Plant Services

5. Pesticide Management

(360) 902-2030 or
(877) 301-4555 toll free
(360) 902-2093 fax
(360) 902-2040 Pesticide Compliance
(360)902-2030 Pesticide Regist. Services
(360) 902-2020 Pesticide Program Dev.
(360) 902-2025 Fertilizer Regulation
(360) 902-2025 Feed Regulation

Department of Ecology

300 Desmond Drive
Lacey, WA 98503 or
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-6000
(360) 407-6007 fax
(800) 406-5322 Agricultural Burning
(800) 321-2008 Cleanup Hotline
(800) 874-2022 Dangerous Waste Annual Report
(800) 633-7585 Hazardous Substance
(800) 732-9253 Recycling
(800) 826-7716 Site Cleanup and UST Info.
(800) 272-3780 Vehicle Emission
(800) 633-6193 Water Quality and Wastewater
<http://www.ecy.wa.gov/>

4 Regional Offices (within DOE):

1. Northwest Region

3190 160th Avenue, S.E.
Bellevue, WA 98008-5452
(425) 649-7000 main
(425) 649-7098 fax
(425) 649-7082 Air Quality
(425) 649-7053 Hazardous Waste & Toxics
Reduction

(425) 649-7096 Shorelands & Envir'l Assistance
(425) 649-7076 Solid Waste & Financial Assistance
(425) 649-7130 Spills
(425) 649-7054 Toxic Cleanup
(425) 649-7270 Water Resources
(425) 649-7033 Water Quality

2. Southwest Region

P.O. Box 47775
Olympia, WA 98504-7775 or
300 Desmond Drive
Lacey, WA 98503
(360) 407-6300 main
(360) 407-6305 fax
(360) 407-6325 Air Quality
(360) 407-6341 Hazardous Waste & Toxics Reduction
(360) 407-6381 Solid Waste & Financial Assistance
(360) 407-6375 Spills
(360) 407-6241 Toxic Cleanup
(360) 407-6389 Water Resources
(360) 407-6271 Water Quality

3. Central Region

15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452
(509) 575-2490 main
(509) 575-2809 fax
(509) 575-2486 Air Quality
(509) 454-7659 Hazardous Waste & Toxics Reduction
(509) 574-3992 Shorelands & Envir'l Assistance
(509) 457-7123 Solid Wste. & Financial Assistance
(509) 454-7829 Spills
(509) 454-7838 Toxics Cleanup
(509) 457-7107 Water Quality
(509) 574-3989 Water Resources

4. Eastern Region

North 4601 Monroe, Suite 202
Spokane, WA 99205-1295
(509) 456-2926
(509) 456- 6175 fax
(509) 456-3284 Air Quality
(509) 456-2725 Hazardous Waste & Toxics Reduction
(509) 456-2994 Shorelands & Envir'l Assistance

(509) 456-3270 Solid Waste & Financial Assistance
(509) 456-6113 Spills
(509) 456-7693 Toxics Cleanup
(509) 456-5057 Water Resources
(509) 456-6198 Water Quality

Kennewick Office
(within DOE, nuclear waste program):
1315 West 4th Avenue
Kennewick, WA 99336-6018
(509) 735-7581 or
(800) 321-2008 toll free
(509) 736-3030 fax

Department of Fish and Wildlife

Natural Resources Building
1111 Washington Street, S.E. or
600 Capital Way
Olympia, WA 98501
(360) 902-2200
(360) 902-2230 fax
(360) 902-2700 Fish Program
(360) 902-2944 Fish fax
(360) 902-2534 Habitat Program
(360) 902-2946 Habitat fax
(360) 902-2661 Hatcheries Program
(360) 902-2943 Hatcheries fax
(360) 902-2515 Wildlife Program
(360) 902-2162 Wildlife fax
<http://www.wa.gov/wdfw/>

6 Regional Offices:

1. Eastern Region (Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman counties)
North 8702 Division Street
Spokane, Washington 99218
(509) 456-4082
(509) 456-4071 fax (please call before faxing)

2. North Central Region (Ephrata Adams, Douglas, Franklin, Grant, and Okanogan counties)
1550 Alder Street, N.W.
Ephrata, Washington 98823
(509) 754-4624
(509) 754-5257 fax

3. South Central Region (Benton, Chelan, Kittitas, and Yakima counties)
1701 South 24th Avenue
Yakima, Washington 98902-5720
(509) 575-2740
(509) 575-2474 fax

4. North Puget Sound Region (Pierce County east of a line from the mouth of the Nisqually River through Drayton Passage, Pitt Passage, Carr Inlet and the Tacoma Narrows, Island, King, San Juan, Skagit, and Snohomish counties.)
16018 Mill Creek Boulevard
Mill Creek, Washington 98012
(425) 775-1311
(425) 338-1066 fax

5. Southwest Region (Clark, Cowlitz, Klickitat, Lewis, Skamania, and Wahkiakim counties)
5405 Northeast Hazel Dell
Vancouver, Washington 98663
(360) 696-6211
(360) 690-7238 fax

6. Coastal Region (Pierce County on the Kitsap Peninsula and Fox Island, Clallam, Grays Harbor, Jefferson, Kitsap, Mason, Pacific, and Thurston counties)
48 Devonshire Road
Montesano, Washington 98563-9618
(360) 249-6522
(360) 664-0689 fax

Department of Health

1112 S.E. Quince Street or
P.O. Box 47890
Olympia, Washington, 98504-7890
(800) 521-0323 Drinking Water Operating Permit
(800) 525-2536 Waterworks Operator Certification

DOH's Environmental Health Programs

New Market Industrial Campus
7171 Cleanwater Lane, Building 2 or
P.O. Box 47820
Olympia, Washington, 98504-7820

5 Offices and Divisions (within DOH's Environmental Health Programs):

1. Division of Drinking Water

New Market Industrial Campus

7171 Cleanwater Lane, Building 3 or
P.O. Box 47822
Olympia, WA 98504
(360) 236-3100
(360) 236-2553 fax

3 Geographic Sections within Drinking Water (DW) Division:

1. Eastern DW Operations
1500 West 4th Ave, Suite 305
Spokane, WA 99204
(509) 456-3115
(509) 456-2997 fax
(Asotin, Benton, Franklin, Chelan, Douglas, Columbia, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, and Yakima counties)

2. Northwest DW Operations
1511 Third Avenue, Suite 719
Seattle, WA 98101
(253) 395-6750
(256) 464-7059 fax
(Island, King, Pierce, San Juan, Skagit, Snohomish, and Whatcom counties)

3. Southwest DW Operations
2411 Pacific Avenue or
P.O. Box 47823
Olympia, WA 98504-7823
(360) 664-0768
(360) 664-8058 fax
(Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Skamania, and Wahkiakim counties)

2. Division of Radiation Protection

New Market Industrial Campus
7171 Cleanwater Lane, Building 5
Tumwater, WA 98501 or
P.O.Box 47827
Olympia, WA 98504-7827
(360) 236-3300 main
(360) 236-2255 fax
(360) 236-3261 Air Emissions/Defense Wastes
(360) 236-3251 Environmental Radiation
(360) 236-3271 Nuclear Safety
(360) 236-3221 Radioactive Materials
(360) 236-3171 Technicology
(360) 236-3241 Radioactive Waste Management
(360) 236-3237 X-ray

3. Office of Food Safety/Shellfish
1112 SE Quince Street or
P.O. Box 47890
Olympia, Washington, 98504-7890
(360) 236-3074 Food Safety Program
(360) 236-3312 Recreational Shellfish
(360) 236-3313 Comm'l Shellfish Lic. & Certif.
(360) 236-3329 Shellfish Growing Areas
(360) 236-3314 Biotxin Closures

4. Office of Environmental Health Assessments
7171 Cleanwater Lane, Building 2
Tumwater, WA 98501 or
P.O. Box 47846
Olympia, WA 98504-7846
(360) 236-3200 or
(877) 485-7316 toll free
(360) 236-2251 fax

5. Office of Environmental Health and Safety
7171 Cleanwater Lane, Building 2
Tumwater, WA 98501 or
P.O. Box 47846
Olympia, WA 98504-7846
888-586-9427 toll free
(360) 236-3064 Clandestine Drug Lab
(800) 545-5581 Hanford Health Information
(360) 236-3381 Hazardous Substances Emergency Events Surveillance (HSEES)
(360) 236-3363 Indoor Air Quality
(360) 236-3064 Lead Exposure Assessment
(360) 236-3361 Pesticides Investigation & Surv'l.
(360) 236-5427 PIRT (Pesticide Incident Reporting & Tracking) Review Panel
(360) 236-3072 School Health & Safety
(360) 236-3040 Wastewater Mgmt Program
(360) 236-3073 Water Recreation
(360) 236-3362 Zoonotic Disease (rabies, hanta virus, lyme disease)

Department of Natural Resources
1111 Washington Street, S.E.
P.O. Box 47001*
Olympia, WA 98504-7001
(360) 902-1000
(360) 902-1775 fax
(800) 527-3305 Air Quality
<http://www.wa.gov/dnr/>

6 Divisions (within DNR):
1. Aquatic Resources
(Same street address, different Mail Stop and *zip+4)
Mail Stop: 47027
Olympia, WA 98504-7027
(360) 902-1100
(360) 902-1786

2. Lands & Resources
Mail Stop: 47016*
(360) 902-1340
(360) 902-1783 fax

3. Resource Protection (Fire Control)
Mail Stop: 47037*
(360) 902-1300
(360) 902-1757 fax
(360) 902-1781 Fire Dispatch
(800) 527-3305 toll free Fire Dispatch

4. Environmental Quality & Compliance
Mail Stop: 47015*
(360) 902-1634
(360) 902-1759 fax

5. Forest Practices
Mail Stop: 47012*
(360) 902-1400
(360) 902-1784

6. Geology & Earth Resources
Mail Stop: 47007*
(360) 902-1450
(360) 902-1785

7 Region Offices (within DNR):
1. Northeast Region
225 South Silke Rd.
PO Box 190
Colville, WA 99114-0190
(509) 684-7474
(Ferry, Okanogan, Pend Oreille, Spokane, and Stevens counties)

2. Northwest Region
919 North Township Street
Sedro Woolley, WA 98284-9384
(360) 856-3500
(Island, San Juan, Skagit, Snohomish, and Whatcom counties)

3. Olympic Region

411 Tillicum Lane
Forks, WA 98331-9271
(360) 374-6131
(Clallam, Grays Harbor, & Jefferson counties)

4. South Puget Sound Region

950 Farman Avenue North
Enumclaw, WA 98022-9282
(360) 825-1631
(King, Kitsap, Mason, and Pierce counties)

5. Southeast Region

713 Bowers Road
Ellensburg, WA 98926-9301
(509) 925-8510
(Adams, Asotin, Benton, Chelan, Columbia, Douglas, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, Whitman, and Yakima counties)

6. Southwest Region

601 Bond Road
P.O. Box 280
Castle Rock, WA 98611-0280
(360) 577-2025
(Clark, Cowlitz, Skamania, and Wahkiakum counties)

7. Central Region

1405 Rush Road
Chehalis, WA 98532-8763
(360) 748-2383
(Grays Harbor, Lewis, Pacific, and Thurston counties)

Boards, Commissions, etc.:

Attorney General

900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-6907 Environmental Council
(206) 622-8113 fax Environmental Council
(360) 664-4968 Health and Agriculture
(360) 586-3564 fax Health and Agriculture
<http://www.wa.gov/ago/>

Energy Facility Site Evaluation Council

P.O. Box 43165
Olympia, Washington 98504-3165
(360) 956-2000
(360) 956-2158 fax
<http://www.efsec.wa.gov/>

Environmental Hearings Office

(for Pollution Control Hearings Board,
Shorelines Hearings Board,
Forest Practices Appeals Board, and
Hydraulics Appeals Board)
4224 6th Avenue S.E., Building 2 or
P.O. Box 40903
Lacey, WA 98504-0903
(360) 459-6327
(360) 438-7699 fax
<http://www.eho.wa.gov/>

Office of Administrative Hearings²⁸

P.O. Box 42488
Olympia, WA 98504-2488
(360) 664-8717
(360) 664-8721 fax
<http://www.oah.wa.gov/>

Parks and Recreation Commission

7150 Cleanwater Lane
P.O. Box 42650
Olympia, Washington 98504-2650
(360) 753-5757
<http://www.parks.wa.gov/>

Washington Apple Commission

2900 Euclid Avenue
P.O. Box 18
Wenatchee, WA 98807-0018
(509) 663-9600
(509) 662-5824 fax
<http://www.bestapples.com/>

Washington Barley Commission

905 West Riverside, Suite 501
Spokane, WA 99201
(509) 456-4400
(509) 456-2807 fax
<http://www.washingtonbarley.org/>

²⁸ An independent state agency which conducts impartial administrative hearings for other state government agencies.

Washington State Beef Commission

14240 Interurban Ave. South, Suite 224
Seattle, WA 98168
(206) 444-2902
(206) 444-2910 fax
<http://wa.beeftips.com/>

Washington State Board of Health

1102 SE Quince Street or
P.O. Box 47990
Olympia, Washington, 98504-7990
(360) 236-4102
(360) 236-4088 fax
<http://www.doh.wa.gov/sboh/>

Washington State Conservation Commission

300 Desmond Drive, Lacey, WA 98503 or
P.O. Box 47721
Olympia, WA 98504-7721
(360) 407-6200
(360) 407-6215 fax
<http://www.conserver.org>

Washington Wine Commission

500 Union, Suite 945
Seattle, WA 98101
(206) 667-9463
(206) 583-0573 fax
<http://www.washingtonwine.org/>