

**STATE ENVIRONMENTAL LAWS
AFFECTING
WISCONSIN AGRICULTURE**

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

A Project of the

**National Association of State Departments
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through the

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Research and Information**



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The Project Participants

National Association of State Departments of Agriculture Research Foundation

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

National Center for Agricultural Law Research and Information

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

Natural Resources Conservation Service

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

U.S. Environmental Protection Agency

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

Disclaimer

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

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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 May 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. 1-11</i>	Livestock and aquaculture operations, depending on size	Wisconsin Pollutant Discharge Elimination System (WPDES) and state general permit or land disposal permit	EPA Regional Office and Wisconsin Department of Natural Resources (DNR)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Clean Water Act (CWA) Section 404 permit	U.S. Army Corps of Engineers with Environmental Protection Agency (EPA) and Wisconsin DNR approval
	Water usage	Permit required for withdrawal of more than 100,000 gallons per day	Wisconsin DNR
	Groundwater protection	No permit, but Best Management Practices (BMPs) must be followed	Wisconsin DNR
Groundwater <i>pp. 11-13</i>	Water well construction and use	No permit, but construction standards must be followed	Wisconsin DNR
	Grain terminals and grain elevators	Permit required	EPA Regional Office or Wisconsin DNR
Air Quality <i>pp. 13-14</i>	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance suits	EPA Regional Office or Wisconsin DNR
	Burning	Permit required in certain circumstances	Wisconsin DNR

Regulatory Area	Type of Activity	Permit Required	Agency
Solid Waste and Hazardous Waste <i>pp. 14-16</i>	Storage, treatment, or disposal of hazardous or solid waste	Permit required for disposal, treatment, or storage activities	EPA Regional Office and Wisconsin DNR
	Public notice of hazardous waste	No permit	Local Emergency Planning Committee and Wisconsin DNR or Department of Agricultural Trade and Consumer Protection (DATCP)
Pesticides and Chemigation <i>pp. 16-18</i>	Application and use of pesticides	No permit, but a license may be required	EPA and Wisconsin DATCP
	Use of pesticides around agricultural workers	No permit, but training and notification is required	Wisconsin Environmental Protection Division (EPD) and Wisconsin DATCP
	Record keeping	No permit, but all requirements must be met	Wisconsin DATCP
Wildlife Protection <i>pp. 19-20</i>	Taking of wildlife	Permit required if endangered or threatened species may be affected	U.S. Fish and Wildlife Service

STATE ENVIRONMENTAL LAWS AFFECTING WISCONSIN 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 affect producers in a number of ways. Environmental regulation is a complex area with both federal and state 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.

I. WATER QUALITY

A. Wisconsin 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 federal law. In all cases, the federal Clean Water Act (CWA)¹ requirements must be followed and enforced along with state enacted statutes and regulations implemented by state administrative agencies. Under the CWA, the Environmental Protection Agency (EPA) has delegated the administration of the National Pollutant Discharge Elimination System (NPDES) permit program to many states. Wisconsin is one of the states that has assumed the responsibility for the NPDES permitting program, however, it is called the Wisconsin Pollutant Discharge Elimination System (WPDES) permit program.

Caution: Because environmental laws change, agricultural producers must stay in contact 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 agency regulations. In addition, regulations are likely to be amended frequently. As a result, agricultural producers must stay in contact with agencies administering specific programs in order to keep up with changes which may occur.

¹ 33 U.S.C. §1250 *et seq.* (1994).

1. *Wisconsin Water Quality Program*

Water quality and overall water management in Wisconsin is vested in the Wisconsin Department of Natural Resources (DNR).² Under Wisconsin law, the DNR is responsible for the protection, maintenance, and improvement of private and public groundwater and surface waters. This authority extends into the boundary waters of the Green Bay and Lakes Superior and Michigan. To carry out its mission, the DNR is authorized to:

- Implement a regulatory program;
- Formulate plans and programs for the prevention and abatement of water pollution;
- Consult and advise landowners as to the most appropriate water source, the best method of providing for its purity, and the best method of disposing wastewater; and
- Enter into agreements with authorities of other states concerning methods, means, and measures of controlling pollution of any interstate streams and other waters.

Producer Note: Pursuant to the CWA and EPA-delegated authority, Wisconsin's DNR has promulgated water quality standards for all surface waters in the state. The quality standards first set forth or designate the use of each segment of the rivers, streams, and lakes in the state according to its highest use, for example, for recreation, irrigation, or drinking water supply. Then, the quality standards describe for each type of pollutant the maximum amount of waste that could be discharged into a river, stream, or lake without reducing the water quality below the minimum necessary for its designated or intended use. These standards are used as a basis to set discharge permit requirements.³

2. *Wisconsin WPDES Program*

Producer Note: The federal CWA authorizes the EPA to delegate the NPDES permit program to individual states. The EPA has delegated the NPDES program, called the WPDES program in Wisconsin to the DNR. Consequently, the DNR, not the EPA, has primary responsibility for issuing permits for point source discharges and for enforcing related sections of the CWA. However, the DNR administers the program in accordance with all federal statutes, regulations, and standards.

² WIS. STAT. ANN. § 281.01 *et seq.* (West 1999).

³ WIS. ADMIN. CODE § NR 102.01 *et seq.*

Producer Note: Point source pollution is defined as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure,, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. Non-point source pollution is any source of pollution that does not fall within the definition of point source pollution.

Under its delegated water pollutant discharge elimination system (WPDES), the Wisconsin DNR issues permits for discharges into state waters.⁴ Any discharge into state waters, without a permit, is prohibited. In administering the WPDES program, the DNR may deny or revoke permits and issue orders prohibiting discharges when it determines that a person is not in compliance with the established standards.

Producer Note: When agricultural producers conduct dredging and filling activities which affect water sources, these activities require a CWA Section 404 permit. Failure to obtain a required permit may expose the operator to serious penalties.

3. *Animal Feeding Operations*

Producer Note: A WPDES permit is required for specific sizes of animal feeding operations (AFOs) based on the number of animal units (AUs) as designated by the EPA regulations or based on whether the operation discharges pollutants in the waters of the state. The WPDES permit requires the operation to implement certain regulatory standards including waste management practices.

The DNR establishes water quality requirements for animal feeding operations (AFOs) based on the number of animal units (AUs).⁵ As a result, AFOs are categorized into one of two classifications:

- Large AFOs (LAFOs) or
- Other AFOs.

LAFOs, sometimes called concentrated animal feeding operations or CAFOs, are defined as animal feeding operations which feed, confine, maintain, or stable 1,000 AUs (the equivalent

⁴ WIS. STAT. ANN. § 283.001 *et seq.* (West 1999).

⁵ WIS. ADMIN. CODE § NR 243.01 *et seq.* (West 1999).

of approximately 700 dairy cows, 1000 beef steers, 2,500 hogs, or 100,000 laying hens)⁶ for at least 45 consecutive days in any 12-month period. LAFOs are required to:

- Obtain a WPDES permit;
- Comply with design standards for permanent control structures for waste runoff;
- Install storage facilities in accordance with regulatory guidelines;
- Implement accepted animal waste management practices; and
- Develop an approved waste management plan which meets regulatory guidelines.

However, other AFOs do not have to obtain a WPDES permit or implement waste management practices unless the DNR determines the operation discharges or has discharged a significant amount of pollutants into Wisconsin waters.

In determining whether an AFO is discharging or has discharged a significant amount of pollutants, the DNR must conduct an onsite inspection and determine that unacceptable practices are performed by the operation or that other factors exist which make the operation subject to necessary corrective action. Unacceptable practices include:

- Overflow from an animal waste storage facility;
- Over-application of animal wastes;
- Direct runoff of animal waste from the operation;
- Discharge of leachate from a manure stack;
- Seepage from an animal waste storage facility; or
- Construction of an animal waste storage facility without a liner in permeable soils or over fractured bedrock.⁷

Other factors that the DNR may consider in deciding that an operation is discharging or has discharged significant amounts of pollutants are:

⁶ WIS. ADMIN. CODE § NR 243.01 *et seq.* (West 1999).

⁷ A liner for waste storage ponds must be designed to meet the specifications contained in standard number 425 of Section IV of the Wisconsin edition of the Natural Resources Conservation Service technical guide effective on November 1, 1983.

- The impact on the waters of the state receiving the discharge;
- The size of the AFO and the amount of waste reaching waters of the state;
- The location of the AFO relative to waters of the state;
- The means by which the animal wastes are conveyed into waters of the state; and
- The slope, vegetation, rainfall, tributary drainage area, and other factors that contribute to the amount and frequency of animal waste discharges into waters of the state.

Following a DNR determination that significant amounts of pollutants are or have been discharged, the DNR must provide the AFO owner or operator with a notice designating:

- The nature of the discharge;
- A list of known governmental or private services which may be available to provide technical or financial assistance;
- One or more suggested corrective measures for controlling the discharge; and
- A reasonable time period for implementing necessary corrective measures which may not be fewer than 60 days nor more than two years from the date of the notice unless mutually agreed upon by the parties.

Producer Note: Agricultural producers may encounter local regulations in addition to those administered by state agencies. Wisconsin has authorized local governmental units to regulate livestock operations; therefore, agricultural producers should check local regulations as well as state regulations.

4. *Wisconsin Livestock Waste Management*

Producer Note: A common by-product of livestock operations is animal waste which must be properly stored and disposed. Many states are becoming more involved in the regulation of storage, treatment, handling, and land application of waste through recommendations, pollution prevention plans, BMPs, and regulations.

Producer Note: Livestock animal waste is increasingly becoming a point of contention between agricultural producers on one side and fishermen, hunters, and conservationists on the other side. In 1998, the Wisconsin Stewardship Network (WSN) proposed a moratorium on livestock operations having more than 500 AUs, i.e., the equivalent of approximately 350 dairy cows, 500 beef steers, 1,250 hogs, or 50,000 laying hens. In addition to the WSN, the moratorium was also supported by the Wisconsin Wildlife Federation which includes members of Trout Unlimited, Wisconsin Bow Hunters Association, Pheasants Forever, Wisconsin Trappers Association, Wisconsin Game Breeders Association, Wisconsin Bear Hunters Association, and other hunting and fishing groups. As Wisconsin continues to see growth in large livestock operations, political conflict between agricultural producers and groups concerned about the pollution of Wisconsin's streams, rivers, and lakes may increase.

The Wisconsin legislature has authorized the DNR to protect, maintain, and improve the quality and management of all groundwaters and surface waters of the state, both public and private.⁸ To that end, the legislature has enacted statutes and regulations to prevent unacceptable practices by animal feeding operations which may discharge pollutants into the waters of the state (see page WI-4 for more information on AFOs and WI-9 for more information on animal waste management). These regulations address the storage, transportation, disposal, and management of animal waste.

Besides the DNR, Wisconsin statutorily allows a local governmental unit⁹ to regulate any livestock operation¹⁰ within its jurisdiction as long as the regulation is consistent with water quality protection standards and does not exceed the agricultural performance standards and prohibitions for nonpoint source pollution¹¹ referenced below unless the local governmental unit demonstrates to the Department of Agriculture, Trade, and Consumer Protection (DATCP) or the DNR that the stricter regulations are necessary to achieve water quality standards of affected waters. Even so, Wisconsin prevents a local governmental unit from applying the regulation to a livestock operation that existed on October 14, 1997 unless cost-sharing is available to the owner or operator of the livestock operation. Furthermore, if the livestock operation is lawful or has a legal but nonconforming use, the operation may continue its activities during the time a required WPDES permit is being obtained.¹²

⁸ WIS. STAT. ANN. § 281.11 *et seq.* (West 1999).

⁹ Here a local governmental unit means a political subdivision of the state, a special purpose district, or instrumentality or corporation of either, or a combination or subunit of any of the foregoing, or an instrumentality of the state and any of the foregoing; *see* WIS. STAT. ANN. § 92.15(b) (West 1999).

¹⁰ Livestock operations include a feedlot, a pasture, or any facility where animals are fed, confined, maintained, or stabled.

¹¹ For agricultural performance standards and prohibitions, *see* WIS. STAT. ANN. § 281.16(3) (West 1999).

¹² WIS. STAT. ANN. § 92.15 (West 1999).

Besides regulating the livestock operations, Wisconsin also allows any county, city, village, or town to establish by ordinance that manure storage facilities constructed after July 2, 1983 meet technical standards of DATCP as well as technical standards established by the county, city, village, or town.¹³ A manure storage facility is defined as any vessel used to contain and store manure on a temporary basis; however, it does not include the equipment used to apply manure to land.¹⁴

The agricultural performance standards and prohibitions addressing nonpoint source pollution for livestock operations, at a minimum includes:

- No discharge or overflow from manure storage facilities;
- No unconfined manure piles;
- No direct runoff from feedlots or stored manure into waters of the state; and
- No unlimited access by livestock to waters of the state such that adequate sod cover cannot be maintained due to the concentration of animals.¹⁵

Producer Note: Recommendations for land application of waste are covered by the Natural Resources Conservation Service (NRCS) technical guidance materials. These recommendations should be followed in order to preserve the agricultural producer's statutory defenses in nuisance lawsuits or to aid the producer when defending against alleged WPDES permit violations. While these NRCS recommendations do not have the force of law that agency regulations have, compliance with the recommendations will generally aid the producer.

5. *Wisconsin Nonpoint Source Pollution Control*

Producer Note: The Wisconsin legislature establishes the nonpoint source pollution abatement program within Wisconsin's environmental regulations. Overall responsibility for the program is assigned to the Wisconsin DNR, but local administration and implementation responsibilities are assigned to other governmental units.

¹³ WIS. STAT. ANN. § 92.16 (West 1999).

¹⁴ WIS. ADMIN. CODE § ATCP 50.62 (West 1999).

¹⁵ WIS. STAT. ANN. § 281.16(3) (West 1999 & Supp 2001).

The DNR promulgates water quality standards necessary to protect the general public interest.¹⁶ Specifically, the DNR has developed an administrative framework under which:

- Area wide water quality management areas and plans are identified;
- Priority watershed projects are selected; and
- Governmental units and state agencies are granted technical and financial assistance necessary to implement nonpoint source water pollution abatement projects.

Moreover, the DNR recommends best management practices (BMPs) which are the most effective means of preventing or reducing nonpoint source pollution. More specifically, the DNR:

- Identifies lakes, streams, groundwater, and other water resources where the uses of water are impaired or threatened by nonpoint source pollution;
- Proposes projects to the land and conservation board to protect or rehabilitate waters according to its established or designated use; and
- Prepares plans in cooperation with governmental units identifying the best means to achieve protection or rehabilitation.

Furthermore, the prioritization of watershed projects regarding nonpoint source pollution is carried out by the DNR's entering into grant agreements and local assistance agreements. The DNR assists these governmental units and state agencies by:

- Coordinating the nonpoint source pollution abatement program with other state and federal water quality programs;
- Providing technical and financial assistance; and
- Evaluating the nonpoint source pollution abatement program and recommending modifications.

In turn, participating local governmental units enter into cost-share grant agreements with landowners, land operators, and state agencies in order to implement the nonpoint source pollution abatement program on a local level. The landowners, land operators, and state agencies are responsible for implementing and maintaining BMPs.

¹⁶ WIS. ADMIN. CODE. § NR 120.01 (West 1999).

In a further effort to protect water quality from nonpoint source pollution, the Wisconsin legislature has recently called for interagency response to address performance standards and prohibitive practices for agricultural operations. Statutes that address soil and water conservation and animal waste management set forth that the DNR in consultation with the DATCP must promulgate rules prescribing performance standards and prohibitions as well as conservation practices and technical standards for nonpoint pollution sources originating from agricultural facilities and agricultural practices.¹⁷ The intent of this legislation is to protect water quality by minimizing sediment, nutrients, and other nonpoint source pollutants from entering waterways. The resultant prohibitions, however, are mandatory only if significant cost-sharing programs are available.

6. *Wisconsin Soil and Water Conservation*

The DATCP administers the soil and water resource management planning program¹⁸ coordinated with the nonpoint source pollution abatement program, the inland lake protection and rehabilitation program, and other programs related to soil and water conservation administered by DNR or other state or federal agencies to:

- Conserve long-term soil productivity;
- Enhance protection of surface water and groundwater resources;
- Provide financial and technical assistance for soil and water conservation activities;
- Promote cost-effective soil and water conservation activities;
- Promote compliance with soil and water conservation by persons who claim a farmland preservation credit;
- Promote and attain goals established to minimize soil erosion;

¹⁷ The DNR has also prepared a fact sheet that more definitively addresses agricultural performance standards and prohibitions using specifications, numeric measurements, and calculations. The fact sheet is Proposed NR 151 (revised), Runoff Management, Subchapter II, Agricultural Performance Standards and Prohibitions, 03/01.

¹⁸ The DATCP and the land and water conservation board and committees jointly administer the land and water resource management planning program that conserves long term soil productivity, protects the quality of related natural resources, enhances water quality, and focuses on several soil erosion problems; *see* WIS. STAT. ANN. § 92.10 (West 1999). Currently there is proposed legislation called ATCP 50 which implements Wisconsin's 1997 legislation that repealed and redesigned the soil and water conservation program by primarily addressing nonpoint source pollution; under ATCP 50 nutrient management plans and certain conservation practices become mandatory for many agricultural producers but only if cost-sharing (70-90%) is available; *see* http://datcp.state.wi.us/arm/regulation/prop-rules/atcp_50.html.

- Increase local technical assistance to address soil and water resource problems;
- Encourage local strategies, regulations, and incentives to address soil and water conservation activities; and
- Enhance the administration and coordination of abatement activities by both the DNR and the DATCP for nonpoint source water pollution.¹⁹

Every county in Wisconsin must develop and implement a soil and water resource management plan program. The key is that the county should take the lead in actively soliciting public participation in planning, evaluating, and improving the delivery of land and water programs. County land and water resource management plan programs are a process by which counties assess their resources. The intent of the program is to support locally led, innovative planning and implementation of natural resource programs efficiently and effectively. County plans should organize implementation activities by watersheds and coordinate with other adjoining county programs.²⁰ The management plan concept was created in response to the need to redesign nonpoint source programs and integrate them into already existing programs. The management plan program must:

- Address the conditions of local land and water resources;
- Review and incorporate existing natural resource plans such as the areawide water quality plans;
- Identify soil erosion and nonpoint pollution problems;
- Develop a multi-year work plan for addressing identified problems;
- Partner with other entities such as landowners, agencies, municipalities, and organizations;
- Coordinate land use planning and zoning efforts;
- Develop a comprehensive strategy to implement the plan;

¹⁹ WIS. STAT. ANN. § 92.14(2) (West 1999) and WIS. ADMIN. CODE § ATCP 50.01 *et seq.*

²⁰ The land conservation committee at the county level must prepare a land and water resource management plan that: 1) includes an assessment of water quality and soil erosion, 2) specifies water quality objectives for each water basin, priority watershed, and priority lake, 3) identifies the best management practices to achieve objectives, 4) identifies applicable performance standards and prohibitions from nonpoint pollution sources and soil erosion, 5) includes a multi-year plan of performance and implementation activities, 6) tracks progress of the activities in described in 5), 7) provides related public information and education, and 8) coordinates with other agencies; *see* WIS. STAT. ANN. § 92.106 (West 1999).

- Track progress and compliance with goals; and
- Utilize funding and resources from local, state, federal, and private sources.²¹

The DATCP may award financial assistance in the form of grants to Wisconsin counties or farmers for implementing BMPs in accordance with statutory provisions for the following activities:

- Implementing land and water resource management plans or
- Implementing shoreland management projects.²²

II. GROUNDWATER

A. Wisconsin Groundwater Laws and Regulations

1. *Wisconsin Pure Drinking Water*

The DNR serves as the central unit of state government to protect, maintain, and improve the quality and management of all waters of the state including groundwater and surface waters, both public and private.²³ As to drinking water, the Wisconsin legislature sets forth that the DNR has the responsibility to prescribe, publish, and enforce minimum reasonable standards, rules, and regulations for various methods pursued:

- In obtaining pure drinking water for human consumption and
- In establishing safeguards necessary to protect the public health against the hazards of polluted sources of impure water supplies including minimum reasonable standards in the construction of well pits.²⁴

Furthermore, the DNR must establish, administer, and maintain a safe drinking water program no less stringent than the requirements of the federal Safe Drinking Water Act; and the DNR may require owners of water systems to demonstrate the technical, managerial, and financial capacity to comply with national primary drinking water regulations.

²¹ At <http://www.execpc.com/~wlwca/Pages/lwrminintro.html> on October 10, 2001.

²² WIS. STAT. ANN. § 92.14 (West 1999).

²³ WIS. STAT. ANN. § 281.11 *et seq.* (West 1999).

²⁴ WIS. STAT. ANN. § 280.01 *et seq.* (West 1999).

2. *Wisconsin Well Water and Sewage*

In Wisconsin no wells may be constructed, installed, or operated for the purpose of withdrawing water from underground sources for any purpose where the capacity and rate of withdrawal of all wells on one property is in excess of 100,000 gallons a day without obtaining the approval of the DNR. Moreover, the DNR may prohibit the installation or use of septic tanks in any area of the state where the DNR finds that the use of septic tanks would impair water quality.

Violators of any Wisconsin statute governing water or sewage regulation, promulgated rule, regulatory approved plan, license, or special order may be fined up to \$5,000 for each violation.²⁵ In addition to this penalty, the court may award reasonable attorney fees and reasonable and necessary expenses of the Department of Justice for the investigation and prosecution of violations of Wisconsin statutes. For violations of safe drinking water program rules, the DNR may assess substantial forfeiture penalties up to \$1,000 for each day of the violation.

3. *Wisconsin Groundwater Management Plans*

For the protection of public health and welfare, the Wisconsin legislature has created groundwater protection standards to minimize the concentration of polluting substances in groundwater by using numerical standards in all groundwater regulatory programs. Numerical standards are developed for various substances.²⁶ The DNR designates which substances involve public health or welfare concerns or which substances have a reasonable probability of entering the groundwater. In determining whether a substance is a public health or welfare concern, the DNR takes into account the degree to which a substance may:

- Cause or contribute to an increase in mortality;
- Cause or contribute to an increase in illness or incapacity whether chronic or acute;
- Pose a substantial present or potential hazard to human health because of its physical, chemical, or infectious characteristics; or
- Cause or contribute to other adverse human health effects or changes of a chronic or subchronic nature even if not associated with illness or incapacity.

²⁵ WIS. STAT. ANN. § 281.98 *et seq.* (West 1999).

²⁶ WIS. STAT. ANN. § 160.001 (West 1998).

In determining whether a substance is of public health concern, the DNR must take into account whether the substance:

- Influences the aesthetic suitability of water for human use;
- Influences the suitability of water for uses other than human drinking water; or
- Has a substantial adverse effect on plant or animal life.²⁷

III. AIR QUALITY

A. Wisconsin Air Quality Laws and Regulations

Air quality in Wisconsin is regulated by Chapter 285 of Wisconsin's environmental statutes.²⁸ Generally, Wisconsin's regulations conform to the national ambient air quality standards promulgated under Section 109 of the federal Clean Air Act (CAA),²⁹ and Wisconsin's standards of performance for stationary sources of air contaminants conform to Section 111 of the federal CAA.³⁰ Specifically, under Wisconsin regulations, any person commencing construction, reconstruction, or modification of any facility, building, structure, or installation that directly or indirectly emits or may emit an air contaminant from a fixed location must obtain a construction permit;³¹ however, there are numerous exceptions. The following is only a partial list of exceptions applicable to agricultural producers from the numerous list of exceptions found in the regulations.³²

- Equipment, not subject to grain elevator regulations governing the standards of performance, that dries or has been designed to dry grain at a rate not more than 5% moisture extraction for 1,500 bushels or less per hour;³³ and
- Grain storage facilities, not subject to grain elevator regulations governing the standards of performance, that have an average tonnage of less than 5,500 tons received per month;

²⁷ WIS. STAT. ANN. § 160.05 (West 1997).

²⁸ WIS. STAT. ANN. §§ 285.01 *et seq.* (West 1999).

²⁹ WIS. STAT. ANN. § 285.21 (West 1999) and 42 U.S.C. § 7401 *et seq.* (1994).

³⁰ WIS. STAT. ANN. § 285.27 (West 1999).

³¹ WIS. ADMIN. CODE § NR 406.03 (West 1999).

³² WIS. ADMIN. CODE § NR 406.04 (West 1999).

³³ WIS. ADMIN. CODE § NR 440.47 (West 1999).

- Landspreads of contaminated soil including agricultural landspreads of soil contaminated with fertilizer or pesticide; or
- Installation and operation of crop irrigation systems or dewatering wells to remediate contaminated water.

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 should be aware of the requirements governing their actions.

A. Wisconsin 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 to determine whether an operation's activities could be regulated under state solid waste or hazardous waste statutes.

1. Wisconsin Solid Waste Laws and Regulations

Solid waste reduction, recovery, and recycling is regulated under Chapter 287 of Wisconsin's environmental statutes³⁴ while solid waste facilities are regulated under Chapter 289 of Wisconsin's environmental statutes.³⁵ The environmental statutes define solid waste as:

[A]ny garbage, refuse, sludge from a waste treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to certain statutory permits, or certain source material, or defined special nuclear material, or defined by-products.³⁶

³⁴ WIS. STAT. ANN. § 287 *et seq.* (West 1999).

³⁵ WIS. STAT. ANN. § 289 *et seq.* (West 1999).

³⁶ WIS. STAT. ANN. § 289.01(33) (West 1999).

Producer Note: Solid waste for regulatory purposes is not necessarily solid in form. Agricultural producers must consider whether they may be violating federal or state statutes when they dispose wastes on their land. Of particular concern are petroleum products, plastic containers, unused pesticides, herbicides, fertilizers, and other wastes that may contaminate surface water or groundwater or pose a threat to humans, livestock, or wildlife. The practice of burying diverse items in a farm dump may no longer be permissible under the Resource Conservation and Recovery Act (RCRA)³⁷ or the Wisconsin environmental regulations.

Wisconsin's environmental statutes cover the reduction, recovery, recycling, incineration, disposal, collection, storage, and transportation of solid wastes. The reduction of the amount of solid waste disposed in landfills and burned without energy recovery is of particular attention.

2. *Wisconsin Hazardous Waste Laws and Regulations*

Hazardous material waste management is regulated under Chapter 291 of Wisconsin's environmental statutes.³⁸ The Wisconsin environmental regulations rely heavily upon the EPA definition of a hazardous waste as identified under the RCRA. Generally, the term hazardous waste means any solid waste or combination of solid wastes which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

- Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed, or otherwise managed.³⁹

Specifically, the list of hazardous wastes promulgated by rule by the DNR is identical to the list promulgated by the federal government under the RCRA.

The improper generation, disposal, treatment, transportation, or storage of a hazardous waste constitutes an unlawful act under the Wisconsin environmental regulations. A violator of Wisconsin's environmental regulations concerning hazardous waste may be fined up to \$25,000 for each day of violation. A willful violator is subject to additional criminal penalties including a fine up to \$100,000 or imprisonment up to seven years.

³⁷ 42 U.S.C. § 6901 *et seq.* (1994).

³⁸ WIS. STAT. ANN. § 291 *et seq.* (West 1999).

³⁹ WIS. ADMIN. CODE § NR 605.04 *et seq.* (West 1999).

3. *Wisconsin Landspreading of Solid Waste*

Under the DNR regulations, no person may operate or maintain a solid waste landspreading facility unless the person has written approval from the DNR.⁴⁰ The following landspreading facilities are exempt from the regulatory requirements when the solid waste or solid waste-derived product is applied as a soil conditioner or fertilizer in accordance with accepted agricultural practices and the facility is operated and maintained in a safe, nuisance-free manner:

- Facilities used for the landspreading of nonhazardous solid waste from a single family or household when the owner, occupant, or lessee of the property used for the disposal is a member of the family or household;
- Farms on which only nonhazardous agricultural solid wastes resulting from the operation of a farm⁴¹ are dispersed; or
- Facilities used for the disposal of soil contaminated only with agricultural chemicals regulated by the DATCP.

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 pesticide users. In addition, if an agricultural producer employs agricultural workers, there are regulations which address safety concerns about pesticide use by those workers or around those workers.

A. Wisconsin Pesticide and Chemigation Laws and Regulations

Producer Note: Wisconsin, 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.

⁴⁰ WIS. ADMIN. CODE § NR 518.04 (West 1999).

⁴¹ Including farm animal manure.

1. *Wisconsin Pesticides*

Wisconsin statutes provide the general rules for the adulteration, misbranding, prohibited use, certification, licensing, sale, and distribution of pesticides.⁴² The Wisconsin DATCP regulates the use and control of pesticides.⁴³ The DATCP regulates:

- The registration and labeling of all pesticides sold, distributed, or to be sold or distributed in Wisconsin;
- The licensing of all pesticide manufacturers and labelers as well as dealers and distributors of restricted-use pesticides;
- The licensing and certification of all private and commercial applicators of pesticides;
- The certification of all pesticide mixers and loaders;
- The special certification and licensing of all aerial pesticide and chemigation applicators;
- The registration of all employee trainees for licensing and certification as pesticide mixers, loaders, or applicators;
- The use of any pesticide;
- The storing,⁴⁴ selling, and transporting of all pesticides;
- The mixing and loading of any pesticide at a prohibited site;
- The filling or cleaning of any pesticide application equipment, mix tank, or nurse tank near any well site or in the waters of the state;
- The disposal of pesticides and pesticide containers;
- Timely and adequate notice and warning of pesticide application and use; and
- The compliance with federal worker protection standards as they apply to pesticide use and application.

⁴² WIS. STAT. ANN. § 94.67 *et seq.* (West 1990 & Supp. 1998).

⁴³ WIS. ADMIN. CODE § ATCP 29 *et seq.* (West 1999).

⁴⁴ Including but not limited to bulk storage.

The DATCP also requires pesticide manufacturers, labelers, and applicators to keep detailed records and reports on information relevant to the regulation of pesticides in Wisconsin. Generally, the records and reports must be kept for two years.

Additionally, the DATCP furnishes a list of restricted-use pesticides, prohibited pesticides, and pesticides allowed only for certain purposes.⁴⁵ Violators of Wisconsin statutes, rules, regulations, or orders governing the use of pesticides may be fined up to \$500 for the first violation and up to \$1,000 for any subsequent violation within five years. Any person who knowingly violates a rule or order may be fined up to \$1,000 and imprisoned up to 30 days. Any commercial dealer, applicator, or distributor who knowingly violates any rule or order may be fined up to \$5,000 and imprisoned up to one year.

2. *Wisconsin Chemigation*

The DATCP also regulates chemigation.⁴⁶ Chemigation means the application of pesticides using a system or device which mixes the pesticides with irrigation water drawn from any source and applies the pesticides along with the irrigation water. Generally, all chemigation systems must be designed, constructed, operated, and maintained to prevent pesticides used in the system from contaminating the waters of the state and to prevent unreasonable hazards to persons, property, and the environment. To that end:

- No chemigation system may draw water directly from a potable water supply;
- No container used to hold pesticides for injection into a chemigation system may be located less than eight horizontal feet from any water supply;
- The chemigation system must be operated according to a written operating plan;
- The individual operating the chemigation system must be present at least hourly; and
- Adequate warning of chemigation must be posted in compliance as to size, legibility, durability, accuracy, proximity to public areas, location, spacing, content, timing, and duration.⁴⁷

⁴⁵ WIS. ADMIN. CODE § ATCP 30 *et seq.* (West 1999).

⁴⁶ WIS. ADMIN. CODE § ATCP 29.54 *et seq.* (West 1999).

⁴⁷ In general, signs must be at least 8 ½ x 11 inches in size, posted before and during the treatment including any restricted entry interval, durable, legible, and spaced at least every 1/4 mile along the perimeter of the treated area where the public may be found such as points of access and within 300 feet of a residence, migrant labor camp, school, playground, day care facility, health care facility, commercial or industrial facility, and recreation area but excluding a public highway; *see* WIS. ADMIN. CODE § 29.52 (West 1999).

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 and wildlife habitat.

A. Wisconsin Wildlife Protection Laws and Regulations

Producer Note: Many states have additional measures which either enhance protections under federal laws or address issues regarding peculiar wildlife found within the state or common problems caused by wildlife. Wisconsin is one of such states that has state laws protecting wildlife.

As a matter of the state's general concern, the Wisconsin legislature finds that certain wild animals and plants are endangered or threatened and entitled to preservation and protection.⁴⁸ To ensure and to strengthen the potential for the continued existence of endangered or threatened species in the state, Wisconsin statutes restrict the taking, possession, or marketing of endangered or threatened species within the state and establish a program of conservation and restoration of these endangered or threatened species. The DNR maintains a list of threatened or endangered species consisting of three parts:

- Wild animals and wild plants on the U.S. list of endangered and threatened foreign species;
- Wild animals and wild plants on the U.S. list of endangered and threatened native species; and
- Endangered and threatened Wisconsin species.

The DNR prohibits, except as permitted by rule or permit:

- The taking, transportation, possession, processing, or selling within the state of any wild animal listed on the DNR endangered or threatened species list;
- The processing or selling of any wild plant of an endangered or threatened species;
- The removal, transport, or carrying away of any wild plant that is an endangered or threatened species; or

⁴⁸ WIS. STAT. ANN. § 29.604 *et seq.* (West 1999).

- The cutting, up rooting, severing, injury, or destruction of any wild plant that is on the endangered or threatened species.

Violations of state laws and regulations protecting endangered or threatened plant or animal wildlife are punishable by:

- Fines up to \$2,000;
- Revocation of all hunting approvals; and
- Prohibition of future hunting approvals for one year.

Intentional violators may be punished by:

- Fines up to \$5,000, imprisonment up to nine months, or both;
- Revocation of all hunting approvals; and
- Prohibition of future hunting approvals for three years.

The DNR may also bring a civil action in the name of the state against any person killing, wounding, catching, taking, trapping, or possessing any of the named, protected wild animals, birds, or fish in violation of the Wisconsin statutes.⁴⁹ In addition, the Wisconsin statutes allow a court imposed levy of animal protection assessment.⁵⁰ All monies collected under this wild animal protection assessment are placed in the state's conservation fund.

Producer Note: In October of 1999, the Wisconsin DNR backed away from a controversial proposal to allow a public hunting season on wolves. The state Natural Resources Board approved the DNR wolf management plan excluding its Appendix J, the wolf harvest regulations. However, the Natural Resources Board provided that an advisory or stakeholder group could bring the proposal up at a future date.

⁴⁹ WIS. STAT. ANN. § 29.977 (West 1999).

⁵⁰ WIS. STAT. ANN. § 29.983 (West 1999).

VII. ENFORCEMENT OF STATE ENVIRONMENTAL LAWS

As with federal environmental laws, persons who violate the requirements of state environmental laws face substantial penalties. The specific penalties vary to some degree with the particular statute. However, penalties generally include both civil and criminal fines. Fines can be assessed for each day of violation. For severe or repeated violations, imprisonment can be imposed. State agencies can also bring legal 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 file suits to enforce the requirements of the environmental laws. As with the federal statutes, state laws usually afford persons the right to administrative and/or judicial review of agency decisions.

VIII. OTHER WISCONSIN STATUTES AFFECTING AGRICULTURE

A. Wisconsin Farmland Preservation

1. Wisconsin Zoning and Planning

Producer Note: Agricultural operations frequently are controlled by local planning or zoning board activities. Since it is not possible to outline each local area's requirements, agricultural producers must check with local boards and governmental units to determine local planning and zoning regulations which may affect agricultural activities and operations.

a. Smart Growth

Along with many other states, Wisconsin recognizes the undesirable results of urban sprawl including unplanned, unsightly, and wasteful growth.⁵¹ Through legislation referred to as Act 9 or Smart Growth, Wisconsin responds to this phenomenon.⁵² Smart Growth encourages public participation and sets forth nine essential elements of required comprehensive plans.⁵³ Smart Growth, however, also provides state funding to local governments to help pay for such planning, and it affords technical planning support through the University of Wisconsin Extension Service. As the guide for future development and redevelopment of local

⁵¹ From master plans in the 1920's (re: § 60.22) to county development plans in the 1960's (re: § 59.69) to comprehensive plans in 1999, Wisconsin has addressed unified, managed growth plans for local governmental units; *see* WIS. STAT. ANN. § 66.1001 (West 1999).

⁵² WIS. STAT. ANN. § 66.1001 (West 1999).

⁵³ The nine elements are: 1) issues and opportunities element, 2) housing element, 3) transportation element, 4) utilities and community facilities element, 5) agricultural, natural, and cultural resources element, 6) economic development element, 7) intergovernmental cooperation element, 8) land-use element, and 9) implementation element; *see* WIS. STAT. ANN. § 66.1001 (West 1999).

governmental units, the Smart Growth statutes mandate by 2010 that comprehensive twenty year (20 yr.) plans containing all nine elements be prepared by local planning commissions.⁵⁴

Although the agricultural, natural, and cultural element is only one of the nine elements required in a comprehensive plan, this element is a compilation of objectives, policies, goals, maps, and programs for the conservation and promotion of the effective management of natural resources such as groundwater, forests, productive agricultural areas, environmentally sensitive areas, threatened and endangered species, stream corridors, surface water, floodplains, wetlands, wildlife habitat, metallic and nonmetallic mineral resources, parks, open spaces, historical and cultural resources, community design, recreational resources and other natural resources.⁵⁵

Wisconsin statutes also authorize counties, towns, villages, and cities to divide their jurisdictions into zones and govern the uses of the land and structures within each zone.⁵⁶ The agricultural use of land may be regulated, and conditions may be imposed on the use of that land including environmental restrictions. Two examples of such governmentally imposed environmental restrictions on agricultural land use are farmland preservation agreements and exclusive agricultural zoning.

b. Farmland Preservation Agreements

Farmland preservation agreements are voluntary agreements between owners of farmland and a governmental entity. By entering into such agreements agricultural producers agree to preserve their land for no other land use except agricultural use in exchange for compensation, generally some type of tax break. In Wisconsin, an owner of farmland may apply for a farmland preservation agreement if:

- The county in which the land is located has a certified agricultural preservation plan; or
- The land is in an area zoned for exclusive agricultural use under a certified ordinance.⁵⁷

⁵⁴ The term local governmental unit includes city, village, town, county, or regional planning commissions; *see* WIS. STAT. ANN. § 66.1001 (West 1999).

⁵⁵ WIS. STAT. ANN. § 66.1001 (West 1999).

⁵⁶ WIS. STAT. ANN. §§ 59-62 *et seq.* (West 1999).

⁵⁷ WIS. STAT. ANN. § 91.11 (West 1999).

c. *Exclusive Agricultural Zoning*

Exclusive Agricultural Zoning (EAZ) refers to county and municipal zoning ordinances that support and protect farmland by stabilizing the agricultural land base.⁵⁸ EAZ designates areas where farming is the desired land use, generally on the basis of soil quality and a variety of locality factors. EAZ discourages other land uses, and non-farm related businesses are not usually allowed. EAZ ordinances are prevalent throughout Wisconsin.

2. *Wisconsin Conservation Easements*

Producer Note: Many states have passed laws allowing preservation or conservation of agricultural land through the use of conservation easements. When conservation easements are used for these purposes, the law frequently has certain requirements relating to the creation, compensation, and enforcement of the easements.

Conservation easements limit land to specific uses and, thus, protect it from development.⁵⁹ These voluntary legal agreements are created between private landowners (grantors) and qualified land trusts, conservation organizations, or governmental agencies (grantees). Grantors may receive compensation or federal tax benefits or both as a result of donating a conservation easement. Most conservation easements are permanent.

The National Conference of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act (UCEA) in 1981. The act was designed to serve as a model for state legislation to allow qualified state agencies and private conservation organizations to accept, acquire, and hold land for the purpose of conservation and preservation. Since the UCEA was approved, 21 states have adopted conservation easement-enabling legislation based on this model, and 23 states have drafted and enacted their own conservation easement-enabling laws. Wisconsin has adopted the UCEA.⁶⁰

a. *Agricultural Conservation Easements*

Agricultural conservation easements are designed specifically to protect farmland.⁶¹ Grantors retain title of ownership to the land and the right to use the land for farming and other purposes that do not interfere with or reduce agricultural viability. Grantors of agricultural conservation easements may continue to restrict access, sell, give, or transfer the remaining

⁵⁸AMERICAN FARMLAND TRUST, SAVING AMERICAN FARMLAND: WHAT WORKS 49 (1997).

⁵⁹ *Id.* at 36.

⁶⁰ WIS. STAT. ANN. § 700.40 (West 1999).

⁶¹ AMERICAN FARMLAND TRUST, *supra* note 64, at 36.

property rights as usual. Agricultural producers also remain eligible for any state or federal farm program for which they qualified before entering into an agricultural conservation agreement.

b. Purchase of Agricultural Conservation Easement Programs

The purchase of agricultural conservation easements (PACE) refers to programs that pay landowners to keep land available for agricultural uses.⁶² The PACE is known as the purchase of development rights (PDR) in many locations. Generally, landowners sell agricultural conservation easements to private conservation organizations or state or local governmental agencies. Landowners are usually paid the difference between the value of their land for agriculture and the value of the land for its highest and best use which is often commercial or residential development.

The PACE programs serve four principal functions that contribute to farmland protection:

- Preventing non-agricultural development that could effectively foreclose the possibility of farming;
- Removing the development potential from farmland generally reduces its future market value; thus, PACE helps to facilitate farm transfer to the children of agricultural producers and makes farmland more affordable to beginning producers;
- Providing landowners with immediate liquid capital that can enhance the viability of individual farming operations and help perpetuate family tenure on the land; and
- Giving communities a way to share the costs of protecting farmland with landowners.

A local PACE program was begun in Dunn County Wisconsin in 1996. During the first year of its inception, the program protected 174 acres at a cost of \$260,000.

⁶² *Id.* at 83.

3. *Wisconsin Circuit Breaker Tax Relief Credits*

Circuit breaker tax relief programs offer tax credits to offset real property tax bills.⁶³ The Wisconsin legislature has provided Wisconsin agricultural producers with two types of tax credits, the farmland preservation credit⁶⁴ and the farmland tax credit.⁶⁵ Basically, Wisconsin agricultural producers may receive state income tax credits based on the amount of their real property tax bill and their income.⁶⁶ To be eligible for the circuit breaker income tax credit program in Wisconsin, land must be located in an agricultural zone. This provision is at least partly responsible for the adoption of EAZ in more than 438 Wisconsin jurisdictions.⁶⁷

a. Wisconsin's Farmland Preservation Program

Wisconsin's Farmland Preservation Program identifies and protects agricultural areas against unplanned development and preserves agricultural land and open spaces by:

- Promoting orderly land use planning and development;
- Promoting soil and water conservation; and
- Providing tax relief to farmers in the program.

In order for agricultural producers to participate in the program, the county must adopt an agricultural preservation plan which is certified by the Land and Water Conservation Board.⁶⁸ Seventy of Wisconsin's 72 counties have such certified agricultural preservation plans. Further eligibility requirements include:

- Residency in Wisconsin;
- Farm activities conducted in compliance with county soil and water conservation standards; and

⁶³ *Id.* at 34.

⁶⁴ WIS. STAT. ANN. § 71.57 *et seq.* (West 1999).

⁶⁵ WIS. STAT. ANN. § 71.28 *et seq.* (West 1999).

⁶⁶ AMERICAN FARMLAND TRUST, at 52.

⁶⁷ *Id.* at 155.

⁶⁸ *Id.* at 155-157.

- Ownership of 35 or more acres of contiguous land which produces gross farm profits of \$6,000.00 or more in the last year or \$18,000.00 in the last three years; or
- Ownership of 35 or more acres of which is enrolled in the Conservation Reserve Program.

The maximum tax credit allowed is \$4,200. In 2000, about 22,000 agricultural producers claimed farmland preservation credits totaling almost \$18 million with an average tax credit of approximately \$824 per producer. Statewide, approximately 38% of potentially eligible producers claimed the credit; however, 50% or 8.2 million of Wisconsin's 16.4 million acres are enrolled in the program.

If not located in an agricultural preservation area, a farmer in a rural area may still qualify for tax credits by entering into a farmland preservation agreement.⁶⁹ Approximately 1.2 million acres are enrolled in farmland preservation agreements.

b. Wisconsin's Farmland Tax Relief Credit

Wisconsin's farmland tax relief credit may equal 10% or up to \$10,000 in property taxes on agricultural land. Household income does not affect this credit as it does farmland preservation credits. Agricultural producers may claim both the farmland preservation credit and the farmland tax relief credit, but the sum of the two credits cannot exceed 95% of the agricultural producer's total property tax liability.

4. Wisconsin Farms for the Future Fund

The Wisconsin legislature has established a separate nonlapsible trust fund designated as the farms of the future fund.⁷⁰ The sole purpose of this trust is to invest funds in the preservation and protection of farmland for agricultural purposes. The funds for the trust come from gifts, grants, and bequests to the fund; monies also come from counties, cities, villages, towns, and the federal government under its farmland protection policy.

⁶⁹ DEPARTMENT OF AGRICULTURE, TRADE, AND CONSUMER PROTECTION, *FARMLAND PRESERVATION PROGRAM SUMMARY SHEET 2001*.

⁷⁰ WIS. STAT. ANN. § 25.44 (West 1999).

B. Wisconsin Nuisance and Right-to-Farm Laws

Producer Note: Agricultural producers may be confronted with complaints of local residents. These complaints may originate from dust or odor generated by the agricultural operation or may result from a lack of knowledge of agricultural activities. While legal actions against agricultural operations are not specifically an area where the state or federal authorities usually become involved, private legal actions can be brought against the operation. These actions are usually based on a nuisance theory, and in some cases, a right-to-farm defense may apply.

1. Wisconsin Nuisance Law

Traditionally, there are two types of nuisance complaints or lawsuits under the common law, a private nuisance or a public nuisance. Generally, under Wisconsin law:

A private nuisance is an intentional and unreasonable, or unintentional but negligent or reckless, invasion of another's interest in the private use and enjoyment of his or her property.⁷¹

A public nuisance is an unreasonable interference with a common right of the general public and not merely a right of some particular person.⁷²

Unreasonable conduct is conduct that involves significant interference with the public health, public safety, public peace, public comfort, or public convenience or conduct that is generally proscribed by statute, ordinance, or regulation.

2. Wisconsin Right-to-Farm Law

Right-to-farm laws are laws that are designed to protect agricultural producers from lawsuits initiated by neighbors based on private nuisance or unreasonable attempts to prohibit farming operations in favor of other uses of the land. The Wisconsin legislature, believing that the law should not hamper agricultural production or the use of modern agricultural technology, has enacted a right-to-farm law.⁷³ Under this law, an agricultural use or practice may not be found to be a nuisance when the agricultural use of practice is:

⁷¹ See generally, *Stunkel v. Price Electric Cooperative*, 599 N.W.2d 919, 921-922 (Wis. Ct. App. 1999) (explaining that Wisconsin has adopted the Restatement (Second) of Torts § 822 into the law of private nuisance).

⁷² RESTATEMENT (SECOND) OF TORTS § 821B (1979).

⁷³ WIS. STAT. ANN. § 823.08 (West 1999).

- Conducted on a public right-of-way;
- Adjacent to land that was in agricultural use without substantial interruption before the person bringing the suit began the use of the property that is allegedly experiencing interference by the agricultural use or practice; and
- Not present a substantial threat to public health or safety.

If the agricultural use or practice alleged to be a nuisance is not found to be a nuisance by the court, then the agricultural producer may collect from the party bringing the nuisance action the following:

- Court costs;
- Disbursements; and
- Expenses including reasonable attorney fees and any expert witness and engineering fees incurred as a result of the producer having to defend the nuisance action.

C. Wisconsin Noxious Weeds

Wisconsin statutes impose an affirmative duty on every person to destroy all noxious weeds on lands which the person owns, occupies, or controls.⁷⁴ Under this legislation, the term noxious weeds includes Canada thistle, field bindweed (creeping Jenny), leafy spurge, and any other such weeds as declared to be noxious by the governing body of any municipality or the county board of any county by ordinance or resolution within its respective boundary of jurisdiction. Additionally, no commercial or unmixed feed or meal may be distributed, offered for sale, exposed for sale, or sold which contains noxious weed seeds in a germinative state including but not limited to quack grass, thistle, and wild mustard either separately or combined.⁷⁵

⁷⁴ WIS. STAT. ANN § 66.96 (West 1999).

⁷⁵ WIS. STAT. ANN. § 94.72 (West 1999).

D. Wisconsin Aquaculture

Aquaculture is defined broadly under Wisconsin law as the controlled cultivation of aquatic plants and animals.⁷⁶ Traditionally, aquaculture in Wisconsin referred only to fish farms meaning facilities where a person hatches fish eggs or holds live fish.⁷⁷ State certification and registration of fish farms is required, and in special circumstances, a WPDES permit may be required. Additionally, some fish farms may require health permits.

E. Wisconsin Dead Animal Disposal

Generally, a license is required for any person who engages in the business of collecting or processing dead animals as a renderer, animal food processor, grease processor, or collector; however, there are limited exceptions.⁷⁸ No person may establish a rendering or processing plant within one-eighth of a mile of a dwelling, public business, or private business. Live downer animals picked up for animal food processing or rendering must be slaughtered before loading for transport to a processing or rendering plant. Violators of these statutory provisions may be fined up to \$1,000 for each violation.

⁷⁶ WIS. STAT. ANN. § 93.01 (West 1999).

⁷⁷ WIS. ADMIN. CODE § ATCP 10.68 (West 1999).

⁷⁸ WIS. STAT. ANN. § 95.72 (West 1999).

Appendix A - Agencies

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

State Agencies:

Department of Agriculture, Trade, and Consumer
Protection
2811 Agriculture Drive or
P.O. Box 8911
Madison, WI 53708-8911
(608) 224-5012
(608) 224-5045 fax
<http://www.datcy.state.wi.gov>

Department of Health and Family Services

1 West Wilson Street
Madison WI 53702 or
P.O. Box 7850
Madison, WI 53707-7850
(608) 266-1865
(608) 266-7882 fax
(608) 266-2663 Hazardous Substance Spills
<http://www.dhfs.state.wi.gov>

Environmental Health Resources (in DHFS)
P.O. Box 2659
Madison, WI 53701-2659
(608) 266-1120
(608) 267-0402 fax

Department of Natural Resources

101 South Webster Street
Madison, WI 53703
(608) 266-2621
(608) 261-4380 fax
<http://www.dnr.state.wi.us/>