

III. AIR QUALITY

A. Federal Clean Air Act

The Clean Air Act¹⁶ (CAA) is a comprehensive and complex piece of environmental legislation. The 1990 amendments to the CAA require sources which may cause pollution to obtain operating permits. These permits include a comprehensive statement of the pollution source's CAA obligations regarding emission limits, fee requirements, inspection, monitoring, and reporting duties. Violators are exposed to administrative compliance orders and federal court injunctions.

Under the 1990 CAA amendments, all criminal penalties are felonies. Fines of up to \$250,000 per day may be imposed on individuals and up to \$500,000 per day on corporations. Prison terms of up to five years may be imposed. Subsequent violations may result in the doubling of sanctions. Knowing endangerment offenses for the release of hazardous air pollutants may subject individuals to fines of up to \$250,000 with jail sentences of up to 15 years, and corporations may be fined up to \$1,000,000.

¹⁵ UTAH CODE ANN. § 73-3-22 *et seq.* (1989).

¹⁶ 42 U.S.C. § 7401 *et seq.* (1994).

Negligently releasing hazardous air pollutants can subject the polluter to fines of up to \$250,000 and one year in jail if the polluter knows that the actions will place another person in imminent danger of death or serious bodily injury. Making false statements on reports or tampering with monitoring devices may result in fines up to \$250,000 per day and jail terms of up to two years.

In April of 1994, EPA announced a reward program for citizens who report companies that violate the CAA. Rewards of up to \$10,000 may be awarded to citizens whose information results in a criminal conviction or fine under the CAA.

The overall objective of the CAA is to protect human health, welfare, and the environment by maintaining and improving the quality of the air through the development of standards. Standards controlling ambient air emissions from farming practices like prescribed burning are geographically specific within each State Implementation Plan (SIP). The SIP may also provide visibility standards. Locations which the National Ambient Air Quality Standards designate as air non-attainment areas are subject to more restrictions.

Finally, grain terminal elevators having a permanent storage capacity of more than 2.5 million bushels and grain storage elevators with a permanent storage capacity of more than one million bushels, including their loading and unloading facilities, are governed by regulations controlling discharge of gases and grain loading and unloading emissions.

Currently, the CAA has no application to the problem of odor, which is a common complaint regarding agricultural facilities. Odor problems are usually handled under state nuisance laws or other state environmental laws or local ordinances. However, livestock producers must stay informed of changes in the CAA which might affect them in the future. For example, regulations have been proposed which would prohibit dust from remaining in the air beyond the property on which it originates. A strict interpretation of this regulation could subject combining, disking, or other farm and ranch operations to the provisions of the CAA.

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

B. State Air Quality Laws and Regulations

Under the Utah Air Conservation Act,¹⁷ responsibility for overseeing protection of air quality rests with DEQ and the Utah Air Quality Board. The Air Quality Board is required to implement an air pollution operating permit program which complies with the federal Clean Air Act.

¹⁷ UTAH CODE ANN. § 19-2-102 *et seq.* (1995).

Air contaminants are any particulate matters excluding steam and water vapor. Air pollution is defined as the presence of any air contaminants in such quantity and duration that it tends to be injurious to human health or would unreasonably interfere with the enjoyment of life. The operator of any source of air pollution which under federal law would require an operating permit is required to have an operating permit from the Air Quality Board. Any operator who knowingly violates the terms of an operating permit is subject to a fine of up to \$10,000 per day.

Producer Note: Utah has enacted clean fuel requirements for automobile and truck fleets, but does not include motor vehicles which are properly registered as farm trucks. Farm trucks are trucks used by the owner or operator of a farm solely for personal use in the transportation of farm products, farm supplies, or livestock, poultry, and other animals used for breeding, feeding, or other purposes connected with a farm. However, farm trucks do not include trucks operated by commercial processors of agricultural products. If the vehicles are not properly registered as farm trucks, they will have to comply with all clean fuel requirements.

Utah has also established a small business assistance program that is designed to assist properly qualified small businesses to comply with the requirements of the federal Clean Air Act.¹⁸

1. Dust Emissions from Farming Operations

Utah has enacted regulations which restrict the amount of dust raised by certain activities. However, those regulations do not apply to agricultural or horticultural operations.¹⁹

2. Burning

Utah has enacted laws regulating burning. However, horticultural or agricultural burning of the following materials is not considered a violation of the Utah Air Conservation Act.²⁰

- Pruning from trees, bushes, and plants;
- Dead or diseased trees, bushes, and plants, including stubble;
- Burning of weed growth along ditch banks incident to clearing those ditches for irrigation purposes; and

¹⁸ UTAH CODE ANN. § 19-2-109.2 (1995).

¹⁹ UTAH ADMIN. R. R307-12.

²⁰ UTAH CODE ANN. § 19-2-114 *et seq.* (1995).

- Controlled heating of orchards or other crops to lessen the chances of their being frozen, so long as the burning does not violate certain minimum air quality standards.

In addition, cities and counties require that individuals obtain a permit before starting any forest, brush, range, grass, stubble, or hay land fires.²¹ However, no permit is required for the burning of fence lines on cultivated lands, canals, or irrigation ditches as long as the nearest fire department is notified of the approximate time the fire will occur.

Producer Note: Producers should check with local authorities regarding obtaining permits for burning.

²¹ UTAH CODE ANN. § 11-7-1 *et seq.* (1996).

²² 42 U.S.C. § 6901 *et seq.* (1994).