

**STATE
ENVIRONMENTAL LAWS AFFECTING
ALABAMA AGRICULTURE**

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

A Project of the

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

through the

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



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

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The Project Participants

National Association of State Departments of Agriculture Research Foundation

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

National Center for Agricultural Law Research and Information

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

Natural Resources Conservation Service

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

U.S. Environmental Protection Agency

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

Disclaimer

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

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The contents and 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 April 2003. Updates of the information contained in the guide will occur on an annual basis and be made 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. 1-5</i>	Livestock and aquaculture operations, depending on size	NPDES and state general permit or land disposal permit	EPA Regional Office and Alabama Department of Environmental Management (ADEM)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit	U.S. Army Corps of Engineers with EPA and ADEM approval
	Water usage	Permit not required	ADEM & Alabama Water Resources Commission (AWRC)
	Water well construction and use	No permit, but construction standards must be followed	ADEM
Groundwater <i>pp. 5-7</i>	Groundwater protection	No permit, but BMPs must be followed	(ADEM)
Air Quality <i>pp. 7</i>	Grain terminals and grain elevators	Permit required	EPA Regional Office or ADEM
	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance suits	EPA Regional Office or ADEM

	Burning	Permit not required	ADEM
Solid Waste and Hazardous Waste <i>pp. 7-10</i>	Storage, treatment, or disposal of hazardous or solid waste	Permit required for disposal, treatment, or storage activities	EPA Regional Office and ADEM
	Public notice of hazardous waste	No permit	Local Emergency Planning Committee and Alabama Department of
Pesticides and Chemigation <i>pp. 10-11</i>	Application and use of pesticides	Permit required	EPA and ADEM
	Use of pesticides around farmworkers	Permit required	ADEM and Alabama Department of Agriculture
	Record keeping	No permit, but all requirements must be met	Alabama Department of Agriculture
Wildlife Protection <i>pp. 11-12</i>	Taking of wildlife	Permit or license required if endangered or threatened species may be affected	U.S. Fish and Wildlife Service

STATE ENVIRONMENTAL LAWS AFFECTING ALABAMA AGRICULTURE

Producer Note: Agricultural producers are faced with many challenges in today's rapidly changing world. Changes in industrialization, use of computer-based technology, governmental involvement in market dynamics, and environmental regulation are affecting producers in a number of ways. Environmental regulation is a complex area with both federal and state government involvement. Keeping informed is the producer's most useful instrument for meeting the challenges of today's agriculture. This information on environmental regulation is provided to inform producers of the breadth and scope of environmental laws which may impact daily production activities.

I. WATER QUALITY

A. State Water Quality Law and Regulation

Most states have enacted clean water legislation. While these statutes usually contain provisions similar to those found in the parallel federal legislation, there may be significant differences. In fact, state statutes may impose requirements that are even more restrictive than the federal law. In all cases, CWA requirements must be followed, and are enforced along with the state enacted statutes and regulations implemented by the state administrative agencies. Under the CWA, EPA has delegated the NPDES permit program to many states.

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

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

1. *Alabama Environmental Management Act*

Producer Note: The Environmental Management Act ("EMA") was enacted to effectuate the grouping of several state agencies under one department. The EMA created

the Alabama Department of Environmental Management (“ADEM”) in order to facilitate a comprehensive and coordinated program of environmental management. Under the supervision of the Environmental Management Commission (“Commission”), ADEM is responsible for administering the provisions of the Alabama Water Pollution Control Act, the Safe Drinking Water Program, the Alabama Water Resources Act, the Alabama Air Pollution Control Act, the Water Well Standards Act, the Water and Wastewater Systems and Treatment Plant Operator Program, the Coastal Area Management Program, the Solid Waste Program, and the Hazardous Waste Program.

The Environmental Management Act¹ (“EMA”) gives ADEM authority to regulate the quality of surface waters in Alabama by designating ADEM as the administering agency of Alabama’s Water Pollution Control Act (“Water Act”).² The Water Act authorizes ADEM to investigate, study, and develop comprehensive programs to control and reduce pollution of “navigable and not navigable” waters of the state. ADEM establishes guidelines and standards under the Water Act that, together with water quality standards, are used to determine criteria standards and limitations for recognized limits of pollution. These standards and recognized limits are used to set waste discharge permit requirements. Moreover, ADEM may issue, modify or deny permits for the installation, modification, or operation of treatment or disposal systems.

Producer Note: As provided by the Water Pollution Control Act, the Commission has established water quality standards for all surface waters in the state. The standards first set forth the water use classifications for each river, stream and lake in the state, including recreational, agricultural and industrial water supply, navigation, shellfish harvesting, or public water supply. Next, the standards establish, for each type of pollutant, the amount of waste that can be discharged into the river, stream, or lake without reducing the water quality below the minimum established for its use. These standards are then used to set discharge permit requirements.

2. *Alabama NPDES Program*

Producer Note: EPA has delegated the NPDES program in Alabama to ADEM. As a result, ADEM, not EPA, has primary responsibility for issuing permits for point source discharges and for enforcing related sections of the CWA. However, ADEM must administer the program in compliance with all federal statutes, regulations, and standards.

¹ ALA CODE § 22-22A-1 *et seq.* (1997).

² ALA CODE § 22-22-1 *et seq.* (1997).

Undoubtedly, one of ADEM's most important duties under the Water Act is the issuance of permits for waste discharges in the state's surface waters. It may issue, modify, or revoke permits and issue orders prohibiting the discharges when it determines that a producer is not in compliance with the standards of the Water Act.

3. *Concentrated Animal Feeding Operations*

Producer Note: A change in the regulations governing operations designated as concentrated animal feeding operations ("CAFOs") or animal feeding operations ("AFOs") is currently being proposed; therefore, the existing regulations may change. Under the present regulations,¹ an NPDES permit is only required for concentrated animal feeding operations, concentrated aquatic animal production facilities, and aquaculture projects that discharge waste into the waters of Alabama. Under the proposed plan AFOs -- facilities that have animals gathered for 45 days in a 12-month period -- must implement measures to prevent pollutants from flowing into open water. Additionally, all CAFOs would be required to register with ADEM.

4. *Enforcement of Water Pollution Control Act*

Unless the discharge of waste into surface waters is authorized by an NPDES or other permit, any discharge is a violation of the Water Act. Any person who violates the Act are subject to both civil and criminal penalties. Civil penalties can result in fines up to \$25,000 for each violation, and each day the violation continues is considered to be a separate offense. Moreover, where pollution occurs because of willful or wanton conduct on the part of the discharger, punitive damages may be assessed. Additionally, when a discharge results in the death of fish or other wildlife, the discharger is also liable for the costs of restocking the waters and replenishing the wildlife.

Serious violations of the Water Act -- described as a willful violation or a violation due to gross negligence -- are punishable by a fine as well as imprisonment. For subsequent violations, the fine and imprisonment time is increased substantially. Any litigation, under the Water Act, may be brought by the Commission, the Attorney General, or any district attorney in any county where the violation occurred or the discharger resides. However, ADEM's ability to enforce NPDES permit requirements is limited to a two-year statute of limitations, whereas EPA's ability is five years.

Furthermore, the Water Act declares any pollution of Alabama's waters to be a public nuisance. Under state law, a public nuisance is one which damages all persons who come within the sphere of its operation, though it may vary in its effect on individuals. Generally, a public nuisance does not allow an individual to pursue a court action in his/her behalf for personal damages. (For further discussion of nuisance laws see page AL-46).

Producer Note: An administrative process is available to contest ADEM actions, such as issuance, denial, modification of a permit, issuance of abatement orders and an assessment of civil penalties. The administrative procedures provide for a hearing before the Commission or a designated hearing officer. Request for a hearing to contest an administrative action must be filed with the Commission within 15 days after notice to the aggrieved person, or if no notice is given, within 30 days of the contested administrative action. Any order issued by the Commission following the hearing can be appealed to the circuit court. All appeals must be filed within 30 days after issuance of the Commission's order.

5. *Alabama Nonpoint Source Pollution Control*

Producer Note: Alabama's statutory scheme for reducing soil erosion and its consequences -- the silting and sedimentation of streams and other waterways, the loss of fertile soil, and the reduction of productivity -- involves the formation of Soil and Water Conservation Districts ("Districts") under the direction of the State Soil and Water Committee ("Committee"). In order to assist in the implementation of agricultural nonpoint source pollution controls, legislation has been adopted to provide financial assistance to landowners to effect such controls.

The Soil and Water Conservation Districts Act³ establishes the formation of the Committee and Districts. The Committee acts as a coordinating body for all the Districts. On the other hand, the Districts are authorized to carry out preventative and control measures; to conduct surveys, investigations and research; and to develop comprehensive plans for the conservation of soil resources and the control and prevention of soil erosion, including the specification of engineering operations, method of cultivation, the growing of vegetation, cropping programs, tillage practices and changes in use of land. To achieve these goals, the governing body of the Districts -- supervisors -- have authority to formulate regulations governing the use of lands within the district to prevent and control soil erosion. The regulations apply to all lands in the district, agricultural and non-agricultural. When a failure to abide by the provisions of land use regulation occurs, the supervisors may initiate an action to force compliance in the circuit court of the county in which the land may lie.

Additionally, the Alabama Agricultural Nonpoint Source Financial Assistance Act of 1988⁴ ("NSFA") provides for the Committee to administer financial assistance or cost-share

³ ALA CODE § 9-8-20 *et seq.* (1987).

⁴ ALA CODE § 22-38-1 *et seq.* (1997).

grants to agricultural operations in order to control associated nonpoint source pollution. In deciding how the funds are to be allocated, the NSFA requires the establishment of priorities for all nonpoint source pollution controls under an overall state plan developed by ADEM and approved by EPA. Consequently, cost-sharing grants will be distributed to landusers in accordance with the priorities established in the agricultural component of the overall state plan.

6. Best Management Practices

Alabama has incorporated best management practices (“BMPs”) into its water quality program. BMPs means practices that prevent or reduce water pollution such as treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material or product storage.⁵ BMPs used for nonpoint source discharges must be adequate to protect water quality consistent with ADEM’s nonpoint source control program.⁶

Producer Note: The specifics of environmental laws are, oftentimes, found in an agency’s regulations. Moreover, regulations are very likely amended frequently. Consequently, a producer should keep in contact with the different administrative agencies in order to be current with all the changes that may develop within a particular program.

II. GROUNDWATER

A. State Groundwater Laws and Regulations

1. Alabama Water Resources Act

Alabama’s Water Resources Act⁷ provides for the most beneficial use of both surface and ground water. Under the Act, the Office of Water Resources (“OWR”) and the Water Resources Commission (“WRC”) were created to develop plans for the management of the waters of the state. However, the implementation or enforcement of any action restricting or limiting any person’s beneficial use of water resources will be under the direction of ADEM.

In fulfilling the requirements of the Act, the OWR is responsible for monitoring, coordinating, and managing water resources. In doing so, the OWR can sponsor or facilitate

⁵ ADEM Admin Code R. 335-6-5.02 (1995).

⁶ ADEM Admin Code R. 335-6-10.04 (1991).

⁷ ALA CODE § 9-10B-1 *et seq.* (Supp. 1998).

plans, projects, policies or programs for the conservation, protection, development, and management of water resources. Moreover, the OWR has discretionary authority to study, survey, analyze, or investigate all water resources including:

- Local, county, regional, and state waters;
- Ground, subsurface or surface waters;
- Watersheds, recharge or drainage areas; and
- Sub-basin or basin waters.

To this extent, the OWR can conduct critical use studies to determine if certain areas should be designated as capacity stress areas. Such studies are then reviewed by the WRC to determine if water use restrictions should be implemented in the studied areas. Once the WRC determines that restrictions are warranted, the enforcement of the restrictions fall under ADEM. Violations of the Act can result in civil penalties of up to \$1,000 for each violation, with each day a violation exists constituting a separate violation.

2. *Alabama Safe Drinking Water Act*

Under the Alabama Safe Drinking Water Act,⁸ ADEM is given the regulatory authority over the drinking water of the state to include providing for the method of protecting ground water supplies. To carry out its authority, ADEM is authorized to formulate and enforce both primary and secondary drinking water regulations. Restraining orders and permanent injunctions are available to ADEM in enforcing and protecting drinking water.

3. *Water Well Standards*

Alabama's Water Well Standards⁹ were enacted to establish guidelines for all wells drilled for the production of water. Although the Act does not dictate water quality standards, it does establish drilling requirements. These requirements provide for the licensing of all water well drillers and the notification of ADEM of all wells drilled. Failure to adhere to the provisions or formulated rules of the Act, is considered to be a misdemeanor and punishable by a fine of up to \$500.

⁸ ALA CODE § 22-23-30 *et seq.* (1997).

⁹ ALA CODE § 22-24-1 *et seq.* (1997).

III. AIR QUALITY

A. State Air Quality Laws and Regulations

Air quality is regulated under the Alabama Air Pollution Control Act of 1971.¹⁰ The purpose of the Act is to provide for a coordinated statewide program for the prevention, abatement and control of air pollution. As is the case with other environmental programs, ADEM has been designated as the agency to enforce the provisions of the Act.

In formulating a coordinated statewide plan, the Act allows existing local air pollution control programs to be maintained provided that the local requirements are consistent with, or more strict than, the requirements imposed by ADEM. However, the Act explicitly restricts any municipal governing body from exercising air pollution control jurisdiction over agricultural or farming operations within the corporate limits or police jurisdiction of the municipality. By the same token, ADEM regulations do not require specific air quality requirements for agricultural or farming operations.

Open burning of rubbish is permitted under controlled circumstances where depositing the rubbish in a sanitary landfill or other permissible landfill is not feasible. Rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves and similar materials.¹¹

Producer Note: Although crop residues are materials that appear to be considered to be rubbish. Open burning of fields following harvesting may present other problems and such action should be investigated prior to burning.

IV. SOLID WASTE AND HAZARDOUS WASTE

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

¹⁰ ALA CODE § 22-28-1 *et seq.* (1997).

¹¹ ALA CODE § 22-27-2 & 3 (1997).

A. State Solid Waste and Hazardous Waste Laws and Regulations

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

1. Solid Waste Disposal Act

The Solid Waste Disposal Act¹² authorizes local governing bodies -- the county commission or a municipality -- to provide for collection and disposal facilities for solid waste in a manner that meets ADEM regulations. Moreover, each county and certain municipalities are required to formulate a plan for managing solid waste within their boundaries. Solid waste, as defined under the Act, does not include household sewage and livestock and poultry wastes, but consists of garbage, rubbish, ashes, street and highway cleanings, dead animals, abandoned automobiles and such industrial wastes not controlled by other agencies.

Of particular interest is that the Act declares unauthorized dumps as a public nuisance *per se*, which means that any unauthorized dump, in and of itself, constitutes a violation of the Act. An unauthorized dump is defined as "any collection of solid wastes either dumped or caused to be dumped or placed on any property either public or private, whether or not regularly used, and not under the control or supervision of any person or agency. An abandoned automobile, large appliance or similar large item of solid waste shall be considered as forming an unauthorized dump within the meaning of this article, but not the careless littering of smaller individual items as tires, bottles, cans and the like."

Additionally, the Act mandates subscription to and participation in a collection system unless the individual or business is granted a certificate of exception. Thus, a person or business may dispose of their own solid waste on their own land provided that an application, an application fee, and a plan of disposal is submitted to the county health officer in the case of an individual and to ADEM in the case of a business. The plan must comply with the rules and regulations adopted by the state or county boards of health or ADEM and must not create a public nuisance or hazard to the public health.

Violators of any provision of the Act or any rule or regulation made pursuant to the Act are guilty of a misdemeanor, which can result in a fine of up to \$200 per violation with each day a violation continues constituting a new offense.

¹² ALA CODE § 22-27-1 *et seq.* (1997).

Producer Note: After a review of the Act and ADEM regulations there does not appear to be an agricultural exception to the provision classifying the depositing/abandoning of large items -- discarded farm machinery and implements -- as unauthorized dumps.

2. *Hazardous Waste Management and Minimization Act*

In enacting the Hazardous Wastes Management and Minimization Act,¹³ the Alabama legislature sought to control and safely manage any hazardous wastes through a statewide program administered by ADEM. Under the Act, hazardous waste is a solid waste such as garbage, refuse, or sludge, which because of its “quantity, concentration or physical, chemical or infectious characteristics” may present a hazard to human health or the environment. Furthermore, the disposal of such waste encompasses any discharge, deposit, injection, spilling, or leaking of the waste on or into the land or water, both surface and ground, or into the air.

Producer Note: In defining solid wastes that are included under hazardous wastes, the Act explicitly excluded “solid or dissolved materials in irrigation return flows.”

3. *Alabama Underground Storage Tank and Wellhead Protection Act*

The Alabama Underground Storage Tank and Wellhead Protection Act of 1988¹⁴ has a dual purpose: regulation of underground storage tanks (“USTs”) and protection of wellhead areas for public water supply systems. While the wellhead provisions authorize ADEM to formulate rules and regulations to protect wellhead areas from all “contaminants,” which may adversely effect public health, the USTs provisions address ADEM’s authority over tanks containing “regulated substances.” Regulated substances, under the ACT, are hazardous substances under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601-9675) and not those involved under Alabama’s Hazardous Wastes Management and Minimization Act (in previous section page AL-26).

Although the Act provides ADEM with regulatory authority over all tanks that contain regulated substances and are 10 percent or more underground, certain tanks are excluded from ADEM’s regulations. The excluded tanks include:

- Farm or residential tanks of 1,100 gallons or less that are used for storing motor fuel for noncommercial purposes;

¹³ ALA CODE § 22-30-1 *et seq.* (1997).

¹⁴ ALA CODE § 22-36-1 *et seq.* (1997).

- Tanks used for storing heating oil to be consumed on the stored premises;
- Septic tanks;
- Storage tanks located in an underground area -- basement, cellar, or similar area -- provided the tank is on or above the surface of the floor.

The statute also appoints ADEM as the administrator over the State Fund for investigative and corrective actions involving petroleum leaks from USTs. Before expending state funds, the ADEM will first seek correction of the problem from the responsible party. However, if no responsible party is found or an imminent danger to humans or the environment exists, ADEM may use state funds. In taking what corrective action is necessary, ADEM and authorized contractors can enter private property and perform the necessary work and later seek reimbursement from the owner or operator of the UST.

Furthermore, any willful violator of the Act or the rules and regulations promulgated in conjunction with the Act can be fined up to \$25,000 per day of violation or be imprisoned for up to one year, or both. The penalty for a second conviction can be double the amount previously mentioned. Also, anyone knowingly making a false statement or report of any required document or who tampers with a required monitoring device is subject to a fine of up to \$10,000 or imprisonment up to six months, or both.

V. PESTICIDES AND CHEMIGATION

Producer Note: Use of pesticides and other farm chemicals is regulated by federal and state statutes. Most states have some form of licensing or certification requirements controlling those who use pesticides. In addition, if a producer employs agricultural workers, there are regulations which address safety concerns about pesticide use by or around those workers.

A. State Pesticide and Chemigation Laws and Regulations

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

1. Alabama Pesticide Act

The Alabama Pesticide Act of 1971¹⁵ was enacted to regulate the registration, sale and use of pesticides on the farm, garden, lawn, golf course or in the home. Administration and enforcement of the Act is under the Commissioner of Agriculture and Industries (A Commissioner"). In keeping with the purpose of the Act, the Commissioner is responsible for:

- Registration of pesticide -- Every pesticide or device distributed, sold or offered for sale in the state must be registered with the Commissioner annually;
- Use permits -- Every person who purchases or uses a restricted-use pesticide (a pesticide or device found by the Commissioner to be hazardous when used by the general public) must obtain a use permit before purchasing or using the pesticide. To receive a permit, the user/purchaser must meet qualifications prescribed by the Commissioner;
- Sampling and inspection -- The Commissioner or his agent may enter public or private property to inspect and sample pesticides, devices and records regarding pesticides; and
- Labeling -- All labels must contain the name and address of the manufacturer; the name, brand, or trademark under which it is sold; the net weight of its contents; and other mandatory labeling requirements.

Violators of any provisions of the Act shall be guilty of a misdemeanor and can be fined up to \$10,000 by the Commissioner following a hearing and for any one offense, with all incidents arising out of the same transaction constituting one offense.¹⁶ Any fine or penalty may be appealed to the Board of Agriculture and Industry within 15 days of assessment of the fine or penalty. Failure to pay the fine or penalty can result in revocation of any permit or license.

VI. PROTECTION OF WILDLIFE

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

¹⁵ ALA CODE § 2-27-1 *et seq.* (1975 & Supp. 1997).

¹⁶ ALA CODE § 2-2-18 (Supp. 1997).

A. State Wildlife Protection Laws and Regulations

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

While recognizing the protection of species listed as endangered under the Federal Species Act, Alabama also provides for preservation of certain species of wildlife through the use of licenses, which can be revoked to prevent extinction. For example, licenses are required for commercial alligator operations and provisions are in place to void all licenses in the event the federal government designates the alligator as an endangered species.¹⁷

Furthermore, the state legislature has created the Alabama Nongame Wildlife Program.¹⁸ This program is designed to protect and enhance all vertebrate wildlife species which are not commonly “pursued, killed or consumed either for sport or profit.” These animals are under the jurisdiction and management of the Game and Fish Division of the Department of Conservation and Natural Resources.

VII. Other State Statutes Affecting Agriculture

Producer Note: Many other state statutes have the potential of affecting agricultural Operations and their relationship with the environment. A brief discussion follows of some of these state laws in Alabama.

¹⁷ ALA. CODE § 9-12-213 (Supp. 1998).

¹⁸ ALA. CODE § 40-18-142 (1993).

A. Farmland Preservation

1. Zoning and Planning

Producer Note: Agricultural operations are frequently controlled by the activities of local planning and zoning boards. Because it is impossible to outline the requirements of each locality, producers should check with their local boards to determine the planning and zoning regulations that might affect their operations.

Zoning legislation authorizes counties and municipalities to divide their respective jurisdictions into zones and to restrict or designate uses of land and structures within the zones. In particular, for flood-prone areas of counties, the county commission has authority to restrict not only the uses of the land, including agriculture, but to limit the number of persons residing and/or habiting the area. The zoning authority specifically provides for the prevention of the overcrowding of the land and the avoidance of undue concentration of population.

2. Conservation Easements

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

Alabama has adopted legislation providing for the creation of conservation easements.¹⁹ These easements provide for nonpossessory interests in the real property which impose limitations on its use. The underlying purpose of conservation easements are:

- Retaining or protecting natural, scenic or open-space values of real property;
- Assuring availability of real property for agricultural, silvicultural, forest, recreational or open-space use;
- Protecting natural resources and maintaining or enhancing air or water quality; or
- Preserving the historical, architectural, archaeological, paleontological or cultural aspects of real property.

¹⁹ ALA CODE § 35-18-1 *et seq.* (Supp. 1998).

Under the provisions of the statute, a conservation easement is created in the same manner as other easements; however, a right in the easement does not exist until accepted by the holder of the easement and recordation of the acceptance takes place. A holder of the easement is either a governmental body empowered to hold an interest in real estate or a charitable entity established to carry out the purposes of conservation easements as described above.

B. Nuisance and Right-to-Farm

1. Nuisance

Producer Note: Many producers are confronted with concerns of local residents. These concerns may originate from dust or odor generated by the agricultural operation or may result from a lack of knowledge of what is involved in an agricultural operation. While not specifically an area where the state or federal authorities may become involved, court 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.

Under Alabama law, a nuisance is anything that works hurt, inconvenience or damage to another.²⁰ Furthermore, the fact the act being done is otherwise legal, is not a defense. Additionally, a nuisance can be either public or private. To be public, it must damage all persons who come into contact with the operation; whereas, a private nuisance has an injurious effect on one or a few individuals. If a public nuisance exists, only the state may sue to stop the nuisance. On the other hand, an individual may bring suit for a private nuisance. In rare instances, when the state does not bring suit for a public nuisance, an individual can sue provided the public nuisance causes special damage to the individual.

In describing the types of actions that constitute nuisances, the statute provides that the inconvenience complained of must be one that would affect an ordinary, reasonable man and expressly excludes nuisances that would affect someone with “fastidious tastes.” However, Alabama’s public health statutes²¹ declare certain conditions or acts public nuisances in and of themselves. These include:

- Insanitary buildings, yards, premises, ponds, and dumps which are, or likely to become, a menace to public health;
- Conducting a business, trade or occupation -- not inherently insanitary or a menace to public health -- in such a way to make it a menace, or likely to become a menace, to public health; or

²⁰ ALA CODE § 6-5-120 *et seq.* (1993).

²¹ ALA CODE § 22-10-1 *et seq.* (1997).

- Conducting a business, trade or occupation -- inherently insanitary or a menace to public health -- without complying with safeguards prescribed by rules and regulations.

2. *Right-to-Farm*

Alabama restricts the ability of neighboring land owners and others from bringing nuisance actions against an agricultural or farming operation.²² However, the statute does not afford farmers absolute protection.

Under the statute, an agricultural or farming operation facility is not a public or private nuisance if:

- The operation has been in existence for over a year;
- The operation was not a nuisance at the time of origination; and
- The changes in conditions are the result of the locality and not the operation.

Under the above conditions, the statute further provides that no municipal corporation can enact ordinances declaring the operation a nuisance. However, the protection of the statute does not apply when a nuisance results from negligence or improper operation of the agricultural or farming operation facility. Furthermore, the statute expressly provides private recovery rights for injuries or damage that occur because of pollution to or any change in the condition of the waters of any stream or any overflow on lands occurring from the agricultural or farming operation facility.

C. **Livestock Waste Management**

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

²² ALA CODE § 6-5-127 (1993).

1. Livestock Waste Control Facilities

At the present time, ADEM is proposing new regulations for regulating the storage, use and disposal of livestock waste. Under the proposed regulations, many animal feeding operations and all concentrated animal feeding operations would have to construct facilities such as dry stack barns to store livestock waste in order to prevent storm water drainage from the waste.

D. Noxious Weeds

In order to protect agricultural and horticultural interests in Alabama from noxious weeds, the legislature has vested certain powers in the Commissioner of Agriculture and Industries under the direction and control of the State Board of Agriculture and Industries.²³ Under the statute, the Commissioner has the power to enter into or upon any place in order to inspect for noxious weeds -- defined as any living stage, seeds and productive parts of a parasitic plant of a kind, which may be a serious agricultural threat. Furthermore, the Commissioner is authorized to supervise or cause the destruction of such plants and can prescribe rules and regulations for the control, prevention and eradication of noxious plants. Moreover, the Board is empowered to declare a quarantine in order to prevent the movement of noxious weeds.

E. Dead Animal Disposal

Alabama has adopted general legislation for the disposal of dead animals²⁴ and specific legislation for the disposal of dead poultry.²⁵ Under general legislation, all owners or custodians of animals which die must, within 24 hours, burn the bodies or bury the carcass at least two feet below the surface of the ground. Such action shall not be done so near a residence as to create a nuisance. Failure to carry out the proper disposal of the dead animal is a misdemeanor and carries a fine of up to \$50.00.

Under the specific statute regarding the disposal of dead poultry, the State Board of Agriculture and Industries is responsible for providing the rules and regulations for dead poultry disposal. While the statute provides for the burial and incineration of dead poultry, unhatched or unused eggs, new sites for burial pits have been prohibited since 1966. Therefore, incineration is, presently, the primary method of disposal.

²³ ALA CODE § 2-25-1 *et seq.* (Supp. 1997).

²⁴ ALA CODE § 3-1-28 (1996).

²⁵ ALA CODE § 2-16-41 (1997).

F. Coastal Area Management Program

Alabama's Coastal Area Management Program²⁶ was enacted to promote, improve and safeguard the lands and waters located in the coastal areas. ADEM acting under the Coastal Area Board is responsible for the development of a comprehensive management program within the geographical area designated by the statute. Under the statute, the following are deemed to be permissible uses within the coastal area:

- Conservation, repletion and research activities of the Marine Environmental Sciences Consortium;
- Use and enjoyment of a dwelling for dwelling use; or
- Use of any land for planting, growing or harvesting plants, crops, trees or other agricultural or forestry products, including normal private road construction, raising livestock or poultry or for other agricultural purposes.

Although a permissible use, any activity requiring a permit must be reviewed by ADEM to see if the permitted activity is in compliance with the coastal area management program. If the activity is not in compliance, no permit can be issued by the issuing agency.

²⁶ ALA CODE § 9-7-10 *et seq.* (1987).

Appendix A - Agencies

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

Alabama Department of Agriculture & Industries

P.O. Box 3336
Montgomery, AL 36109-0336
or
Richard Beard Building
1445 Federal Drive
Montgomery, AL 36107-1110
(334) 240-7100
(334) 240-7190 fax
e-mail: alagicom01@agri-ind.state.al.us

(334) 271-7710 - Administration
(334) 279-3044 fax
(334) 271-7714 - Permits & Services
(334) 271-7950 fax
(334) 260-2700 - Field Operations
(334) 272-8131 fax
<http://www.adem.state.al.us/>
e-mail: Permitsmail@adem.state.al.us

Alabama Department of Conservation and Natural Resources

P.O. Box 301450
64 N. Union Street, Suite 468
Montgomery, AL 36130-1450
(334) 242-3486
(334) 242-3489 fax
<http://www.dcnr.state.al.us/>
e-mail: commissioner@dcnr.state.al.us

Water Quality Division

1751 Congressman W.L. Dickinson Drive
Montgomery, AL 36109
(334) 271-7823
(334) 279-3051 fax

Groundwater Division

1751 Congressman W.L. Dickinson Drive
Montgomery, AL 36104-2608
(334) 270-5655 or
(334) 271-7831
(334) 270-5631 fax

Division Wildlife & Freshwater Fisheries

P.O. Box 301457
64 N. Union Street
Montgomery, AL 36130-1457
(334) 242-3465
(334) 242-3032 fax

Air Quality Division

1751 Congressman W.L. Dickinson Drive
Montgomery, AL 36109
(334) 271-7861
(334) 279-3044 fax

Alabama Department of Environmental Management

P.O. Box 301463
Montgomery, AR 36130-1463
or
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 242-0551 fax
e-mail: scauthen@dsmd.dsmd.state.al.us

Alabama Soil & Water Conservation Committee

P.O. Box 304800
RSA Union Building
100 N. Union Street, Suite 334
Montgomery, AL 36104-3762
(334) 242-2620