STATE ENVIRONMENTAL LAWS AFFECTING MARYLAND 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

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Website: http://www.nasda-hq.org/ under the Research Foundation Section

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This document has two components: the state guide and the federal guide. To complete this guide, please download the federal guide also found on NASDA's website.

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 February 2002. 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 *pp. 1-8*	Livestock and aquaculture operations, depending on size	NPDES and state general permit or land disposal permit	Environmental Protection Agency (EPA) Regional Office and Maryland Department of Environment (MDE)
	Farming Operations	Nutrient Management Plans are required.	Maryland Department of Agriculture (MDA)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit	U.S. Army Corps of Engineers with EPA and MDE approval
	Water usage	Permit required for withdrawal of more than 10,000 gallons per day	MDE
Groundwater *pp. 8-9*	Water well construction and use	Permit required and well driller must be licensed	MDE

Regulatory Area	Type of Activity	Permit Required	Agency
Air Quality *pp. 9-10*	Grain terminals and grain elevators	Permit required	EPA Regional Office or MDE
	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance suits	EPA Regional Office or MDE
	Burning	Permit may be required in certain circumstances	MDE and Local Control Officer
Solid Waste and Hazardous Waste *pp. 11-12*	Storage, treatment, or disposal of hazardous or solid waste	Permit required for disposal, treatment, or storage activities	EPA Regional Office and MDE
	Public notice of hazardous waste	No permit	Local Emergency Planning Committee and Maryland Department of Labor
Pesticides and Chemigation *pp. 12-14*	Application and use of pesticides	No permit, but certification is required	EPA and MDA
	Use of pesticides around farmworkers	No permit, but training and notification is required	MDA
	Record keeping	No permit, but all requirements must be met	MDA
Wildlife Protection *pp. 15-16*	Taking of wildlife	Permit required if endangered or threatened species may be affected Permit required for taking wildlife to address crop damage	U.S. Fish and Wildlife Service and Maryland Department of Natural Resources (DNR)

STATE ENVIRONMENTAL LAWS AFFECTING MARYLAND 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. Maryland Water Quality Laws and Regulations

Most states have enacted clean water legislation. While these statutes usually contain provisions similar to those found in the parallel federal legislation, there may be significant differences. In fact, state statutes may impose requirements that are even more restrictive than the federal law. In all cases, since federal Clean Water Act (CWA) requirements must be followed, they are enforced along with the state enacted statutes and regulations implemented by the state administrative agencies. Under the CWA, the Environmental Protection Agency (EPA) has delegated the National Pollution Discharge Effluent System (NPDES) permit program to many states. The NPDES program was delegated to Maryland and is administered by the Department of Environment (MDE).

Caution: Because environmental laws and regulations change frequently, all 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, a producer must keep in contact with offices administering specific programs in order to keep up with all changes which may occur.

1. Maryland Environmental Protection Program

Producer Note: Water quality in Maryland is primarily regulated under a series of statutes on the Environment. The same legislative scheme also regulates air quality and solid/hazardous waste. Most environmental programs are administered by the Department of the Environment (MDE),[1] headed by the Secretary of the MDE. Within the MDE are the following councils or boards: Air Quality Control Advisory Council, Environmental Noise Advisory Council, Hazardous Substances Advisory Council, Radiation Control Advisory Council, Science and Health Advisory Council, Board of Environmental Sanitarians, Board of Waterworks and Waste System Operators, Board of Well Drillers, and Hazardous Waste Facilities Siting Board.

Maryland's Environmental legislation[2] gives the MDE authority to regulate the quality of surface and groundwater in the State. To accomplish this task, the MDE is authorized to develop comprehensive programs and plans for the prevention, control, and abatement of water pollution. Consequently, the MDE has adopted water quality standards. The standards consist of two parts: a designated use of the surface water and water quality criteria to protect that designated use.

Utilizing the standards, the MDE has established limits on the amount of pollutants that can be discharged into the State's waters on a daily basis. This is accomplished through the use of TMDLs (total maximum daily loads) -- an estimate of the maximum amount of a given pollutant that a body of water can accept without violating water quality standards. The pollutants considered in formulating TMDLs include: nutrients, sediments, toxics, acidity, or fecal coliform bacteria. Based on the standards and the subsequent TMDLs, the MDE is able to establish the requirements for discharge permits.

2. Maryland NPDES Program

Producer Note: The EPA has delegated the NPDES program in Maryland to the MDE. Thus, the MDE, not the EPA, has primary responsibility for issuing permits for point source discharges and for enforcing related sections of the CWA. However, the MDE is required to administer the program in accordance with all federal statutes, regulations, rules, and standards.

The MDE's primary function under the NPDES program -- the principal permit program -- is the issuance of permits. Discharge permits are required for the following activities:

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[1] However, the Maryland Department of Agriculture (MDA) has statutory and regulatory authority for pesticide and nutrient management programs, and the Department of Natural Resources (DNR) regulates forestry and wildlife programs which may also be of interest to farmers.

[2] MD. CODE ANN., ENVIR. § 1-101 *et seq.* (1996 & Supp. 1997).

- Discharge into the waters of the State of any waters in excess of 10,000 gallons per day, as a monthly average;

- Discharge into the waters of the State of any waste or wastewater regardless of the volume;

- Construction or operation of any system for waste or wastewater disposal into the waters of the State or any system that might discharge into the waters; or

- The modification or addition of an existing system that will discharge into the waters.[3]

The MDE may also deny, suspend, or revoke any permit. Revocation can occur when the permittee has failed to comply with corrective actions, filed false information, violated conditions of the permit, or disallowed access to a facility by the MDE personnel for the inspection of the facility, monitoring equipment, or records.

3. Maryland Concentrated Animal Feeding Operations

Producer Note: An NPDES permit will be required for livestock feeding operations if the operation handles the number of animal units specified by EPA regulations and discharges waste into Maryland waters or will be a threat to water quality. In Maryland, the MDE issues both general and individual permits for animal operations under the NPDES program.

A general discharge permit is required for confined animal feeding operations (CAFOs) -- a lot, building or structure where animals are confined, fed, or maintained for 45 or more days in a twelve-month period and where no crops, vegetation, or forage growth are sustained in the normal growing season over any portion of the facility -- which discharge via application of liquid wastewater to the soil surface (including spray irrigation) and are:

- Operations with over 1,000 animal units or 55,000 turkeys;

- Operations with 30,000 or more chickens which produce a liquid waste stream;

- Animal feeding operations (AFOs) which have been or are a threat to surface water quality because the animals come into direct contact with surface waters;

- AFOs which are likely to discharge into waters of the State through man-made conveyance because the operation is over 300 animal units and wastewater is likely to be discharged; or

[3] MD. REGS. CODE, tit. 26 § 8.04.01 (1995).

- AFOs which are likely to discharge into waters of the State through a man-made conveyance because the means of wastewater conveyance and site conditions -- slope, lack of vegetative cover, and proximity to surface waters -- are likely to cause a discharge and because water quality violations or the likelihood to discharge have previously been documented.

4. Maryland Nutrient Management Plans

Producer Note: Although an AFO or other agricultural operation may not need a NPDES permit, the operation may be required to institute and operate under other requirements. The MDA requires all agricultural operations that have gross annual income of $2,500 or more or who have eight or more animal units to develop and implement a nutrient management plan by specified calendar dates.

Further measures have been taken in Maryland to maintain or improve water quality. Recent legislation has been enacted which will impact the way that farmers fertilize their crops or fields. The new requirements are:

- Any person operating a farm and using chemical fertilizers must have a nutrient management plan for nitrogen and phosphorus by December 31, 2001 and must comply with the plan by December 31, 2002;

- Any person operating a farm and using sludge or animal manure must have a nutrient management plan for nitrogen by December 31, 2001 and a nutrient management plan for nitrogen and phosphorus by July 1, 2004 and comply with the plan for nitrogen by December 31, 2002 and the plan for nitrogen and phosphorus by July 1, 2005; and

- Any person engaged in applying nutrients to land -- 10 acres or more -- which the person owns, operates, or manages and which is used for agricultural purposes must complete an educational program on nutrient application every three (3) years.[4]

A nutrient management plan consist of the following information:

- Plan identification: The name and address of the farmer/operator must be included along with the name of the county, the watershed code for the land, the total acreage, plus type and approximate number of livestock if applicable;

[4] MD. CODE ANN., AGRIC. § 8-801 *et seq.* (1999).

- Map or aerial photograph: The location and boundaries of the farm must be shown along with individual field boundaries, field number, field acreage, field-specific and summary nutrient recommendations, nutrient application methods, type crop or plants grown by field, realistic goals for yields, information about limiting nutrients, soil tests, average number of animals produced, quantity of manure or waste generated, manure analysis, plus the management and final fate of the manure;

- Plan maintenance: The dates for which the plan is effective must be indicated as well as any changes in operation which require plan modification, the information on soil fertility, and recommendations to ensure efficient application of fertilizers and organic nutrients; and

- Data for specific field of application: The name of a certified nutrient management consultant plus the consultant's license number, the date the plan was prepared or updated, the watershed location code, the field number, the field acreage, the expected crop or plant, the expected yield, the primary nutrient requirements based on expected crop yield or crop uptake, the available nutrients remaining in soil, the nutrients to be applied from organic or other fertilizer sources, liming recommendations, time recommendations on nitrogen applications, recommendations on application method and calibration of equipment, information on field soil fertility and nutrient levels, and information about best management practices other than a nutrient management plan to reduce potential degradation of environmental resources from surface water runoff or nutrient leaching to groundwater.[5]

5. Maryland Nonpoint Source Pollution Control

Producer Note: Maryland has enacted legislation for the purpose of reducing soil erosion, sedimentation, and related water pollution caused by wind and water runoff. The statutes are administered by the MDE, and the MDA coordinates the implementation of this program through soil conservation districts who work with farmers to correct any identified problems prior to the MDE issuing formal enforcement actions.

a. Agricultural Sediment Pollution Control Act

The Agricultural Sediment Pollution Control Act (ASPCA)[6] mandates that no person engaged in agricultural land management practices is allowed to add, leak, spill, or emit soil or sediment into waters of the Maryland. The MDE is responsible for regulating the ASPCA with

[5] MD. REGS. CODE, tit. 15 § 20.04.09 (1993).

[6] MD. CODE ANN., ENVIR. § 4-413 (1996).

MDA approval. Violators are not subject to penalties if they are using an approved soil conservation and water quality plan (SCWQP) or comply with an order for a corrective action water quality plan (CAWQP).

The SCWQP is a land use plan for a whole farm prepared with technical oversight by the Natural Resources Conservation Service (NRCS) and approved by the local soil conservation district. The plan must be in accordance with the National Conservation Planning Manual and the Maryland Technical Guide and make the best possible uses of soil and water resources including minimizing the movement of sediment, animal wastes, nutrients, or agricultural chemicals into the waters of the State.

The CAWQP is that portion of a SCWQP which address a specific sediment pollution violation. In the CAWQP, specific conservation practices are identified to correct the violation along with a schedule for implementation.[7]

b. Cost Sharing -- Water Pollution Control Program

Under the Cost Sharing--Water Pollution Control Program,[8] Maryland and eligible farmers enter into an agreement which obligates the farmer to establish, construct, or install and maintain best management practices (BMPs) for the farm. Best management practices are conservation or pollution control practices that manage soil loss due to farming practices or that manage nutrient, animal wastes, or agricultural chemicals so as to minimize movement into the surface waters of the State.

Cost for the BMPs are shared by the State and the farmer with the State providing up to 87½ % of the cost and up to $20,000 per BMP/$50,000 per farmer. The program is administered solely by the MDA, but the MDE jointly promulgates regulations with the MDA. Technical assistance is supplied by the appropriate local soil conservation district. The MDA provides cost share assistance for over 26 BMPs. Eligibility is based on correction of an existing or potential water quality problem. Guidelines are set to assure the cost-effectiveness of the project and its maintenance over a 5 to 15 year period.

Approval of a project is based on the following factors:

- The existence of a critical condition;
- Water quality improvements to be achieved;
- The estimated reduction of soil loss;

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[7] MD. REGS. CODE, tit. 26 § 17.03.01 *et seq.* (1996).

[8] MD. CODE ANN., AGRIC. § 8-701 *et seq*. (1999).

- The estimated reduction of pollution from animal waste;
- The estimated economic benefit to the participating farmer for using the BMPs;
- Use of the most cost effective BMPs.[9]

6. Maryland Water Resources

Water quantity, as well as water quality, is regulated in Maryland. Maryland follows the reasonable use doctrine in establishing a person's right to use surface or groundwater. Consequently, any person wishing to appropriate or use surface or groundwater over a certain amount per day, not including that used for domestic purposes, must obtain a use permit from the MDE. The permit authorizes the permitee to make reasonable use of the waters of the State without unreasonable interference with others also attempting to make reasonable use of water.[10]

A permit is required for any person using water for an agricultural purpose if the average annual use is more than 10,000 gallons per day. An agricultural purpose is water used for the production, harvesting, or processing of crops; vegetation or animals for human or animal consumption or use, including horticultural operation; and land-based aquaculture.[11] The MDE will assist any person seeking a permit for agricultural purposes in determining the following permit information:

- The projected average daily appropriation; and
- The anticipated average daily use of groundwater during the month of highest use or the maximum daily use of surface water.

In the event water supplies become inadequate in an area to meet the needs of permit holders, the following priorities have been set:

- Domestic and municipal uses for sanitation, drinking water, and public health and safety;
- Agricultural uses including the processing of agricultural products; and
- All other permitted uses.

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[9] MD. REGS. CODE, tit. 15 § 1.05.05 (1999).

[10] MD. CODE ANN., ENVIR. § 5-101 *et seq.* (1996 & Supp. 1997).

[11] MD. REGS. CODE, tit. 26 § 17.06.01 *et seq.* (1997).

7. Maryland Enforcement of Water Pollution

Discharging waste into surface waters, unless authorized by a permit -- NPDES or otherwise -- is a violation. Violators can face either civil or criminal penalties. Civil penalties include fines up to $10,000 per day with each day of continuing violation being a separate offense. Criminal violations are a misdemeanor and upon conviction are subject to a fine up to $25,000 and/or imprisonment up to one year for a first offense and up to a $50,000 fine and/or imprisonment up to two year for subsequent offenses.[12]

Producer Note: An administrative process is available to contest the MDE actions including the issuance or denial of permits, issuance of abatement orders, and assessment of civil penalties. Administrative procedures provide for notice and a hearing before the MDE. Requests for a hearing must be filed within 10 days of being served with an order. Final decisions by the MDE are appealable to the courts and must be done in accordance with the procedures outlined in the Administrative Procedure Act.

II. GROUNDWATER

A. Maryland Groundwater Laws and Regulations

1. Maryland Groundwater Water Quality Standards

Like surface waters, Maryland has established water quality standards for groundwater. Under its regulatory scheme, the MDE has identified three aquifer types and has established standards for each.[13] Consequently, any discharge or disposal of water or wastewaters into groundwater requires approval by the MDE. However, no discharge can result in degradation of groundwater below the established criteria.

Additionally, a separate State discharge permit -- a discharge permit issued to an individual discharger -- is required for the following:

- Wastewater effluents disposed by means of spray or other land treatments and application systems;
- Groundwater recharge systems; or
- Discharge of leachate from a landfill.

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[12] MD. CODE ANN., ENVIR. §§ 9-334 to 9-344 (1996).

[13] MD. REGS. CODE, tit. 26 § 8.02.09 (1997).

2. Maryland Water Wells

Maryland regulates the drilling of water wells in two ways. First, a permit from the MDE is required to drill a well.[14] Secondly, all well drillers must be licensed.[15] As noted in the earlier section on Water Resources (see pages MD-7 to MD-8), a use permit may be required for the appropriation of groundwater; therefore, the MDE may not allow a well to be drilled. However, in no case will an appropriation or use permit be refused for domestic use of a well on a farm. Domestic use is described as the non-commercial use of water by individuals for residential sanitation and drinking purposes.

III. AIR QUALITY

A. Maryland Air Quality Laws and Regulations

Air quality in Maryland is regulated under its Environmental statutes,[16] the same statutory scheme that governs water quality and solid wastes. While the MDE is given authority to adopt regulations requiring a permit for the construction or operation of any source which may cause or control emissions into the air, certain exceptions are provided. Among these are:

- Any machinery or equipment that is normally used in a mobile manner;
- Any boiler used exclusively to operate steam engines for farm and domestic use; and
- Actual construction of buildings, apart from any possible emission producing machinery housed in the buildings.

Consequently, few agricultural operations will have emissions subject to regulation. However, on-farm incinerators and grain elevators may be exceptions. Grain-drying installations are required to meet certain emission standards to operate unless:

- The installations were in operation before January 1, 1975; or
- The grain-drying equipment has an operating capacity of 1,000 bushels or less per hour, is located on a farm, and is more than 200 feet from a habitable dwelling.[17]

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[14] MD. CODE ANN., ENVIR. § 9-1306 (1996).

[15] MD. CODE ANN., ENVIR. § 13-301 *et seq.* (1996 & Supp. 1997).

[16] MD. CODE ANN., ENVIR. § 2-101 *et seq.* (Supp. 1997).

[17] MD. REGS. CODE, tit. 26 § 11.18.03 (1980).

Related air issues -- odor, dust, and open burning -- can also impact an agricultural operation. For example, odor is not permitted, if its discharge crosses the property line of an operation and results in air pollution or a nuisance.[18] Also, no employee of a farmer may enter a confined space used for grain storage unless the employer ensures that the employee wears a dust mask when entering or cleaning the space.[19]

Generally, open burning in Maryland is not allowed. However, the control officer[20] may permit open burning in specific counties under certain conditions. In other counties while no permit is required, all reasonable means must be used to minimize smoke, and the fire must be necessary for one of the following purposes:

- Prevention of a fire hazard;
- Instruction of fire fighters;
- Protection of public health or safety;
- Destroying pest infested crops or products;
- Agricultural burning necessary for animal disease control; and
- Good forest resource management practices.[21]

Producer Note: Emission and air quality standards may also be adopted in Maryland by other political subdivisions -- such as municipalities and counties -- as long as the standards are no less stringent than those established by the MDE. Therefore, producers need to check local ordinances, rules, or regulations to see if any exist that could impact their operation.

[18] MD. REGS. CODE, tit. 26 § 11.06.09 (1980).

[19] MD. REGS. CODE, tit. 9 § 12.35.05 (1988).

[20] MD. REGS. CODE, tit. 26 § 11.01.01 (1999) (Control officer is the health officer of Allegany, Anne Arundel, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Prince George's, Queen Anne's, St. Mary's Somerset, Talbot, Washington, or Wicomico County).

[21] MD. REGS. CODE, tit. 26 § 11.07.01 *et seq.* (1995).

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, petroleum, or other products stored in storage tanks must be aware of requirements governing their actions.

A. Maryland 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. Maryland Solid and Hazardous Waste

As previously noted, solid and hazardous wastes are regulated by Maryland's statutes governing the Environment.[22] Solid waste is defined as any garbage, refuse, sludge, or liquid from industrial, commercial, mining, or agricultural operations or community activities including scrap tires and yard wastes but not solid or dissolved material in domestic sewage or irrigation return flows. Hazardous waste is defined by reference to the Federal Act. Both solid and hazardous waste must be disposed at approved sites and facilities. Consequently, disposal cannot be in an unapproved open dump -- including open dumping of solid waste on one's own property.

Producer Note: Producers must consider whether they are violating either federal or state law when they dispose wastes on their farms or ranches. Of particular concern are petroleum products, unused pesticides, herbicides, and fertilizers and their containers as well as other agricultural wastes that may contaminate ground or surface waters or pose a threat to human, animals, or wildlife. Under Maryland's solid waste management scheme, it appears that burying items in a farm dump is not permissible.

a. Maryland Underground Storage Tanks

Maryland regulates the problem of leaking underground storage tanks (USTs) by requiring the registration of any existing or new tanks and by providing containment, clean-up, and contingency funds for discharges.[23] Under the statutory provisions, the person responsible for an oil spillage, as well as the owner of the tank, is liable to any other person for damage to real

[22] MD. CODE ANN., ENVIR. §§ 7-101 *et seq.*, 9-101 *et seq.* (1996 & Supp. 1997).

[23] MD. CODE ANN., ENVIR. § 4-401 *et seq.* (1996 & Supp. 1997).

property or personal property as a result of a spillage. The owner of an UST is any person who causes an UST to be installed or acquires an UST. However, any tank on a farm or private residence with a capacity of 1,100 gallons or less of motor fuel or heating oil for personal or noncommercial use is exempt from the above provisions.

In the event of a spill or leak, the owner or operator of an UST must immediately begin clean-up. In the event, clean-up does not occur immediately, the MDE will contract or otherwise undertake the clean-up and seek reimbursement from the owner.

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 around those workers or by those workers.

A. Maryland Pesticide and Chemigation Laws and Regulations

Producer Note: Maryland, 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.

Maryland's Pesticide Applicators Law and Pesticide Registration along with Labeling Law (Pesticide Law)[24] governs the licensing, selling, registering, labeling, storing, and record keeping of pesticides. For restricted-use pesticides used on farms and ranches, the MDA has adopted specific regulations to ensure proper application, storage, and record keeping.

1. Maryland Private Applicator Certificate

A person must be certified before they can purchase or use a restricted-use pesticide. To obtain certification, an applicant must:

- Apply to the MDA on a departmental form;
- Demonstrate a practical knowledge of pest control;
- Pass an examination given by the MDA; and
- Pay the appropriate fee.[25]

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[24] MD. CODE ANN., AGRIC. § 5-101 *et seq.* (1999).

[25] MD. REGS. CODE, tit. 15 § 5.01.07 (1993).

2. Maryland Storage of Pesticides

Any person maintaining a supply of pesticides must implement the following storage requirements:

- Storage areas must be secured or locked to prevent unauthorized access;
- Pesticides must be stored in a separate building or a physically separate area from living and working areas and from food, feed, fertilizer, seed, and safety equipment;
- Exterior of storage areas must have an approved warning sign;
- Storage areas must be dry and well ventilated;
- Storage areas must be kept clean;
- Absorbent material sufficient to absorb a spill from the largest container must be kept in the area;
- The areas must contain only properly labeled containers free of leaks;
- An appropriate fire extinguisher must be available; and
- Storage areas must be located at least 50 feet from any water well or within a secondary containment structure.[26]

3. Maryland Record Keeping Requirements

A certified private applicator must maintain records on each general-use or restricted-use pesticide application. The records must be held for two years and available for inspection by the MDA. The records must contain the following information:

- Name and address of certified applicator;
- Name and address of applicator if different from the certified applicator;
- Location of the treated area including county, address of farm or production area, and, if possible, the field designation;
- Date of application;
- Brand or common name and the EPA registration number of the pesticide used;

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[26] MD. REGS. CODE, tit. 15 § 5.01.06 (1993).

- Application rate of pesticide used;
- Total amount of pesticide used;
- Acreage and size of area treated or number of plants or animals treated; and
- Crop, commodity, site, or stored product treated.[27]

4. Maryland Enforcement of Pesticide Law

The MDA can issue a civil penalty or suspend, revoke, or deny any certificate if the applicator violates any provision of the Pesticide Law or FIFRA (including negligent application), fails to maintain records, makes false reports, or fails to maintain the required liability insurance.[28]

Civil penalties may be assessed up to $2,500 for the first violation and up to $5,000 for each subsequent violation. Before assessing a civil penalty, the MDA will consider:

- The willingness of the violator -- the extent the violation was known and not corrected;
- Any actual harm to human health or the environment;
- The cost of control;
- The nature and degree of injury or interference with the general welfare, health, and property;
- The location of the violation and its proximity to areas of human population; and
- The extent the current violation is the same or similar to other violations by that individual.

All violators are given an opportunity to be heard and any action -- fine, denial, revocation, or suspension of a permit -- may be appealed according to the MDA regulations and the Administrative Procedure Act.

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[27] MD. REGS. CODE, tit. 15 § 5.01.07 (1993).

[28] MD. REGS. CODE, tit. 15 § 5.01.18 to 5.01.20 (1994).

VI. PROTECTION OF WILDLIFE

Producer Note: All wildlife species in Maryland are protected and are classified as either game or nongame species. Many wildlife species inhabit agricultural areas and are dependent upon these areas for food and shelter. Game species are regulated primarily through hunting seasons. Nongame species are regulated by special permits.

A. Threatened or Endangered Species

Producer Note: An agricultural producer has responsibility concerning threatened or endangered species, as defined by state or federal law, that inhabit his or her property.

The Nongame and Endangered Species Conservation Act (NESCA)[29] provides state protection to all species of wildlife and plants found to be threatened or endangered pursuant to the federal Endangered Species Act (ESA). The Maryland Department of Natural Resources (DNR) is authorized to extend the protection of the NESCA to species of wildlife and plants normally occurring within the State but not listed under the NESCA that are still endangered or threatened due to:

- The destruction, curtailment, or modification of its habitat or range;
- Overutilization for commercial, sporting, scientific, educational, or other purposes;
- Disease or predation;
- The inadequacy of existing regulatory mechanisms; or
- Other natural or manmade factors affecting its continued existence within the State.

The NESCA prohibits the taking, possession, transportation, shipment, exportation, processing, sale, or offer for sale within the State of endangered species and carefully regulates the same activities with regard to threatened species. However, the DNR may permit the prohibited activities for scientific purposes or to enhance the propagation or survival of an affected species.

B. Nuisance Wildlife

Landowners who need assistance in controlling wildlife species should contact the local office of the Maryland Wildlife and Heritage Service. Information and contact names and phone numbers can be found on the Department of Natural Resources website—Wildlife and Hertiage

[29] MD. CODE ANN., NAT. RES. II § 10-2A-01 *et seq.* (1990 & Supp. 1997).

Service, http://www.dnr.state.md.us/wildlife/. Click on "Wildlife Problems," then click on "Nuisance Wildlife," and for damage permits, click on "Wildlife Damage Permits."

VII. ENFORCEMENT OF STATE ENVIRONMENTAL LAWS

As with federal environmental laws, persons who violate the regulatory requirements of state environmental laws face substantial penalties. The specific penalties vary to some degree with each statute. However, they generally include both civil and criminal fines. Additional fines may be assessed for each day that a violation exists. For severe or repeated violations, jail sentences can be imposed. State agencies may also bring proceedings, either in court or before an administrative tribunal, to enjoin a 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 afford producers the right to administrative and/or judicial review of agency decisions.

VIII. OTHER MARYLAND STATUTES AFFECTING AGRICULTURE

Producer Note: Many other state statutes have the potential of impacting agricultural operations and their relationship to the environment. The following is a brief discussion of state laws in Maryland.

A. Maryland Farmland Preservation

Recognizing the desire to preserve farmland, Maryland like many states has enacted different programs to assist in this endeavor. One particular program in Maryland requires the assessment of farmland to be based on its agricultural use not on market value.[30] The criteria used to determine whether the land is actually used for farm or agricultural purposes includes:

- The zoning of the land;
- The present and past use of the land including land under the Soil Bank Program;
- The productivity of the land including timberlands and reforested lands; and
- The gross income derived from agricultural activity.

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, a producer must check with local boards to determine local planning and zoning regulations which may affect an operation.

[30] MD. CODE ANN., TAX-PROP. § 8-209 (Supp. 1998).

1. Maryland Zoning and Planning

Zoning legislation[31] authorizes counties and municipalities to divide their jurisdiction into zones and restrict the uses of land and structures within each zone including issuing permits. The agricultural use of land may be regulated, and conditions may be placed on the use of that land including environmental restrictions.

2. Maryland Conservation Easements

Producer Note: Many states have enacted 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.

Legislation to establish the Maryland Agricultural Land Preservation Foundation[32] was enacted to preserve agricultural and woodland as:

- Sources of agricultural products within the State for the citizens of the State;
- Controls for urban expansion;
- Curbs on the spread of urban blight and deterioration; and
- Open-space land.

Under the statute, the Foundation is empowered to acquire easements in gross or other property rights to restrict the use of agricultural land and woodland in order to continue use of the land as agricultural land or woodland. The acquisition may be accomplished by gift, purchase, devise, bequest, or grant. In order for land to be acquired by the Foundation, the land must be in an agricultural district. A district is established by the county governing body following a petition by the landowner, approval by the county agricultural preservation advisory board and a public hearing on the petition. In making its recommendations, the county advisory board will consider:

- Current local regulations;
- Local patterns of land development; and
- Locally established priorities for the preservation of agricultural land.

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[31] MD. CODE ANN., art. 66B § 4-01 *et seq.* (1995).

[32] MD. CODE ANN., AGRIC.§ 2-501 *et seq.* (1999).

Once an easement is obtained by the Foundation, the land may be used for any farm use; for the operation of any machinery used in farm production or primary processing of agricultural products; and for all normal agricultural operations performed in accordance with good husbandry practices including sale of farm products produced on the farm where such sales are made. An easement is to be held for as long as farming is profitable on the land; however, 25 years after the Foundation's acquisition, the landowner may request a review for possible termination.

B. Maryland Nuisance and Right-to-Farm

Producer Note: Many producers may be confronted with complaints of local residents. These problems may originate from dust, odor, or insects generated by the agricultural operation. While not specifically an area where state or federal agencies have become involved, court actions can be brought by individuals against the operation. These actions are usually based on a nuisance theory, and in some cases, a right-to-farm defense may apply. See *Right-to-Farm* section following on page MD-19.

1. Maryland Nuisance

A nuisance is any activity or use of property that causes annoyance, harm, inconvenience, or damage to another. Nuisance can be public if it interferes with the community at large and private if it disturbs an individual's use and enjoyment of his land.[33] State law gives parties injured by public or private nuisances the right to sue the person causing or allowing the nuisance for damages and for an injunction prohibiting the activity.

Maryland nuisance laws[34] specify certain activities which may constitute public or private nuisances. These activities include:

- Any watercourse, well, spring, open ditch, gutter, cesspool, drain, outhouse, pigpen, or other place;
- Any accumulation or deposit of offensive or noxious matter;
- Any house, building, trade establishment or manufacturing place; or
- Any water in which mosquito larvae breed.

[33] Rosenblatt v. Exxon Co., 642 A.2d 180, 190 (Md. Ct. Spec. App. 1994).

[34] MD. CODE ANN., HEALTH-GEN. II § 20-301 *et seq.* (1996).

2. Maryland Right-to-Farm

Maryland's Right-to-Farm statute[35] restricts the ability of neighboring land owners from bringing a nuisance action against farm operations for noise, dust, odors, or insects under certain conditions. This statute, however, does not provide complete protection to the farmer/rancher, but the operation will not be deemed a private or public nuisance if:

- The operation has been under way for one year or longer;
- The operation is in compliance with applicable federal, State, and local health, environmental, zoning, and permit requirements; and
- The operation is not being operated in a negligent manner.

C. Maryland Dead Animal Disposal

The owner or custodian of any domestic animal which dies of a contagious or infectious disease must, within three hours before sunset of the day following discovery, bury the animal at least three feet deep or burn the carcass.[36]

D. Maryland Noxious Weeds

Maryland's weed control legislation[37] authorizes the Secretary of the MDA to enter into agreements with counties and other subdivisions of the State in order to effect a program for control and eradication of designated noxious weeds - Johnsongrass, shattercane, and thistles. Under the program, both the counties and the MDA can provide technical assistance to landowners for ridding private or public land of noxious plants.

Furthermore, the legislation prohibits into the state of Maryland the importation or transportation of a noxious weed in any form capable of growth or the contamination uninfested land with a noxious weed through the movement of rootstocks, seed, soil, mulch, nursery stock, farm machinery, or any other artificial medium.

E. Maryland Aquaculture

Maryland has enacted legislation governing aquaculture.[38] Aquaculture is the commercial rearing of fish or aquatic plants for sale, trade, barter, or shipment. In order to protect wild stocks of fish from an aquaculture operation, the MDA requires that all aquaculture operations be

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[35] MD. CODE ANN., CTS & JUD. PROC. § 5-403 (1998).

[36] MD. CODE ANN., AGRIC. § 3-109 (1999).

[37] MD. CODE ANN., AGRIC. § 9-401 *et seq.* (1999).

[38] MD. CODE ANN., AGRIC. § 4-11A-01 *et seq.* (1999).

permitted. Conditions of a permit may include regulating the size of the operation; regulating the release, possession, and use of legally propagated game and freshwater fish; and requiring operation reports. Most aquaculture operations are also required to get a NPDES permit from MDE.

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.

State Agencies:

Maryland Department of Agriculture
Wayne A. Crawley Building
50 Harry S. Truman Parkway
Annapolis, MD 21401-7080
(410) 841-5700
(410) 841-5914 fax
http://www.mda.state.md.us

Marketing, Animal Industries, and Consumer Services
(410) 841-5782
(410) 841-5987 fax
Resource Conservation
(410) 841-5865
(410) 841-5736 fax
Plant Industries & Pest Management
(410) 841-5870
(410) 841-5914 fax

Maryland Department of Environment
1800 Washington Blvd.
Baltimore, MD 21230
(410) 537-3000
(410) 537-3936 fax
(866) 633-4686 Emergency Response
http://www.mde.state.md.us

Maryland Department of Health and Mental Hygiene
201 West Preston Street, 5th Floor
Baltimore, MD 21201
(877) 463-3464 toll free or
(410) 767-6500
(410) 767-6489 fax
http://www.dhmh.state.md.us

Maryland Department of Natural Resources
Tawes State Office Building
580 Taylor Avenue
Annapolis, MD 21401
(877) 620-8367 toll free or
(410) 260-8100
(410) 260-8111 fax
http://www.dnr.state.md.us