

**STATE ENVIRONMENTAL LAWS
AFFECTING MINNESOTA
AGRICULTURE**

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

A Project of the

**National Association of State Departments
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Research and Information**



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STATE ENVIRONMENTAL LAWS AFFECTING MINNESOTA AGRICULTURE

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The Project Participants

National Association of State Departments of Agriculture Research Foundation

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

National Center for Agricultural Law Research and Information

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

Natural Resources Conservation Service

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

U.S. Environmental Protection Agency

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

Disclaimer

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

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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 July 2001. Updates of the information contained in the guide will occur on an as needed basis and be available on the internet.

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

Quick Reference Guide

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

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 1-23</i>	Livestock and aquaculture operations, depending on size and whether construction or expansion is planned	Individual or General National Pollutant Discharge Elimination System (NPDES) permit or State Disposal System (SDS) permit or Interim permit or Short-form Construction permit	Environmental Protection Agency (EPA) Regional Office and Minnesota Pollution Control Agency (PCA)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 Clean Water Act (CWA) permit	U.S. Army Corps of Engineers with EPA and PCA approval
	Water appropriations in excess of 10,000 gallons per day or 1 million gallons per year	Water appropriations permit required	Department of Natural Resources (DNR)
Groundwater <i>pp. 23-27</i>	Groundwater protection	Generally no permit, but Best Management Practices (BMPs) must be followed in capacity use and sensitive areas	DNR or Minnesota Department of Agriculture (MDA)
	Water well construction	Permit required and well driller must be licensed	Minnesota Department of Health (MDH)

Regulatory Area	Type of Activity	Permit Required	Agency
Air Quality <i>pp. 27-30</i>	Grain terminals and grain elevators	Permit required	EPA Regional Office or PCA
	General agricultural operations including dust, flies, and odor, particularly hydrogen sulfide from livestock manure management	No permit, but may be subject to nuisance suits and violations of air quality standards Odor abatement plan required for certain livestock facilities	EPA Regional Office or PCA
	Burning/Incineration of dead animals	Permit required in certain circumstances	PCA
Solid Waste and Hazardous Waste <i>pp. 31-35</i>	Storage, treatment, or disposal of hazardous or solid waste	Permit required for disposal, treatment, or storage activities	EPA Regional Office, PCA, and Minnesota Solid Waste Management Districts
	Possession of hazardous waste	No permit, but public notice required	PCA
Pesticides and Fertilizer <i>pp. 35-41</i>	Application and use of pesticides	Certification or licensing required, permit for chemigation may be required	EPA and MDA
	Use of pesticides around farmworkers	No permit, but training and notification is required	MDA
	Record keeping	No permit, but record keeping requirements must be met	MDA
	Storage of pesticides and fertilizer	Permit may be required	MDA
	Chemigation of fertilizers and pesticides	Permit required	MDA
	Commercial application and management of manure	Commercial animal waste technician license required	MDA

Regulatory Area	Type of Activity	Permit Required	Agency
Wildlife Protection <i>pp. 41-46</i>	Taking of wildlife	Permit required if endangered or threatened species is or may be affected	U.S. Fish and Wildlife Service and DNR

STATE ENVIRONMENTAL LAWS AFFECTING MINNESOTA AGRICULTURE

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

I. Water Quality

A. Minnesota Water Quality Laws and Regulation

Producer Note: In order for agricultural producers to stay in compliance with water quality legislation, they must be aware of not only water quality standards, NPDES permit requirements, nonpoint source pollution programs, wetland permits, and oil spill liability but also whether there are waters in their area that require special protection. Minnesota takes an active role in ensuring compliance with federal, state, and local requirements.

Most states have enacted clean water legislation. While state statutes usually contain provisions similar to those found in parallel federal legislation, there may be significant differences. In fact, state statutes may impose requirements that are even more restrictive than the federal law. In all cases, federal Clean Water Act (CWA)¹ requirements must be followed and enforced along with state enacted statutes and state agency regulations. Under the authority of the CWA, the Environmental Protection Agency (EPA) has delegated the National Pollutant Discharge Elimination System (NPDES) permit program to many states. Minnesota is one of those states that has assumed the responsibility for administering the NPDES permit program.

Caution: Environmental laws and regulations change frequently because of the ongoing and improved understanding of the environment as well as the rapidly changing agricultural industry. Agricultural producers must stay in touch with local, state, and federal officials in order to remain in compliance and aware of changes in the law.

¹ 33 U.S.C. § 1251 *et seq.* (1994).

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

1. Minnesota Public Water Law

The primary state law governing Minnesota water quality is the Public Water Law (PWL).² Provisions of the PWL are carried out by four state agencies, the Minnesota Department of Health (MDH), the Pollution Control Agency (PCA), the Minnesota Department of Agriculture (MDA), and the Department of Natural Resources (DNR).

In general, the MDH has authority to control the regulations and standards for private drinking water supplies and sewage disposal systems while the PCA generally has authority to regulate water quality within Minnesota.

The MDH also establishes health risk limits (HRLs) for groundwater,³ and under Minnesota's Safe Drinking Water Act,⁴ the MDH assists local public water supplies in developing source water protection plans to protect groundwater and surface water used as public drinking water.

PCA duties include implementing the federal Clean Water Act (CWA)⁵ and the federal Safe Drinking Water Act (SDWA)⁶ within the state of Minnesota⁷ and issuing or denying permits for water pollution control in Minnesota.⁸ Furthermore, the PCA establishes plans and programs for the abatement, control, and prevention of water pollution with the exception that the Minnesota Department of Agriculture (MDA) is wholly responsible for water pollution

² MINN. STAT. ANN. §§ 103 *et seq.* (West 1997 & Supp. 2001).

³ MINN. STAT. ANN. § 103H.201 (West 1997); *see also* MINN. R. § 4717.7100 to .7800 (2001).

⁴ MINN. STAT. ANN. § 144.381 to .387 (West 1997); *see also* MINN. R. § 4720 (2001).

⁵ 33 U.S.C. §§ 1251 *et seq.* (1994).

⁶ 42 U.S.C. §§ 300g-1 *et seq.* (1996).

⁷ MINN. STAT. ANN. §§ 115.01 *et seq.* (West 1997 & Supp. 2001). The PCA also implements the federal Clean Air Act (CAA) at 42 U.S.C. §§ 7401 *et seq.* (1994).

⁸ The PCA is charged with water pollution control that includes animal feeding operations (AFOs) or feedlots and water treatment facilities. The PCA is also charged with permits for air pollution prevention including air contaminant treatment, storage, emissions, installations, and operations for facilities having emissions; the storage, collection, transportation, or processing of solid or hazardous waste disposal or the facility installation or any related part or parts of such; and noise pollution sources. MINN. STAT. ANN. § 116.07(4a) (West 1997 & Supp. 2001).

abatement, control, and prevention related to pesticides and fertilizers.^{9, 10, 11, 12} Together the PCA and the MDA have authority that extends to many types of public waters, water basins, navigable waters, meandered lakes, scientific and natural areas, and areas surrounded by public lands. Too, if necessary, the PCA has emergency powers to order immediate discontinuance or abatement of air, land, or water pollution activities before a constitutionally assured hearing takes place if imminent and substantial danger to the health and welfare of the people of the state occurs as a result of such activities.¹³

Besides state statutes and state agency regulations, Minnesota gives counties the authority to impose additional water pollution controls. With this authority, any county board in Minnesota may also, by resolution following approval of the PCA, assume responsibility for processing applications for required water quality permits required for animal feeding operations (AFOs) including livestock feedlots, poultry lots, or other animal lots.¹⁴

Regional water pollution control is enforced through sanitary districts. The purpose of sanitary districts is to promote public health and welfare by providing an adequate and efficient system to collect, convey, pump, treat, and dispose domestic sewage, domestic garbage, and industrial wastes within the district.¹⁵ Two or more adjacent areas may form a sanitary district. Districts may construct, install, improve, maintain, and operate any waste disposal system, works, or facility.¹⁶

Whether released accidentally or not, every person in the state has a duty to notify the PCA immediately of any discharge of any substance or material which, if not recovered, may pollute state waters. A duty also exists to immediately mitigate the damages caused by such discharges.¹⁷

⁹ MINN. STAT. ANN. §§ 115.01 *et seq.* (West 1997 & Supp. 2001).

¹⁰ MINN. STAT. ANN. Ch. 103 H (West 1997 & Supp. 2001).

¹¹ MINN. STAT. ANN. Chs. 18B, C, D, E (West 1997 & Supp. 2001).

¹² The MDA also has federally-delegated Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authority and administers Minnesota's comprehensive Environmental Response and Liability Act (MERLA) also called the state superfund law (see page MN-34 to 35).

¹³ MINN. STAT. ANN. § 116.11 (West 1997).

¹⁴ MINN. STAT. ANN. § 116.07(7) (West 1997 & Supp. 2001).

¹⁵ MINN. STAT. ANN. § 115.19 (West 1997).

¹⁶ MINN. STAT. ANN. § 115.26 (West 1997).

¹⁷ MINN. STAT. ANN. § 115.061 (West 1997).

Before constructing, installing, or operating a new waste disposal system or changing or altering an existing waste disposal system, a permit is required unless the PCA conveys a special waiver of this requirement.¹⁸ Furthermore, anyone who controls, operates, or installs a disposal system or point source is required to provide the PCA with information regarding the system and any polluting and potentially polluting effects. If not voluntarily provided, upon presenting proper credentials to a landowner or tenant, the PCA may enter onto public or private land to examine records, conduct surveys, or perform investigations regarding the installation, maintenance, operation, or discharge of such systems.¹⁹ To carry out PWL duties, the PCA has authority to enforce water quality laws and regulations through injunction, criminal prosecution, civil penalty, specific (or compelled) performance, and any other appropriate action.²⁰

2. *Minnesota Water Conservation*

Subject to existing rights, all public waters and wetlands are under state control, and the state can regulate appropriation and use of surface and underground state waters. The Department of Natural Resources (DNR) oversees the conservation and utilization of water resources including wetlands in the state. The DNR works and plans with other agencies and local governmental units to manage water resources on a statewide basis. The DNR is responsible for the general water resources program involving conservation, allocation, and development of all state waters as well as the issuance of permits for activities that affect state waterways.²¹ In fulfillment of these duties, the DNR collects data, classifies waterways, performs inventories, and creates various maps involving water resources.

The DNR also controls and supervises any activity which changes or could change the course of public waters or wetlands as well as the cross section or current. This includes among other things the construction, reconstruction, repair, removal, abandonment, the transfer of ownership, and other changes of dams, reservoirs, control structures, and waterway obstructions involving state public waters or wetlands.²²

¹⁸ Limited, seasonal permits are issued if the disposal system is operated on streams with extreme seasonal flows.

¹⁹ MINN. STAT. ANN. § 115.04 (West 1997).

²⁰ MINN. STAT. ANN. § 115.071 (West 1997 & Supp. 2001).

²¹ MINN. STAT. ANN. § 103B.155, 103G.127 (West 1997).

²² MINN. STAT. ANN. §§ 103A.201; *see also* Chs. 103B, C, D, E, F, G, H, I, 104 (West 1997 & Supp. 2001).

3. *Minnesota Waterbank Program*

Under the PWL, public waters or wetlands may not be drained without a permit unless replaced or mitigated with public waters or wetlands of equal or greater public value.²³ Some privately owned wetlands are eligible for inclusion in a state waterbank program.²⁴

State waterbank programs are designed to:

- Conserve surface waters;
- Preserve wildlife habitat;
- Reduce runoff;
- Provide for floodwater retention;
- Reduce stream sedimentation;
- Contribute to improved subsurface moisture;
- Enhance the natural beauty of the landscape; and
- Promote total, comprehensive water management planning.

The Minnesota waterbank program is supplemental and complementary to the federal waterbank program. The waterbank program allows the DNR to enter into agreements with landowners for the conservation of wetlands. Minnesota DNR payment rates are dollar amounts at least equal to federal payment rates in place at the time the waterbank agreements are signed.

Waterbank agreements are effective for a period of twenty years and have the option to renew for an additional period of twenty years.²⁵ Waterbank agreements compel the landowner to:

²³ MINN. STAT. ANN. § 103G.211 (West 1997).

²⁴ MINN. STAT. ANN. §§ 103G.221-.235, 97A.145 (West 1997 & Supp. 2001).

²⁵ MINN. STAT. ANN. § 103F.601(2), 84C.01 (West 1997 & Supp. 2001).

- Place designated wetland areas in the program for the agreed period;
- Not drain, burn, fill, or otherwise destroy the wetland character of the areas nor use the areas for agricultural purposes except as determined by the DNR;
- Comply with wetland conservation and development plans for the area as stated in the agreement;
- Forfeit all rights to further payments or grants under the agreement and refund to the state all payments or grants received if the agreement is violated or the land is transferred during the agreement term; and
- Accept DNR's payment and refund determinations.²⁶

In return, the DNR will:

- Make annual payments to the landowner for the full term of the agreement;
- Provide advice on conservation and development practices on the wetlands and adjacent areas; and
- Terminate any agreement by mutual accord if the DNR determines that it is in the public's interest to do so.²⁷

Applications for permission to drain a wetland may be deemed to be granted without an actual permit or without a land exchange if DNR fails to offer one of the following alternatives within 60 days of submission of the application.²⁸

- Accept the wetland area for inclusion into the state waterbank program;
- Acquire the wetlands; or

²⁶ MINN. STAT. ANN. § 103F.601(3) (West 1997).

²⁷ MINN. STAT. ANN. § 103F.601(4), (5), (8) (West 1997).

²⁸ MINN. STAT. ANN. § 15.99 (West 1997 & Supp. 2001).

- Indemnify the landowner through other appropriate means such as conservation restrictions, easements, leases, or any other applicable federal program.²⁹

4. *Minnesota Agricultural Drainage*

A drainage system is a ditch and tile system used to drain water from land and includes lateral lines, system improvements, and improvements of water outlets. Drainage authorities³⁰ have jurisdiction over agricultural drainage systems.³¹ Drainage systems include the improvement of natural waterways and any part of a drainage system under either a federal or state flood control plan.

Drainage authorities have the power to:

- Construct and maintain drainage systems;
- Deepen, widen, straighten, or change the channel or bed of a natural waterway that is part of a drainage system or the channel or bed of a natural waterway that is located at the outlet of a drainage system;
- Extend a drainage system into a municipality for suitable outlet; and
- Construct necessary dikes, dams, and control structures and use power appliances, pumps, and pumping machinery as the law provides.³²

In the determination of drainage system projects, the drainage authority considers factors including environmental and use criteria such as:

- Benefits and costs of the proposed drainage system (both public and private);
- Availability and use of agricultural land acreage (present and anticipated);
- Flooding characteristics of land in the system;

²⁹ MINN. R. § 6115.1220 (2001).

³⁰ Drainage authorities are either board-based drainage authority or joint-county drainage authorities.

³¹ MINN. STAT. ANN. §§ 103E.005, .011(West 1997 & Supp. 2001).

³² MINN. STAT. ANN. § 103E.011(1) (West 1997 & Supp. 2001).

- Effects on water quality, fish, and wildlife; and
- Groundwater availability.³³

Projects include drainage system improvements, improvements of water outlets, lateral line connections, and construction of new drainage systems. These projects begin by petitions to the drainage authority for approval.^{34, 35}

5. *Minnesota Watershed Act*

The purpose of the Minnesota Watershed Act (MWA) is to conserve the state's natural resources through land utilization and flood control.³⁶ The Minnesota Board of Water and Soil Resources (BWSR) oversees the implementation and enforcement of provisions of the MWA³⁷

The BWSR has authority under the MWA to establish a watershed district upon a proper petition. Newly established watershed districts require that all areas included be contiguous and entirely within or partly within a Minnesota county.³⁸ Watershed districts may include all or any part of any watershed within the BWSR's discretion.

Watershed districts are established to:

- Control or alleviate flood water damage;
- Improve stream channels for drainage, navigation, or other public purposes;
- Reclaim or fill wet and overflowed lands;
- Provide water supply for irrigation;
- Regulate the flow of streams and conserve the use of stream waters;

³³ MINN. STAT. ANN. § 103E.015 (West 1997). Determinations are made before drainage work is done.

³⁴ MINN. STAT. ANN. §§ 103E.101, .202, .221, .225, .215 (West 1997 & Supp. 2001).

³⁵ For a useful reference and more information about agricultural districts *see* UNDERSTANDING MINNESOTA'S PUBLIC DRAINAGE LAW: AN OVERVIEW FOR DECISION MAKERS (Assoc. of Minn. Counties, St. Paul, March 1997).

³⁶ MINN. STAT. ANN. §§ 103D (West 1997 & Supp. 2001).

³⁷ MINN. STAT. ANN. §§ 103D.101 (West 1997).

³⁸ MINN. STAT. ANN. § 103D.205 - .271 (West 1997).

- Divert or change watercourses in whole or in part;
- Provide and conserve water supply for domestic, industrial, recreational, and agricultural use;
- Repair, improve, relocate, modify, consolidate, or abandon drainage systems within a watershed district;
- Impose preventive or remedial measures for the control or alleviation of land and soil erosion as well as siltation of watercourses or bodies affected by these things;
- Regulate improvements made by riparian landowners to beds, banks, and shores of lakes, streams, and marshes using a permit process or preserve such areas for beneficial use;
- Provide for the generation of hydroelectric power;
- Protect or enhance the quality of water in watercourses or bodies of water; and
- Provide for the protection and regulation of groundwater.³⁹

6. *Minnesota Animal Feedlots or Animal Feeding Operations*⁴⁰

The purpose of Minnesota feedlot regulation is to achieve a balance of interests - the interest of maintaining environmental integrity and human health with the interest of maintaining an adequate supply of livestock essential to the well being of Minnesota citizens and the nation.⁴¹ Generally, all persons are governed by the revised animal feedlot regulations if they have an operation that produces, stores, disposes, transports, or utilizes animal manure.⁴² Three factors

³⁹ MINN. STAT. ANN. § 103D.201(West 1997).

⁴⁰ A great deal of the reference material for this section of the guidebook was obtained from Minnesota Pollution Control Agency, REVISED FEEDLOT RULES AT A GLANCE, MINNESOTA RULES CHAPTER 7020, *available at* <http://www.pca.state.mn.us/hot/feedlots.html#factsheets> AND MINNESOTA DEPARTMENT OF AGRICULTURE, THE MINNESOTA LIVESTOCK PRODUCER'S GUIDE TO FEEDLOT RULES, 2001, *available at* <http://www.mda/state/mn.us/feedlots/default.htm>.

⁴¹ Statewide, Minnesota has limited animal facility zoning and location requirements. Most regulations controlling the location of animal facility sites in Minnesota are not found in state law but are found in county land use control laws under the subject of zoning. Counties may adopt more stringent standards for feedlots than those developed by the PCA; *see* MINN. STAT. ANN. §§ 366.10, 366.181(West 1991), § 394.21 (West 1997), §§ 462.351 to 462.365 (West 2001).

⁴² The regulations also include the production, storage, disposal, transportation, or utilization of process; *see* Minn. R. § 7020.0200 (2001).

that generally determine the necessary responses to feedlot regulations are location, size, and manure management.⁴³ Feedlot regulation encompasses the air quality and water quality surrounding feedlot facilities, too. In the past, monitoring of some feedlots has shown that the concentration of manure at large livestock feedlots may cause violation of the state's air quality standards for hydrogen sulfide.

Under the Minnesota feedlot regulations, animal feedlots or animal feeding operations (AFOs)⁴⁴ are defined as lots, buildings, or combination of lots and buildings specifically designed and used for the confined feeding, breeding, raising, or holding of animals:

- Where manure may accumulate or
- Where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure.⁴⁵

Using the above definition, open lots used for the feeding and rearing of poultry may be considered animal feedlots, however, pastures are not considered animal feedlots.⁴⁶

Feedlot regulations in Minnesota were first adopted in 1971 and then amended in 1974, in 1978, and in 1997. The 1997 revision of feedlot regulations became effective on October 23, 2000. In general, the revised regulations address all aspects of livestock production but primarily focus on the management of manure - its storage, transportation, and utilization. The revised regulations provide a dual approach to implementation and oversight - both a statewide approach as well as an optional localized, county approach. The county approach involves a cooperative arrangement between the PCA and the individual county where the PCA transfers a portion of its feedlot regulatory authority to the county.⁴⁷

The county approach to feedlot regulation changes the emphasis from procedures involving statewide permitting to local participation and local inspection where flexibility and

⁴³ MINNESOTA POLLUTION CONTROL AGENCY, WATER QUALITY DIVISION, ANIMAL FEEDLOTS, Preamble.

⁴⁴ Intensive aquaculture where large amounts of feed are provided for fish growth is considered essentially an aquatic livestock rearing operation by the PCA, and the PCA has developed a general NPDES/SDS permit for land or surface application of the manure discharge. Contact the PCA for specific details regarding water quality. For more information about licensing, contact the DNR; *see also* MINN. STAT. ANN. §§ 17.46 to 17.498 (West 1998 & Supp. 2001).

⁴⁵ MINN. R. § 7020.0300(3) (2001).

⁴⁶ Pastures are areas where grass or other growing plants are used for grazing and where the concentration of animals is such that vegetation cover is maintained during the growing season except in the immediate vicinity of temporary supplemental feeding or watering devices; *see* Minn. R. § 7020.0300(18) (2001).

⁴⁷ MINN. STAT. ANN. §§ 115.03, 116.07 (West 1997 & Supp. 2001).

compliance may be more appropriately embraced. The localized approach is referred to as the County Feedlot Program (CFP).^{48, 49}

a. The County Feedlot Program

Minnesota's revised feedlot regulations allow the PCA to delegate part of its regulatory authority to counties that want the responsibility of administering the CFP. To participate in the CFP, the county must first request the authority from the PCA in the form of a county-approved resolution and then provide the PCA with a workplan that shows the county's ability to conduct inspections and implement the feedlot regulations. Since the county field officer (CFO) becomes the central figure in the CFP, the county workplan must include the designation of a county employee to serve as the CFO.⁵⁰ The PCA reviews the county's resolution and the required workplan to determine if they may be approved.⁵¹

Upon approval of the county's resolution and workplan, the workplan is incorporated into a joint county/PCA agreement. The joint agreement identifies the county's responsibilities regarding feedlot registration, permitting, inspections, education and assistance, complaints, and follow-up. The joint agreement is reviewed annually by PCA to determine if modifications to the CFP are needed.

The concept behind the localized approach is that counties have considerable experience and sensitivity to local practices and conditions which are useful to expedite both feedlot owners' permitting needs and community concerns. Generally, county experience also encompasses a knowledge of local issues, ordinances, zoning, land use plans, watersheds, soils, and well-water supply. The local approach provides more flexibility and liberty to design programs that fit the county's needs. The CFO's proximity to feedlots plus a greater familiarity of the area makes local staffing a significant asset to the CFP.

⁴⁸ MINN. R. § 7020.1600(3) (2001).

⁴⁹ In early 2001, fifty-three (53) of the 87 Minnesota counties were participating in the CFP; *see* <http://www.pca.state.mn.us/hot/fl-countyoff.html> (visited Nov. 15, 2001).

⁵⁰ Counties with more than 500 feedlots typically need a full time CFO position, although some counties use other local government services such as the Natural Resources Conservation Service (NRCS), the Soil and Water conservation District (SWCD), and the Extension Service to perform many of the more technical requirements of the program; *see* MINNESOTA POLLUTION CONTROL AGENCY, THE COUNTY FEEDLOT PROGRAM, Feb. 2001, *at* <http://www.pca.state.mn.us/publications/wq-f6-51.pdf> (visited Nov. 15, 2001).

⁵¹ Block grants are available to the counties to assist in the financial implementation of the CFP. Block grants are on a 1:1 matching ratio, for cash or in-kind contributions, and the maximum dollar amounts are determined by the number of feedlots in the county with more than 10 AUs; *see* MINNESOTA POLLUTION CONTROL AGENCY, THE COUNTY FEEDLOT PROGRAM, Feb. 2001, *at* <http://www.pca.state.mn.us/publications/wq-f6-51.pdf> (visited Nov. 15, 2001).

Besides regulatory functions pertaining to feedlots, the CFP provides information and education to local citizens regarding potential discharges of feedlot pollution into state waters. The PCA provides training, program oversight, policy, technical support, and formal enforcement for the CFP when needed.⁵²

b. The Revised Feedlot Regulations

Apart from the localized approach involving the CFPs, the revised feedlot rules address many aspects of the management of manure including production, storage, disposal, transportation, and utilization. Livestock operations generally include either pastures or feedlots or combinations of both. Pasture operations are exempt from the feedlot regulations.

Producer Note: At the present time, livestock grazing on pastures in Minnesota are not required to be restricted from access to lakes, rivers, or other waters. However, a feedlot that adjoins a lake⁵³ is required to restrict livestock access to the lake by October 1, 2002. The use of best management practices (BMPs) to reduce or eliminate soil erosion and runoff caused by livestock access to water remains voluntary at this time although developing, implementing, and maintaining BMPs to avoid a pollution hazard⁵⁴ or an imminent public health threat is the responsibility of all livestock owners. The PCA and/or the CFO works with livestock owners on an as needed or case-by-case basis to prevent and abate water quality violations.

A pasture operation is defined as an area where grass or other growing plants are used for livestock grazing and where the concentration of animals is such that vegetative cover can be maintained during the growing season except in the immediate vicinity of temporary supplemental feeding or watering devices.⁵⁵ Although pasture operations are exempt from the Minnesota feedlot regulations,⁵⁶ they are not exempt from the water quality regulations.⁵⁷

⁵² CFPs have the authority to issue interim permits and construction (short-form) permits for feedlots with fewer than 1000 AUs. Permits for feedlots with 1000 or more AUs must be issued by the PCA; *see* MINNESOTA POLLUTION CONTROL AGENCY, THE COUNTY FEEDLOT PROGRAM, Feb. 2001, at <http://www.pca.state.mn.us/publications/wq-f6-51.pdf> (visited Nov. 15, 2001).

⁵³ However, the lake must be classified by the DNR as natural environment, recreational development, or general development; *see* Minn. R. §§ 7020.2015, 6120.3000 (2001).

⁵⁴ Potential hazard is defined as an animal feedlot that presents a potential or immediate source of pollution to waters of the state as determined by a CFO or PCA staff that take into consideration the five following factors: 1) size of the operation, 2) the amount of pollutants involved, 3) the proximity of the operation to waters of the state, 4) the means whereby the pollutants are conveyed to waters of the state, and 5) slope, vegetation, rainfall, and other factors influencing the pollution discharge; *see* MINN. R. § 7020.0300(19)(a) (2001).

⁵⁵ Minn. R. § 7020.0300(18) (2001).

⁵⁶ MINN. R. § 7020.0300(3) (2001).

⁵⁷ MINN. R. §§ 7050 and 7060 (2001).

To establish whether a livestock pasture operation may be considered a feedlot, agricultural producers must make determinations involving vegetative cover and manure accumulation.⁵⁸ The term vegetative cover means that plant coverage is maintained throughout the pasture to the extent that soil erosion and runoff from the area are not environmental problems.⁵⁹ The existence of manure accumulation is another important factor in the determination of whether an area is considered a feedlot. If manure accumulation in an area is minimal enough such that vegetative cover can be maintained during the growing season without regular manure removal, the area is not considered a feedlot.⁶⁰ However, if the existence of manure in an area accumulates to an extent that vegetative cover cannot be maintained without regular manure removal, the area is considered a feedlot. For combination pasture/feedlot operations, only the portion of the operation that meets the definition of a feedlot is regulated by the feedlot rule. All areas of a livestock operation that meet the definition of a feedlot are governed by the feedlot regulations and require registration, site or location restrictions, permitting, and manure management.

Registration is a new requirement of Minnesota's revised feedlot regulations which may be accomplished in three ways:

- Completing a registration form;
- Submitting a permit application; or
- Participating in or being included in a Level II or Level III inventory report conducted as part of a CFP that is submitted to PCA and that contains the required information.⁶¹

⁵⁸ The time or duration that animals are confined or held in an area does not determine whether the area is considered a feedlot.

⁵⁹ Cow paths and shady gathering spots that do not maintain vegetative cover throughout the year are not intended to be defined as feedlots and, thus, are not determined separately from the pasture; *see* MINNESOTA POLLUTION CONTROL AGENCY, THE COUNTY FEEDLOT PROGRAM, Feb. 2001, *at* <http://www.pca.state.mn.us/publications/wq-f6-51.pdf> (visited Nov. 15, 2001).

⁶⁰ Minn. R. § 7020.0300(3) (2001).

⁶¹ Required information for the feedlot registration includes: 1) date application form is completed, 2) name and address of all owners and the person completing the report, 3) legal location of facility, e.g., section number, township, range, etc.), 4) any previous permits held, 5) maximum number and type of animals anticipated to be housed and the type of animal holding areas, 6) identification of surface waters within 1000 feet of the operation and distance from the operation to any nearby water wells, and 7) type and location of manure storage areas; *see* Minn. R. § 7020.0350 (2001).

Another parameter that determines necessary responses to feedlot regulation is the size of the operation in terms of animal units (AUs).⁶² An AU is a mathematic conversion factor developed to uniformly equate different sizes and species of livestock in order to compare potential pollution discharges involving manure into navigable waters for the purpose of water quality regulation under the CWA.⁶³

Beginning January 1, 2002,⁶⁴ the owner of any feedlot or manure storage area that serves 50 or more AUs must register the feedlot with the CFO or the PCA.⁶⁵ Limited exemptions exist for the feedlot registration but include:

- Owners of livestock facilities located on county fairgrounds;
- Owners of pasture or grazing operations that have buildings or lots with a capacity of fewer than 50 AUs;⁶⁶ and
- Owners of pasture or grazing operations that do not have buildings or open lots.⁶⁷

⁶² MINN. R. § 7020.0300(5) (2001); Minnesota AU species values vary slightly from the federal values. Calculation worksheets are available from the PCA to determine the number of animal units for a facility and are also *available at* REVISED FEEDLOT RULES AT A GLANCE, pg. 21, <http://www.pca.state.mn.us/hotfeedlots.html#factsheets> (last visited Nov. 2, 2001). Minnesota AU factors are as follows: mature dairy cattle over 1,000 lbs., 1.4 AU; mature dairy cattle under 1,000 lbs., 1.0 AU; dairy heifers, 0.7 AU; dairy calves, 0.2 AU; slaughter beef cow or steer, 1.0 AU; feeder beef cattle or heifers, 0.7 AU; beef cow-calf pair, 1.2 AU; beef calves, 0.2 AU; swine over 300 lbs., 0.4 AU; swine from 55 to 300 lbs., 0.3 AU; swine under 55 lbs., 0.05 AU; horses, 1 AU; sheep or lambs, 0.1 AU; laying hens or broilers in a facility using a liquid manure system, 0.033 AU; chickens over 5 lbs. in a facility using a dry manure system, 0.005 AU; chickens under 5 lbs. in a facility using a dry manure system; turkeys over 5 lbs., 0.018 AU; turkeys under 5 lbs., 0.005 AU; ducks, 0.01 AU; other animals, divide animal weight by 1,000 lbs. to determine AU; *see* Minn. R. § 7020.0300(5) (2001).

⁶³ To determine the number of AUs for a livestock operation at a single location, first sort any diversity of livestock by species and by size (see n.62). Determine the total number of animals in each group. Multiply the group totals by the AU factor that corresponds to each diversity classification (see n.62). Then add the sum of each calculation together for a grand total. The resulting grand total is the number of AUs for that livestock operation.

⁶⁴ Livestock owners must register feedlots by January 1, 2002 and at least once every four years thereafter; *see* MINN. R. § 7020.0350 (2001).

⁶⁵ If the livestock operation is located less than 300 feet from a stream or river or if the area is located less than 1000 feet from a lake or pond, this number decreases to 10 AUs; *see* Minn. R. §§ 7020.0300(21) (2001).

⁶⁶ In shoreland areas, this number decreases to a capacity of fewer than 10 AUs; *see* MINN. R. § 7020.0350(2)(A)(2) (2001).

⁶⁷ MINN. R. § 7020.0350 (2001).

c. Discharge Permits

Agricultural producers may be reminded that the authority for federal regulation of feedlots comes through the CWA. Under the CWA, discharges of pollution from point sources are unlawful without a NPDES permit. By congressional intent, many agricultural practices enjoy an exemption to CWA's NPDES permit requirement. However, concentrated animal feeding operations (CAFOs) are required to obtain a general or an individual NPDES permit and are exceptions to the agricultural exemption.

A CAFO is defined as an livestock operation having more than 1000 AUs or a livestock operation having more than 300 AUs that discharges directly into navigable waters.⁶⁸ Generally, federal guidelines are set forth according to AU size and whether the operation discharges or does not discharge pollution directly into navigable waters. The federal regulations distinguish livestock operations as follows:

- 1000 or more AUs (are CAFOs);
- 300 to 999 AUs that discharge pollution directly into navigable waters; (are CAFOs);
- 300 to 999 AUs that do not discharge pollution directly into navigable waters (not CAFOs); and
- Fewer than 300 AUs (not CAFOs).

In Minnesota, although the state threshold for feedlot permitting is slightly lower because exemption is more difficult to achieve, most feedlot owners and handlers of manure in Minnesota are not required to have a NPDES or discharge permit.⁶⁹ A feedlot is exempt from a

⁶⁸ However, a NPDES permit may be required on a case-by-case basis if there is a determination that there is a potential risk of discharge of pollution into navigable waters; *see* MINN. R. § 7020.0300(5a) (2001) and 40 C.F.R. § 122.23 (1996).

⁶⁹ Permits are obtained by completing an application form available from the PCA (including their website at <http://www.pca.state.mn.us/hot/feedlots.html#forms>), CFO, NRCS, Soil and Water Conservation Districts (SWCD), and the Minnesota Extension Service. Information required includes the owner's name and address; the facility name and address; physical location of the facility (soil surveys or county maps are helpful); previous permits; reason for the permit application; the proposed number of AUs (a worksheet is available to assist in the calculation); a listing of the existing or proposed buildings, lots, and storage areas on the premises along with the type and dimensions; a description and the location of waters, surface and groundwater, and soil types on the premises; the number of acres used for land application of manure and/or a manure management plan submitted and approved; a sketch or aerial photograph of facilities with features clearly identified; and (if the application is for 1000 or more AUs) an air emissions plan and an emergency response plan. All permit applications must be dated and signed to certify that the application is truthful. Permit applications for the individual NPDES/SDS or the general NPDES/SDS require additional information and a small processing fee. The additional information required for these two permits include the facility's four-digit state identification code (SIC), listing of any other permits that

required discharge permit if the feedlot or manure storage area has fewer than 300 AUs **and** the facility;

- Has not been designated a CAFO and does not have a pollution hazard;⁷⁰ or
- Has one or more open lots that discharge manure-contaminated runoff to waters of the state but the livestock owner has submitted a 2005/2010 Open-Lot Certification form to the PCA.⁷¹

Two feedlot exceptions recognized by Minnesota law that bar the requirement for a discharge permit are:

- When the facility is located on the county fairgrounds or
- When the facility is a short-term stockpile or compost site and the owner does not also own a feedlot or manure storage area.

d. Construction or Expansion Permits

Construction and expansions of feedlots are events that may trigger the requirement to obtain a permit although feedlots with fewer than 300 AUs are not required to have a permit if new construction or expansion of an existing feedlot is in accordance with all technical standards for feedlots.⁷²

have been issued to the facility that were not previously listed in the application, the design basis for the facility (for example, the design basis was the 25-year, 24-hour storm event for the area), the expected volume of freeboard available for manure storage structures during operation, and a second signature that certifies that the additional information is truthful.

⁷⁰ A pollution hazard is a feedlot or manure storage area that does not comply with the requirements of Minn. R. §§ 7020.2000 to 7020.2225 (2001) and has not been issued a SDS or NPDES permit establishing a n alternative construction or operating method or presents a potential or immediate source of pollution to waters of the state based on size, amount of pollutants, location, means of runoff, and other factors; *see* MINN. R. § 7020.0300(19a) (2001).

⁷¹ When a feedlot is registered with PCA and has fewer than 300 AUs, if it discharges manure-contaminated runoff from open lots discharges to surface waters but that discharge is not an immediate threat to human health or the environment, the 2005/2010 Open-Lot Certification (OLC) allows the feedlot owner to implement corrective measures to address the discharge under an extended schedule. The OLC prescribes that corrective measures must be installed to reduce the discharge by approximately 50% by October 1, 2005 and that by October 1, 2010 corrective measures must be installed to meet the final effluent limitations set forth in MINN. R. 7050 (2001). The OLC also protects the owner from any civil penalties that may have accrued in the past due to (passive) pollution discharge violations and failure to obtain a permit.

⁷² Technical standards are found at MINN. R. § 7020.2000 to .2225 (2001) and include requirements for planning, design, construction and operation of feedlots, manure storage areas and related manure handling activities focusing on air and water pollution control. Limited variances for these requirements may exist to avoid undue hardship but exemption application must be filed with the PCA.

For construction or expansions of feedlots resulting in more than 300 AUs but fewer than 1000 AUs, a permit is required but it is the streamlined short-form construction permit.⁷³ A change in feedlot operations or activities that affects manure storage, handling, use, or disposal also triggers permitting for feedlots with more than 300 AUs but fewer than 1000 AUs.

All in all, Minnesota has five types of permits⁷⁴ that may be issued for feedlots:⁷⁵

- Construction Short-Form Permits - for facilities with proposed construction or expansions resulting in 300 to 999 AUs where no pollution hazard exists; these permits are valid for 24 months with a possible extension up to 24 months;
- Interim Permits - for facilities with more than 300 AUs that involve the application of manure to land with high phosphorous soils or greater than 6% slopes in protected areas or proximity near a vulnerable aquifer that supplies drinking water or for facilities with fewer than 1000 AUs that have a pollution hazard; these permit are valid for 24 months with a possible extension up to 90 days;
- Individual SDS Permits - for feedlots with 1000 or more AUs that are not CAFOs and for facilities with fewer than 1000 AUs where a pollution hazard exists that cannot be corrected within the interim permit time frame (above) and for facilities that involve new technology, construction, or operational methods; these permits are valid up to five years;
- Individual NPDES/SDS Permits - for the construction and/or operation of a CAFO as defined by federal regulations that does not meet the criteria of a general NPDES/SDS permit; these permits are valid up to five years;
- General NPDES/SDS Permits - for the construction and/or operation of a CAFO as defined by federal regulations,⁷⁶ i.e., facilities having greater than 1000 AUs or having 300 or more AUs that discharge into navigable waters, or having been

⁷³ Feedlots with 1000 or more AUs must undergo environmental review prior to construction or expansion. The PCA conducts this review and provides the results of an environmental analysis (EA) in an EA worksheet (EAW), but if based on the EAW, there is a finding of no significant impact (FONSI), an environmental impact statement (EIS) is not required to be completed; *see* MINN. STAT. ANN. § 116D (West 1997 & Supp. 2001) and MINN. R. § 4410 (2001).

⁷⁴ MINN. R. § 7020.0405 (2001).

⁷⁵ Besides obtaining the proper permit for construction or expansion, an approval must be obtained from the PCA or the CFO for the plans and specifications of any liquid manure storage structure 90 days prior to any construction and/or expansion. Requirements also exist for notifying the PCA and/or CFO, nearby residents, and the public 30 days prior to any construction and expansion.

⁷⁶ 40 C.F.R. § 122.23 (1996).

determined as a CAFO on a case-by-case basis; these permits are valid up to five years.

e. Specific County Regulations

Since some counties have chosen to regulate facility location, agricultural producers should obtain copies of their county's zoning regulations or ordinances and carefully examine them for any location or distancing requirements. Careful attention must be paid to requirements for public area distancing or buffering. Examples of regulation in this area include setback requirements prohibiting CAFOs or feedlots located closer than 100 feet from any public or private wells, including sealed wells, and requirements that disallow the location of CAFOs or feedlots within a 100 year floodplain.

f. Enforcement

Hearings, appeals, and other procedural matters involved in the permitting process are governed by PCA rules and the rules of the Office of Administrative Hearings. Copies of procedural rules may be obtained upon request, and applicants choosing to appeal decisions should obtain and carefully review these procedural rules. Variances from the permitting requirements discussed above may be obtained to avoid undue hardship, but variances must be requested by application. The variance application procedure is similar to the permit application process. Appeals from the denial of variances are also procedurally allowed.

Permit violations involving livestock operations are punishable by fines up to \$10,000 per day of violation.⁷⁷ Additionally, the attorney general may compel compliance and performance of any terms or conditions of the permit. Violations of the permit may also be enjoined on the basis that the violation is a public nuisance.

Willful or negligent violation of a state regulation or permit requirement generally constitutes a criminal offense and is charged as a misdemeanor. However, the willful or negligent violation of an NPDES permit is increased to a felony offense and punishable by a fine up to \$50,000 per day of violation and imprisonment up to two years. Making false statements on a permit application with the knowledge that one is doing so is punishable by a fine up to \$10,000 and imprisonment up to 6 months.

Violations may also be addressed by enforcement actions under the Minnesota Environmental Rights Act (MERA).⁷⁸ Legal actions filed under the MERA may request declaratory or equitable relief and may be brought by citizens wishing to protect Minnesota's air, water, land, or other natural resource from pollution, impairment, or destruction. However, in citizen lawsuits filed on behalf of the state's natural resources, an alleged violator is usually

⁷⁷ MINN. STAT. ANN. § 115.071(3) (West 1997 & Supp. 2001).

⁷⁸ MINN. STAT. ANN. § 116B.03 *et seq.* (West 1997 & Supp. 2001).

protected by a permit compliance defense if the alleged violation is conduct or activity in compliance with a permit requirement or regulation.

g. General Requirements for Manure Management

Regardless of the size or location of a livestock operation and regardless of whether the livestock operation is considered a pasture or feedlot, Minnesota has requirements related to manure handling and required notifications:

- All persons, whether a permit is required or not, must comply with applicable technical requirements if their operation produces, stores, disposes, transports, or utilizes animal manure or process wastewater;⁷⁹
- Livestock owners that use or apply manure to the land as a fertilizer must have an Individual State Disposal System (SDS) Permit, an Individual NPDES/SDS Permit, or a General NPDES/SDS Permit and must apply the manure to the land in a manner that does not cause pollution;
- Livestock owners who use manure packs or mounding must manage the manure so that a pollution hazard is not created or maintained;
- Local zoning authorities must be notified of any proposed construction or expansion of any feedlot or manure storage area, and notification to the feedlot authority, either PCA or the CFO, must be given thirty days before beginning construction or expansion of any feedlot or manure storage area that would result in 300 or fewer AUs by completing a notification form or by submitting plans and specifications required for liquid manure storage construction.
- Within 10 days of submitting a permit application to PCA for construction or expansion that would result in 500 or more AUs, public notification of the proposed construction or expansion must be published in a local newspaper or actual notice must be given to each resident within 5,000 feet of the proposed feedlot facility and proof of the notification must be presented to PCA along with the permit application for the construction or expansion;

⁷⁹ Technical standards include: 1) general requirements and notification, 2) air standards, 3) water standards, 4) location and expansion restrictions, 5) transportation, 6) livestock access to waters, 7) closure, 8) liquid manure storage areas, 9) unpermitted liquid manure storage areas, 10) poultry barn floors, 11) stockpiling, 12) composting, and 13) land application of manure and manure management plans; *see* MINN. R. §§ 7020.2000 to .2225 (2001).

- Persons who store manure produced by livestock owned by others must keep accurate records of the ownership of all such livestock for a period of three years.⁸⁰

Additional requirements that relate to manure management for livestock operations that qualify as CAFOs and feedlots include:

- No animal feedlot or manure storage area may be constructed, located, or operated in a manner that would create or maintain a potential pollution hazard;
- Vehicles used to transport manure on county, state, or interstate highways or through municipalities must be leakproof;⁸¹
- Manure used as domestic fertilizer may be stored no longer than one year and must not be applied in amounts exceeding the agronomic rate unless a higher rate is allowed by permit; and
- Manure that is not used as domestic fertilizer must be treated or disposed in accordance with other state rules and regulations.⁸²

7. ***Minnesota Nonpoint Source Management Program - the Clean Water Partnership Law***

The federal CWA was enacted to protect and improve water quality. The CWA first focused attention on point sources of pollution.⁸³ Later amendments to the CWA shifted this attention to also include nonpoint sources of pollution. Section 319 of the federal CWA requires each state to assess nonpoint sources of pollution within its boundaries.⁸⁴ To comply with

⁸⁰ MINN. STAT. ANN. § 115.04; *see also* MINN. R. § 7020.0250 (2001).

⁸¹ MINN. R. § 7020.2010 (2001). Should any manure spill onto the public roadway, it must be removed and properly disposed by the hauler.

⁸² Minn. R. § 7020.1600(4a)(b)(2) (2001).

⁸³ The term point source means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete, fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigation; *see* 33 U.S.C. § 1362(14) (1994). Nonpoint sources are all sources of water pollution other than point sources.

⁸⁴ 33 U.S.C. § 1329 (1996).

Section 319, Minnesota developed the nonpoint source management plan program (NSMPP) and enacted the Clean Water Partnership Law (CWPL).⁸⁵

The CWPL aids in the implementation of the CWA's Section 319 in that it directs financial assistance to local governmental units and establishes that technical assistance is available from the PCA⁸⁶ to the local governmental units to carry out the duties to protect and improve surface and groundwater. Although the CWPL specifically targets water quality improvement through the control of water pollution from nonpoint sources, the overall strategy of CWPL is integrated with existing point source pollution control programs.

Soil, soil nutrients, and pesticides have been identified as primary components of nonpoint source pollution. Normal rain, storms, and snow-melt cause many agricultural practices in land use and land management activities to become significant nonpoint sources of pollution. It is important that agricultural producers, local governmental units, state agencies, and federal agencies work together to develop environmentally prudent practices for agriculture and to provide solutions to improved water quality. (MN-58 provides additional information on CWPL funding.)

8. *Minnesota Wetlands*

Wetlands are defined by moisture, soil, and vegetation characteristics. Consequently, wetlands may not always appear wet on the surface.⁸⁷ The Minnesota legislature enacted the Wetland Conservation Act (WCA)⁸⁸ in 1991 but various amendments have been passed to accommodate the different agroecoregions within the state. The purpose of the WCA is to maintain and protect Minnesota's wetlands and the benefits wetlands provide. The policy set forth in the WCA is a no-net-loss policy in quantity, quality, and type. Specifically, the WCA focuses on:

- Preservation of wetlands;
- Conservation of surface waters;
- Maintenance and improvement of water quality;

⁸⁵ MINN. STAT. ANN. §§ 103F.705 to .761 (West 1997 & Supp. 2001).

⁸⁶ Local governmental units include soil and water conservation districts, watershed districts, and any other special purpose district or authority exercising authority in water and related land resources management at the local level.

⁸⁷ MINN. R. § 8420.0110(52) (2001) and 1987 EPA manual; it is NRCS policy to rely on existing USDA wetland determinations when evaluating proposals unless the landowner provides a written request for a certified determination..

⁸⁸ MINN. STAT. ANN. §§ 103G.222 to .2373 and other scattered sections (West 1997 & Supp. 2001); *see* §§ 103A.201, .202, 103B.3355, 103F.901-905 (West 1997) and Minn. R. § 8420 (2001).

- Preservation of wildlife habitat;
- Reduction of runoff;
- Provisions for floodwater retention;
- Reduction of stream sedimentation;
- Contributions to improved subsurface moisture;
- Enhancement of the natural beauty of the landscape; and
- Promotion of comprehensive and total water management planning.⁸⁹

Echoing the federal CWA, the WCA prohibits wetland draining and filling activities on all wetlands⁹⁰ unless the activity is exempt⁹¹ or wetlands are replaced by restoring or creating wetland areas of at least equal public value.⁹² Activities in or around wetlands must follow a priority schedule called sequencing.⁹³ Sequencing means the activity must:

- First, avoid the wetland if possible;
- Second, minimize the impact to the wetland; or
- Third, replace the wetland.⁹⁴

Under the WCA, approximately 4,000 to 5,000 acres of wetland are protectively managed. To assist the landowner in the expense of wetland establishment or replacement, cost-sharing (up to

⁸⁹ MINN. STAT. ANN. § 103A.202 (West 1997).

⁹⁰ On wetlands not covered by the DNR's Public Waters Work Permit Program.

⁹¹ Exempt activities include certain agricultural activities, maintenance of existing drainage systems, public utilities, road maintenance, de minimis activities affecting less than 400 sq. ft. and some larger areas depending on the wetland type, location, and ownership; *see* MINN. R. § 8420.0122(9) (2001).

⁹² Generally replacement acreage is two acres of replaced for each acre drained, excavated, or filled. MINN. R. §§ 8420.0540 to .0550 (2001); wetland acreage that is created or replaced in excess of the prescribed ratio may be deposited into the state wetland bank; accounts are tracked by geographic areas and must maintain a positive balance; *see* MINN. R. §§ 8420.0700 to .0760 (2001).

⁹³ A federal Section 404 CWA dredge and fill permit is required for discharge activities in wetlands; *also see* 33 U.S.C. § 1344 (1996), 40 C.F.R. § 230(1996).

⁹⁴ MINN. R. § 8420.0520 (2001).

50%) may be available. Application for cost-share funds is made to the Board of Water and Soil Resources.

The Board of Water and Soil Resources oversees the administration of the WCA, but local governmental units including cities, counties, townships, soil and water conservation districts, and watershed management organizations actually implement the wetland program.⁹⁵ Because local governmental units may enact their own ordinances, ordinances may vary from area to area. Although the WCA provides for a number of agricultural exemptions (meaning that no permit is required), the WCA requires all landowners to replace any wetland areas drained or filled.⁹⁶ Since all wetland replacement plans are approved by the local governmental unit, agricultural producers should always contact local governmental units before beginning any activities in wetland areas.

To enforce the WCA, cease and desist orders and restoration or replacement orders may be issued by the local governmental unit that implements the WCA or by the Enforcement Division within the DNR.⁹⁷ A violation of a wetland order is considered a criminal offense and is charged as a misdemeanor. However, a violation may also be addressed by civil enforcement. Agricultural producers should contact the local soil and water conservation district before beginning any land altering activities to determine if the land is considered a wetland.⁹⁸

II. GROUNDWATER

A. Minnesota Groundwater Laws and Regulations

The state of Minnesota controls the appropriation and use of underground waters as well as surface waters. Groundwater is protected in Minnesota by the Groundwater Protection Law (GPL).⁹⁹ This statute sets forth the state's goal to maintain groundwater in a natural condition free from any degradation caused by human activity. One approach used to protect Minnesota groundwater is identifying areas that are sensitive to pollution. The GPL contains specific

⁹⁵ To determine the local governmental unit that implements the WCA in your area, contact the county soil and water conservation district or the Minnesota Board of Water and Soil Resources.

⁹⁶ MINN. STAT. ANN. § 103G.2241 (West 1997 & Supp. 2001).

⁹⁷ MINN. R. § 8420.0290 (2001).

⁹⁸ Wetland determinations older than 5 years old may not be accepted. To obtain an agricultural wetland determination, there are four options: 1) request NRCS complete a certified wetland determination (calls for a CPA-038 form), 2) request the Corps of Engineers to complete a wetland determination, 3) hire a private consultant to complete a wetland determination, or 4) request a wetland determination from the local SWCD; *also see* DEPARTMENT OF NATURAL RESOURCES, FACT SHEET: AGRICULTURAL WETLAND DETERMINATIONS, PERMITS, AND REGULATION, FACT SHEET 2.08.01.

⁹⁹ MINN. STAT. ANN. §§ 103H.001 to .280 (West 1997 & Supp. 2001).

procedures for identifying sensitive and contaminated groundwater areas¹⁰⁰ and developing BMPs to respond and prevent such contamination. Groundwater regulation in Minnesota is shared, as is water quality regulation, by four agencies, the DNR, PCA, MDA, and MDH.¹⁰¹

The DNR's Division of Waters, Soils, and Minerals oversees and coordinates the identification of sensitive areas as well as the conservation and utilization of water resources. The DNR develops criteria and guidelines to assess sensitive areas to encourage a consistent approach to assessing geologic sensitivity in Minnesota.^{102, 103} Sensitivity to pollution is best understood in relation to the approximate time that elapses from when a drop of water infiltrates the land surface until it is discharged or pumped from an aquifer. Along with identifying these sensitive areas, these areas are located by mapping. The DNR has primary responsibility to prepare groundwater pollution sensitivity maps.¹⁰⁴ These maps serve as a screening tool to estimate the potential impacts of certain activities and land uses on groundwater.

The GPL gives the DNR the authority upon request to examine any public or private water system which appropriates or uses surface or underground water as well as to discover any information about the water system.¹⁰⁵ Unless there is prior notification to the DNR, wells may not lawfully be abandoned, covered, or otherwise made inaccessible for inspection or have pumps permanently removed.¹⁰⁶

The PCA coordinates notification to those affected by groundwater degradation, and the agency monitors field audits of BMPs. Public education is a responsibility exercised by the PCA, MDA, Minnesota Extension Service, Board of Water and Soil Resources, and Soil and Water Conservation Districts.

¹⁰⁰ Sensitive area means a geographic area defined by natural features where there is a significant risk of groundwater degradation from activities conducted at or near the land surface; *see* MINN. STAT. § 103H.005(13) (West 1997 & Supp. 2001).

¹⁰¹ MINN. STAT. ANN. §§ 103H.001 to .280 (West 1997 & Supp. 2001).

¹⁰² The DNR in conjunction with the Minnesota Geological Survey, Soil and Water Conservation Districts, local water planning authorities and other interested parties.

¹⁰³ MINN. STAT. ANN. § 103H.101(1) (West 1997).

¹⁰⁴ MINN. STAT. ANN. § 103H.101(2) (West 1997).

¹⁰⁵ MINN. STAT. ANN. § 103G.275(3) (West 1997).

¹⁰⁶ Wells with casings of six inches or more (inside diameter). MINN. STAT. ANN. § 103I.301(6)

The MDA has responsibility for the protection of groundwater that relates to the use of agricultural chemicals such as pesticides, fertilizers, plant amendments, or soil amendments.^{107, 108} This responsibility exists whether the degradation is from a point source or a nonpoint source. The MDA is also responsible for developing and recommending BMPs for any degradation related to agricultural chemicals within a sensitive area.¹⁰⁹

The GPL provides for the determination of groundwater contamination in terms of health risk limits (HRLs). The MDH assumes this responsibility and establishes HRLs for groundwater and potential drinking water by using EPA's risk assessment methods and published potency data.¹¹⁰

One of the state's goals is to prevent waste and, thereby, conserve underground water supplies. In following this directive, the MDH uses its authority to regulate water wells.¹¹¹ MDH regulations require that all appropriations of groundwater by drilling or other means be filed with a verified statement with the MDH. The verified statement must contain a log of the drilling materials used, any water encountered, and results of all water pumping tests. Individual statements are confidential, but the information contained in them is used by the MDH for the purpose of scientific study and may cumulatively be made public.

The MDH has authority to take remedial measures including repairs, reconstructing, or sealing a well or boring¹¹² if it is determined that it is:

- Contaminated;
- Not sealed as required;

¹⁰⁷ MINN. STAT. ANN. § 103H.101(5) (West 1997).

¹⁰⁸ The MDA also implements the pesticide management plan and administers nonpoint source pollution authority; Minnesota's Agricultural Chemical Response and Reimbursement Account (ACRRA) provides reimbursement for agricultural chemical spill remediation.

¹⁰⁹ MINN. STAT. ANN. § 103H.275(2)(a)-(f) (West 1997 & Supp. 2001).

¹¹⁰ MINN. STAT. ANN. § 103H.201 (West 1997).

¹¹¹ The MDH has authority to regulate the drilling, construction, modification, repair, and sealing of wells and borings and issue licenses for water well drillers and permits for well drilling; *see* MINN. STAT. ANN. § 103I.101(2), 103I.501 (West 1997 & Supp. 2001). Unless the MDH has delegated authority, a political subdivision may not regulate wells or elevator shafts; *see* MINN. STAT. ANN. § 103I.111(3) (West 1997 & Supp. 2001). A local governing unit may regulate open wells and recharging basins consistent with existing laws and may provide penalties for violations; *see* MINN. STAT. ANN. § 103I.111(4) (West 1997).

¹¹² A boring is a hole or excavation that is not used to extract water and includes exploratory borings, environmental bore holes, vertical heat exchangers, and elevator shafts; *see* Minn. Stat. Ann. § 103I.005(2) (West 1997 & Supp. 2001).

- Poses a danger to groundwater quality; or
- A health hazard.¹¹³

Nonetheless, the owner of a well is not liable for groundwater contamination from a well that occurs after the well is sealed by a licensed contractor who was in compliance with all groundwater laws if a report of the seal has been filed with the MDH and no disruption of the seal occurred.¹¹⁴

Unsealed wells are considered public nuisances, and a county may also abate the nuisance.¹¹⁵ Beyond the state agencies' regulatory authority, a municipality may regulate all drilling except well drilling, elevator shaft drilling and exploratory drilling by prohibiting, restricting, controlling, and requiring permits.¹¹⁶

In Minnesota, a seller of land containing a well has a duty to disclose in writing the existence of any well to a buyer and by failing to disclose its presence becomes liable for costs to seal the well and for any necessary attorney fees.¹¹⁷ A violation of any groundwater law is charged as a misdemeanor. If the violation is willful or involves the failure to obtain a well driller's or exploratory borer's business license, the charge escalates to a gross misdemeanor.¹¹⁸

B. Minnesota Agricultural Use of Groundwater

Minnesota prohibits the increase of water withdrawal pumping capacity or major modification of any installation appropriating or using groundwater or surface water without first obtaining a written permit from the DNR.¹¹⁹

Permits are required for the appropriation of groundwater including agricultural irrigation¹²⁰ whether withdrawals are from natural or altered natural watercourses or

¹¹³ MINN. STAT. ANN. § 103I.231(a) (West 1997).

¹¹⁴ MINN. STAT. ANN. § 103I.325(2) (West 1997).

¹¹⁵ MINN. STAT. ANN. § 103I.111(6) (West 1997).

¹¹⁶ MINN. STAT. ANN. § 103I.111(8) (West 1997).

¹¹⁷ MINN. STAT. ANN. § 103I.235(1)-(2) (West 1997 & Supp. 2001).

¹¹⁸ MINN. STAT. ANN. § 103I.715 (West 1997).

¹¹⁹ MINN. STAT. ANN. § 103G.275(1) (West 1997).

¹²⁰ MINN. STAT. ANN. § 103G.295((3)-(5) (West 1997).

waterbasins.¹²¹ In making permit decisions involving the irrigation of agricultural lands from public waters, the DNR takes soil and water conservation district recommendations into consideration.¹²²

Any agricultural land within an identified sensitive area involving groundwater is eligible for enrollment in the conservation reserve program.¹²³ The landowner of a sensitive area has a complete defense to liability for any degradation of groundwater when:

- The area is addressed in a plan adopted by the soil and water conservation district; and
- The projects and practices required by the plan have been implemented, certified, and maintained.¹²⁴

III. Air Quality

A. Minnesota Air Quality Laws and Regulations

1. Minnesota Air Pollutants

Air pollution or hazardous air pollutants (HAPs)¹²⁵ is defined as a presence of any air contaminant or combination in the outdoor atmosphere that exceeds a quantity of nature for a duration such that it would be injurious to human health or animals or plants or property or that unreasonably interferes with the enjoyment of life or property.¹²⁶ Air contaminant means the presence of any dust, fume, mist, smoke, vapor, gas, or other gaseous, fluid, or particulate substance in the outdoor atmosphere differing or exceeding the natural components of the atmosphere in concentration.¹²⁷ Toxic air contaminant means an air contaminant that may cause or contribute to an increase in mortality or an increase in a chronic or an acute illness or which may pose a present or potential hazard to human health or the integrity of aquatic or terrestrial ecosystems.¹²⁸

¹²¹ MINN. STAT. ANN. § 103G.301(West 1997 & Supp. 2001)

¹²² MINN. STAT. ANN. § 103G.295(5) (West 1997).

¹²³ MINN. STAT. ANN. § 103H.105 (West 1997).

¹²⁴ MINN. STAT. ANN. § 103H.111(a)-(b) (West 1997).

¹²⁵ HAPs are also known as regulated pollutants. The threshold amount for a single HAP is 10 tons/year and 25 tons/year for two or more HAPs.

¹²⁶ MINN. STAT. ANN. § 116.05(3) (West 1997).

¹²⁷ MINN. STAT. ANN. § 116.06(2) (West 1997 & Supp. 2001).

¹²⁸ MINN. STAT. ANN. § 115D.14 (West 1997).

In Minnesota, air quality standards are developed by the PCA.¹²⁹ The MDH, however, has authority to set forth health risk values (HRVs)¹³⁰ for guidance in air quality determinations and in improving overall air quality. The PCA regulates and enforces air standards primarily through a permit system designed to limit pollutant emissions. Measurements of emissions provide a means to determine the success of control programs. Emissions of pollutants above established thresholds may not lawfully occur without a permit. An air emission permit describes how the emitter must operate or what the emitter must do to meet air quality requirements. Minnesota has four types of state air permits:

- Construction permit - This permit applies to construction, expansion, or modification of facilities or equipment;
- Registration permit - This permit applies to facilities or equipment with low measured emissions;
- General permit - This permit applies to general manufacturing facilities, hot mix asphalt plants, and non-metallic mineral processing emissions; and
- Individual total permit - This permit applies to existing facilities that do not meet the criteria of the other permits.

A person who controls the source of an air emission is required to notify the PCA immediately of excessive or abnormal unpermitted emissions that:

- May cause air pollution endangering human health;
- May cause air pollution damaging property; or
- Cause obnoxious odors constituting a public nuisance.¹³¹

Any person who is required to notify the PCA under the above conditions must take immediate and reasonable steps to minimize the emissions or abate the air pollution and obnoxious odors caused by the emissions. Otherwise, the PCA is authorized to issue administrative orders for air pollution abatement or air quality control.¹³² However, unpermitted air emissions from agricultural operations that are not otherwise deemed a nuisance are exempt from the notification

¹²⁹ Currently Minnesota ambient air quality standards for criteria pollutants also called HAPs are the same as national ambient air quality standards (NAAQS) under EPA; *available at* http://www.pac.state.mn.us/air/air_mnrules.html and <http://www.epa.gov/airs/criteria.html>.

¹³⁰ MINN. R. § 4717 (2001).

¹³¹ MINN. STAT. ANN. § 116.061(1) (West 1997 & Supp. 2001).

¹³² MINN. STAT. ANN. § 116.061(3) (West 1997 & Supp. 2001).

requirements and mandatory abatement for emissions of air pollution and obnoxious odors.¹³³ In determining whether control or abatement orders are issued, the PCA evaluates many factors. These factors include:

- Degree and character or type of injury;
- Interference with the protection of public health and property;
- Practicability of reducing or limiting emissions; and
- Suitability of the air pollution source to the area where it is located.¹³⁴

2. *Minnesota Odor Emissions*

Under recent changes in the law, odor emissions are also regulated under air pollution control regulations.¹³⁵ These regulations prohibit emission of odorous air contaminants into the ambient air in excess of designated standards. Odor emissions are controlled at the source, i.e., the landowner's property line with limitations governed by area zoning, and at general public accesses. Air quality easements obtained by landowners on adjoining property can extend air standards control boundaries beyond the boundary of the landowner's own property. An air quality easement may provide the means whereby a livestock production facility may achieve air standards compliance that otherwise might violate air quality standards if measured nearer to the livestock facility.^{136, 137}

In response to citizen complaints of livestock odors, the PCA initiates monitoring to identify potential livestock facility violations of the state ambient air quality standards for hydrogen sulfide.¹³⁸ When livestock production facilities are found to be in violation of ambient

¹³³ MINN. STAT. ANN. § 116.061(3) (West 1997 & Supp. 2001).

¹³⁴ MINN. STAT. ANN. § 115.071 (West 1997 & Supp. 2001).

¹³⁵ MINN. POLLUTION CONTROL AGENCY, RULES, REGULATIONS, AND AIR QUALITY STANDARDS, and CONTROL OF ODORS IN THE AMBIENT AIR.

¹³⁶ MINN. STAT. ANN. § 116.0713(d) (West 1997 & Supp. 2001).

¹³⁷ The air quality easement must be for no more than five years, must be in writing, and must be available upon request by the agency or the county feedlot officer; *see* MINN. STAT. ANN. § 116.0713(d) (West 1997 & Supp. 2001).

¹³⁸ Minnesota ambient air quality standards exist for hydrogen sulfide, ozone, carbon monoxide, sulfur dioxide, three sizes of particulate matter, and nitrogen dioxide. Hydrogen sulfide and particulate matter are of special concern for many agricultural operations; *see* MINN. R. § 7009.0080 (2001).

hydrogen sulfide standards, the PCA takes actions necessary to bring about compliance utilizing technical assistance and enforcement authorities.¹³⁹

Livestock production facilities, nonetheless, have a limited exemption from state ambient air quality standards on days when manure is being removed from barns or from manure storage facilities and for seven days after manure is removed. Livestock production facilities with greater than 300 AUs have a maximum cumulative exemption in a calendar year of 21 days for the manure removal process. To claim the odor exemption, the operator of the livestock production facility must provide notice to either the PCA or the CFO.¹⁴⁰ Notification must include:

- The names of the owners or the legal name of the facility;
- The location of the facility by county, township, section, and quarter section;
- The facility's permit number, if applicable; and
- The anticipated date and anticipated number of days of removal.¹⁴¹

3. Minnesota Sound and Noise Levels

Minnesota also has rules governing the maximum sound levels.¹⁴² These rules limit levels of sound based on present knowledge for the preservation of public health and welfare.¹⁴³ The standards or restriction vary according to the time of day, the area and/or activities affected, the level of annoyance, and the activity emitting the noise. The rules are based on noise area classifications and are protective of residential neighborhoods and evening times.

Producer Note: Agricultural producers should be aware that air emissions from CAFOs are regulated and subject to air quality violations.

¹³⁹ Ambient hydrogen sulfide standards are violated when an operation exceeds more than 50 ppb, averaged over a half-hour period, twice in one year or 30 ppb, averaged over a half-hour period, twice in five consecutive days; *see* MINN. R. § 7009.0080 (2001).

¹⁴⁰ MINN. STAT. ANN. § 116.0713 (West 1997 & Supp. 2001).

¹⁴¹ MINN. R. § 7020.2002 (2001).

¹⁴² MINN. R. §§ 7030.0010 to .1060 (2001).

¹⁴³ MINN. R. §§ 7030.0040 (2001).

4. Minnesota Air Quality Enforcement

If as a result of air pollution, the citizens of the state are exposed to imminent and substantial danger to their health and welfare,¹⁴⁴ the PCA may by emergency order direct the immediate discontinuance or abatement of the pollution without notice and without a hearing or in the alternative, at the request of the PCA, the attorney general may bring a legal action in the name of the state in the appropriate district court for a temporary restraining order to immediately abate or prevent the pollution. The agency's order or, alternatively, the temporary restraining order remains in effect until a notice, hearing, and determination occurs.¹⁴⁵

IV. SOLID WASTE AND HAZARDOUS WASTE

A. Minnesota Solid Waste and Hazardous Waste Laws and Regulations

1. Minnesota Waste Management Districts

The management of solid waste has shifted from seeking a locally focused solution to seeking a broader statewide, and sometimes nationally, focused solution. Along with many other states, Minnesota discovered it was necessary to develop integrated and coordinated solid waste management systems in order to:

- Properly manage the solid waste generated in the state;
- Conserve and protect the natural resources in the state; and
- Protect the health, safety, and welfare of its citizens.¹⁴⁶

Minnesota uses solid waste management districts in the management of its waste. Solid waste management districts are established by petition and must have the approval of the governing bodies of at least one-half of the counties located partly or wholly within the district.¹⁴⁷ Representatives of a solid waste district have authority to enter upon any public or private property for any necessary purpose such as to obtain information or conduct surveys or investigations provided that reasonable notice has been given, the entrance and activity is during normal business hours, and compensation is made for any damage to the property caused by the entrance or activity.¹⁴⁸

¹⁴⁴ Air, land, or water.

¹⁴⁵ MINN. STAT. ANN. § 116.11 (West 1997).

¹⁴⁶ MINN. STAT. ANN. § 115A.62 (West 1997)..

¹⁴⁷ MINN. STAT. ANN. §§ 115A.62 *et seq.* (West 1997 & Supp. 2001).

¹⁴⁸ MINN. STAT. ANN. § 115A.69(4) (West 1997 & Supp. 2001).

A solid waste district has the same authority that a county would have for solid waste management purposes except authority to issue general obligation bonds or to levy property taxes.¹⁴⁹ The solid waste districts have a duty to develop strategies for:

- Achieving the maximum feasible reduction in waste generation;
- Encouraging manufacturers to design products that eliminate or reduce adverse environmental impacts of resource extraction, manufacturing, use, waste processing, and disposal;
- Educating businesses, public entities, and other consumers to consider potential environmental and financial impacts of all products purchased that may be expensive to recycle or manage as waste due to the presence of toxic or hazardous components or that may create a legal liability;
- Eliminating or reducing toxic or hazardous components in compost from municipal solid waste composting facilities, in ash from municipal solid waste incinerators, and in leachate and air emissions from municipal solid waste landfills in order to reduce the potential legal liability of waste generators, facility owners and operators, and taxpayers;
- Encouraging separation of materials to the extent practicable to ensure that resources result that can be reused or recycled rather than disposed or destroyed; and
- Maximizing the efficiency of a waste management system by managing waste and recyclables close to the point of waste generation taking into account the characteristics of the resources to be recovered from the waste and the type and capacity of local facilities.¹⁵⁰

2. *Minnesota Waste Policy*

Minnesota's policy regarding waste is to protect and conserve the state's natural resources and environment and to manage hazardous waste in a manner that protects the health, safety, and welfare of citizens. This approach involves reducing the amount of waste generated and using further processing, treatment, separation, and resource recovery when possible and using waste disposal as a final alternative.

¹⁴⁹ MINN. STAT. ANN. § 115A.715 (West 1997).

¹⁵⁰ MINN. STAT. ANN. § 115A.411 (West 1997 & Supp. 2001).

Minnesota has a Waste Management Board (WMB) which has the power to create hazardous waste sites and buffer zones around those sites.¹⁵¹ The WMB is responsible for developing a statewide hazardous waste management plan and providing technical and research assistance programs for hazardous waste generators.

The MDA conducts waste pesticide collection programs throughout the state.¹⁵² Permanent waste pesticide collection sites are located in agricultural areas. Annual container collections are coordinated by the MDA, and temporary county collections are held every two years. The MDA also regulates agricultural chemical storage. Incident response (emergency, comprehensive, long-term, and voluntary) concerning pesticides and fertilizers is another domain regulated by the MDA. The MDA has joint responsibility with the PCA for administering the Minnesota Environmental Response and Liability Act (MERLA), often called the superfund law.

a. Waste Tire Disposal

Waste tire disposal is prohibited because it is considered to unreasonably endanger public health and safety. Minnesota manages waste tire disposal through a permitting system for tire collectors and tire processors.¹⁵³ Any waste tire collector or processor with more than 500 waste tires is required to have a permit from the Minnesota PCA. The PCA can also require tire collectors or processors with fewer than 500 waste tires to have permits unless the collector or processor falls under one of the several exceptions.¹⁵⁴ Exceptions for the permit requirement for waste or used tire disposal include the utilization of tires for agricultural purposes as long as the waste tires are kept on the site of use.¹⁵⁵

b. Lead Acid Battery Disposal

The disposal of lead acid batteries into a land disposal of mixed municipal solid waste has been prohibited since 1988. Violations of this law are charged as misdemeanors.¹⁵⁶

c. Radioactive and Hazardous Waste Storage

Storage of radioactive or hazardous waste in a manner that would endanger the state's potable water supply is prohibited. This storage prohibition applies to waste produced within

¹⁵¹ MINN. STAT. ANN. § 115A.075 (West 1997).

¹⁵² MINN. STAT. ANN. § 18B.065 (West 1998).

¹⁵³ MINN. STAT. ANN. § 115A.90 to 115A.914 (West 1997 & Supp. 2001).

¹⁵⁴ MINN. STAT. ANN. § 115A.902(1) (West 1997 & Supp. 2001).

¹⁵⁵ MINN. STAT. ANN. § 115A.902(2)(5) (West 1997 & Supp. 2001).

¹⁵⁶ MINN. STAT. ANN. § 115A.915 (West 1997).

and outside the state.¹⁵⁷ Depositories for radioactive or hazardous waste are prohibited whether they are located above the natural grade of the land, partially above, or below it; however, an exception exists if there is proof that the depository could not be expected to pollute a potable water supply.¹⁵⁸

3. *Minnesota Underground Storage Tanks*

An underground storage tank (UST) is any storage tank, container, or combination of containers including vessels, enclosures, structures, and connected underground appurtenances used to contain or dispense regulated substances where the volume of such, including any associated underground pipes, is ten percent or more beneath the surface of the ground.¹⁵⁹ An UST, however, does not include surface impoundments, pits, ponds, lagoons, stormwater or wastewater collection systems, flow-through process tanks, septic tanks, and tanks located above the floor surface in an underground area such as a basement, cellar, or mine.¹⁶⁰

The owner of an UST must notify the PCA of a tank's existence within 30 days after installation of the tank and provide information that specifies its size, type, age, location, use, and contents. The UST owner also must also notify the PCA within 30 days of any permanent removal from service or a change in a UST's reported use, contents, or ownership.¹⁶¹

Farm or residential tanks with a capacity of 1,100 gallons or less that are used for storing motor fuel for noncommercial purposes or storing heating oil for consumptive use on the premises are exempted from UST notification requirements.

¹⁵⁷ MINN. STAT. ANN. § 115.065 (West 1997).

¹⁵⁸ MINN. STAT. ANN. § 115.067 (West 1997). Regarding the storage of radioactive waste, *see Id.* § 116C.76 (West 1997).

¹⁵⁹ MINN. STAT. ANN. § 116.46(8) (West 1997).

¹⁶⁰ MINN. STAT. ANN. § 116.47 (West 1997).

¹⁶¹ MINN. STAT. ANN. § 116.48 (West 1997).

4. *Minnesota Environmental Compensation and Liability Act/MERLA*

In 1983, Minnesota adopted the Minnesota Environmental Compensation and Liability Act (MERLA).¹⁶² The MERLA imposes joint and several liability on any person(s) responsible for the release or threatened release of hazardous substances from a facility.¹⁶³ The PCA administers the MERLA jointly with the MDA.

The MERLA also creates a hazardous waste generator tax. This tax provides funds that may be designated for use in clean-up activities and funds that may be used for hazardous substance injury compensation. An injury compensation claimant may be compensated for injuries to person or property due to releases of hazardous substances. Agricultural producers should note that the MERLA limits the filing time for such claims and proscribes simultaneous court claims.

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

V. PESTICIDES AND FERTILIZERS

Producer Note: Use of pesticides and other farm chemicals is regulated by federal and state statutes. Most states, including Minnesota, have some form of licensing or certification requirements controlling pesticide users. Additionally, if an agricultural producer employs agricultural workers, there are regulations which address safety concerns about pesticide use by those workers and around those workers.¹⁶⁴

A. Minnesota Pesticide and Fertilizer Laws and Regulations

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

¹⁶² MINN. STAT. ANN. §§ 115B.01 *et seq.* (West 1997 & Supp. 2001).

¹⁶³ Facilities may be buildings, structures, pipelines, equipment, impoundments, wells, pits, ponds, lagoons, or any other site where a hazardous substance, pollutant, or contaminant has been placed, stored, or disposed. MINN. STAT. ANN. § 115B.02(5) (West 1997 & 2001). Joint and several liability addresses response costs and damages tied to a release of a hazardous substance. Releases of pollutants or contaminants are excluded from the joint and several liability provisions; *see* MINN. STAT. ANN. § 115B.04, .05, .055 (West 1997).

¹⁶⁴ Worker Protection Standard 40 C.F.R. § 170.

1. Minnesota Pesticide Registration

Every pesticide sold, offered for sale, or distributed in Minnesota is required to be registered with the MDA and to be reviewed annually.¹⁶⁵ The registration application includes the name and address of the applicant or the person whose name appears on the label, the name of the pesticide and other necessary product information or nomenclature, a complete copy of the pesticide label including the directions for use, a statement of all claims made for its use, and the use classification desired for approval as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).¹⁶⁶

For registration purposes, the MDA may require submission of the formula of any pesticide including active and inert ingredients or any other relevant information deemed necessary. Registration is not required if the pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at the plant or warehouse as a constituent part of a registered pesticide. The MDA is authorized to issue experimental use permits for pesticides in lieu of registration.¹⁶⁷

2. Minnesota Certifications for Pesticide Applicators

Laws that control pesticide use and application differ according to whether or not the pesticide is classified as a restricted-use pesticide or a general-use pesticide. A restricted-use pesticide refers to any pesticide formulation addressed by FIFRA or state law which, in order to protect the environment, requires additional restrictions as to the rates, areas, times, and conditions of use when utilized according to directions for use.¹⁶⁸ Restricted-use pesticides may be utilized by pesticide applicators that are certified as private, noncommercial, commercial, and structural pest control applicators.¹⁶⁹

A certified applicator is an individual including a private, noncommercial, commercial, or structural pest control applicator who may lawfully use or supervise the use of any restricted-use pesticide. To become certified, one must first comply with the certification requirements and any other requirements or conditions the MDA may deem necessary to prevent adverse effects to

¹⁶⁵ Pesticide registrations expire each year on December 31 and may be renewed on or before that date for the following calendar year; *see* MINN. STAT. ANN. § 18B.26(1) (West 1998 & Supp. 2001).

¹⁶⁶ MINN. STAT. ANN. § 18B.26 (West 1998 & 2001) and 7 U.S.C. §§ 136 *et seq.* (1994).

¹⁶⁷ MINN. STAT. ANN. § 18B.28 (West 1998).

¹⁶⁸ MINN. STAT. ANN. §§ 18B.01(24) (West 1998).

¹⁶⁹ MINN. STAT. ANN. § 18B.30 - .39 (West 1998).

the environment.¹⁷⁰ A person who is not a certified applicator may not use a restricted-use pesticide unless the use is under the direct supervision of a certified applicator.

a. Certified Private Applicator

Any individual who desires to lawfully use or supervise the use of any restricted-use pesticide to produce an agricultural commodity on land owned or rented by the individual or owned or rented by the individual's employer or conducts such activities without any compensation other than the trading of personal services between agricultural commodity producers on the land of another may do so by becoming a certified private applicator.¹⁷¹ The applicant becomes certified by MDA to use restricted-use pesticides after attesting that he is competent to use the product properly, that he has read and understands the label, and that he will use the pesticide according to the label directions.

b. Certified Noncommercial Applicator

Any individual who desires to lawfully use or supervise the use of restricted-use pesticides on lands in the performance of the individual's job duties must obtain a noncommercial applicator license for an appropriate use category unless the individual is a certified private applicator, a licensed commercial, or a structural pest control applicator.¹⁷²

To become a licensed noncommercial applicator, the applicant must pass a closed-book examination or its equivalent¹⁷³ and pay a small but nonrefundable fee.¹⁷⁴ The license issued must be prominently displayed to the public in the individual's place of business.¹⁷⁵ It expires annually on December 31 and is nontransferrable. License renewals may require an assurance of continuing level of competence and ability to safely and properly use pesticides.¹⁷⁶ A licensed noncommercial applicator may not apply restricted-use pesticides into or on surface waters without also having a valid aquatic pest control license except when applying pesticides intended for: 1) pest control operations for purple loosestrife control, 2) mosquito and black fly control, 3) pest control on rights-of-way, 4) pest control for silvicultural operations, and 5) piscicides.¹⁷⁷

¹⁷⁰ MINN. STAT. ANN. § 18B.28 (West 1998).

¹⁷¹ MINN. STAT. ANN. § 18B.36 (West 1998).

¹⁷² MINN. STAT. ANN. § 18B.34(1)(a) (West 1998).

¹⁷³ MINN. STAT. ANN. § 18B.34(3) (West 1998).

¹⁷⁴ MINN. STAT. ANN. § 18B.34(5) (West 1998).

¹⁷⁵ MINN. STAT. ANN. § 18B.34(2) (West 1998).

¹⁷⁶ MINN. STAT. ANN. § 18B.34(4) (West 1998).

¹⁷⁷ MINN. STAT. ANN. § 18B.34(1)(b) (West 1998).

c. Commercial Applicator License

To lawfully apply a pesticide on lands for hire, an individual must obtain a structural pest control license or a commercial applicator license for the particular appropriate use category.¹⁷⁸ A person with a commercial applicator license may not apply pesticides on or into surface waters without an aquatic pest control license except when the application is for the purpose of: 1) pest control on cultivated wild rice, 2) aerial pest control operations for emergent vegetation control, 3) mosquito and black fly control operations, 4) pest control on rights-of-way, 5) pest control for silvicultural operations, and 6) aerial application of piscicides.¹⁷⁹

d. Pesticide Dealer License

A pesticide dealer license is required for:

- Restricted-use or bulk pesticide dealers;
- Persons having a restricted-use pesticide in their possession with the intent to distribute; and
- Private applicators buying restricted-use pesticides from an unlicensed source for personal use.¹⁸⁰

e. Pesticide Records

Pesticide dealers are required to keep pesticide records regarding sales of all restricted-use pesticides. These records must be kept on forms supplied by the MDA for five years.¹⁸¹ Year-to-year records must also be submitted annually with the application for pesticide dealer license renewal.

Commercial and noncommercial applicators must maintain a record of all pesticide use for each site. Additionally, noncommercial applicators are required to keep more detailed records on the use of restricted-use pesticides. The required record for restricted-use pesticides include the:

¹⁷⁸ MINN. STAT. ANN. § 18B.33(a) (West 1998).

¹⁷⁹ MINN. STAT. ANN. § 18B.33(b) (West 1998).

¹⁸⁰ MINN. STAT. ANN. § 18B.31 (West 1998).

¹⁸¹ MINN. STAT. ANN. § 18B.37(1) (West 1998).

- Name and address of the customer;
- Location of the site where the pesticide was applied;
- License number, name, and signature of applicator;
- Name and address of applicator business;
- EPA registration number and brand name of the pesticide used;
- Concentration or dosage used;
- Area treated;
- Temperature, wind speed, and wind direction at time of application; and
- Other information as required by the MDA.¹⁸²

Records for each pesticide application should be a single page document except a map may be attached to identify treated areas. Record forms are available from the MDA, however, an invoice with the required information may serve as the required record. Records must be retained for five years after the date of treatment. A commercial applicator must give a copy of the record to the customer.¹⁸³

f. Pesticide Storage

The storage of any pesticide or pesticide container is prohibited when storage is in a manner likely to endanger humans, pollute the environment, or damage agricultural products, livestock, wildlife, or beneficial insects. All pesticides and pesticide containers are required to be disposed properly unless they are returned to the original manufacturer, distributor, or agent for resale, reformation, or disposal.¹⁸⁴

g. Pesticide Enforcement

The MDA has access for inspection or sampling at reasonable times to all places where persons manufacture, formulate, distribute, dispose, store, or transport any pesticide or pesticide

¹⁸² MINN. STAT. ANN. § 18B.37(2) (West 1998).

¹⁸³ MINN. STAT. ANN. § 18B.37(2) (West 1998).

¹⁸⁴ MINN. STAT. ANN. § 18B.14, .37(4) (West 1998).

device and all places affected by the use of any pesticide or pesticide device.¹⁸⁵ When the MDA has reasonable cause to believe that a pesticide or pesticide device is being distributed, stored, transported, or used in violation of law, the MDA is authorized to issue and serve a written stop-sale, stop-use, or removal order upon the owner or custodian of the pesticide or pesticide device.¹⁸⁶ The pesticide or pesticide device is prohibited from sale, use, or removal until the violation has been corrected.¹⁸⁷

B. Minnesota Fertilizer and Soil Conditioner Law

State registration is required for fertilizer brands and fertilizer grades when sold as small package items for products represented and labeled as specialty fertilizers and for soil conditioners sold with recommendations for commercial agriculture use.¹⁸⁸ Minnesota law requires that commercial fertilizers sold or offered for sale or distributed in the state have a legible label conspicuously placed or affixed to the container providing the net weight, brand, grade, guaranteed analysis, and name and address of the guarantor.¹⁸⁹ An exception exists when commercial fertilizer is solely used for agricultural purposes; in these cases, the inclusion of the grade is optional as long as the guaranteed analysis statement is shown in the complete label.¹⁹⁰

A commercial animal waste technician license is required to manage or apply animal wastes for hire. It requires an application and fee, proof of financial liability, and proof of training and knowledge by exam;¹⁹¹ this section, however, exempts persons managing or applying animal waste on land managed by the person's employer.

Producer Note: Agricultural producers must take special care in disposing pesticide containers. Although permits for disposal are not required under Federal Insecticide Rodenticide Act (FIFRA), the pesticide label will reflect requirements for disposal which must be met in order to prevent violations of the law.

¹⁸⁵ MINN. STAT. ANN. § 18D.201 (West 1998 & Supp. 2001).

¹⁸⁶ MINN. STAT. ANN. § 18D.201(4) (West 1998 & Supp. 2001).

¹⁸⁷ MINN. STAT. ANN. § 18D.301 - .331(West 1998 & Supp. 2001).

¹⁸⁸ MINN. STAT. ANN. § 18C.401, .425 (West 1998).

¹⁸⁹ MINN. STAT. ANN. § 18C.215 (West 1998 & Supp. 2001).

¹⁹⁰ MINN. STAT. ANN. § 18C.215(1)(b)(2) (West 1998 & Supp. 2001).

¹⁹¹ MINN. STAT. ANN. § 18C.430 (West 1998 & Supp. 2001).

Producer Note: Agricultural producers are required to take precautions to protect farm workers from pesticides. Producers must properly train and notify workers of pesticide dangers. Producers should refer to the EPA publication entitled *The Worker Protection Standard for Agricultural Producers-How to Comply: What Employers Need to Know* for specific explanations of these requirements. Contact the EPA or the MDA for the most current worker protection requirements.

VI. PROTECTION OF WILDLIFE

Producer Note: Agricultural producers 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 to enhance wildlife and wildlife habitat.

A. Minnesota Wildlife and Endangered Species Protection Laws and Regulations

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

1. *Minnesota Wildlife Habitat Protection*

Minnesota DNR enforcement officers enforce laws and regulations for aquatic plants and endangered species in the same manner as they enforce game and fish provisions. Punishment for violations of wildlife provisions is handled consistently.¹⁹²

Minnesota prohibits the taking, importing, transporting, or selling of any portion of any endangered species of wild animals or plants. Furthermore, possession with the intent to sell an article or product made with any component of the skin, hide, or parts of an endangered species of wild animal or plant is prohibited.¹⁹³ The DNR may, however, allow a prohibited act under a permit issued by the DNR, and exceptions exist for accidental and unknowing destruction of plants and for agricultural activities conducted in noxious weed control.¹⁹⁴

¹⁹² MINN. STAT. ANN. § 84.0895(6) (West 1995 & Supp. 2001).

¹⁹³ MINN. STAT. ANN. § 84.0895(1) (West 1995 & Supp. 2001).

¹⁹⁴ MINN. STAT. ANN. § 84.0895(2)(a) (West 1995 & Supp. 2001).

The Minnesota DNR has authority to designate certain species of wild animals or plants as endangered, threatened, or of special concern.¹⁹⁵ The DNR reevaluates the list of designated species on a three-year cycle to determine whether reclassification or expansion is required.

The term of special concern is not the same as endangered or threatened. The term means the species is uncommon in Minnesota and requires a unique habitat such that monitoring of its status is necessary for its survival or protection. This includes those species that were once threatened or endangered but are no longer threatened or endangered and those species that are on the periphery of their normal geographical range but are not listed as a threatened species.¹⁹⁶

The DNR may create management programs, issue orders, and adopt rules necessary to protect and control the populations of any animal or plant species listed as endangered. Peace officers or conservation officers are authorized to execute warrants to search and seize goods, merchandise, plants, or animals being taken, sold, or offered for sale which ought not to be taken, sold, or offered for sale.¹⁹⁷

Generally, it is not prohibitive to take or destroy plant and animal species on the DNR list for zoological, education, or scientific study for the purpose of enhancing survival of the affected species or when it is necessary to prevent injury to persons or property. Nonetheless, destruction of an endangered species is allowed only when social and economic benefits outweigh the harm caused and when every alternative including live trapping and transportation has been evaluated and rejected. However, destruction and capture of an endangered species is allowed to avoid an immediate and demonstrable threat to human life or property.¹⁹⁸

2. *Minnesota Critical Natural Habitat*

Minnesota has established a natural habitat program promoting reinvestment in Minnesota resources.¹⁹⁹ The program is administered by the DNR and includes contributions from private sources matched with state appropriations. State funds are matched with those provided by environmental organizations for the purpose of purchasing land from the private sector when land is designated as a critical natural habitat for some animal or plant species.²⁰⁰

¹⁹⁵ MINN. STAT. ANN. § 84.0895(3) (West 1995 & Supp. 2001).

¹⁹⁶ MINN. STAT. ANN. § 84.0895(3)(a) (West 1995 & Supp. 2001).

¹⁹⁷ MINN. STAT. ANN. § 84.0895(6) (West 1995 & Supp. 2001).

¹⁹⁸ MINN. STAT. ANN. § 84.0895(7) (West 1995 & Supp. 2001).

¹⁹⁹ MINN. STAT. ANN. §§ 84.943, .945 (West 1995 & Supp. 2001).

²⁰⁰ MINN. STAT. ANN. §84.943 (West 1995 & Supp. 2001).

3. *Minnesota Native Prairie Bank*

Native prairie is land that has never been plowed, has less than ten percent tree cover, and has predominantly native prairie vegetation. The Minnesota DNR is authorized to purchase native prairie for conservation purposes by entering into conservation easements with landowners. Conservation easements may be permanent or limited in duration. If the easement is limited in duration, it must comprise at least a twenty year period with a provision for renewal of another twenty year period.²⁰¹

The DNR encourages the production of prairie plant seeds of Minnesota origin by entering agreements to subsidize costs of commercial production. Such agreements are made, however, only with a landowner whose land is subject to a conservation easement having ten or more years remaining and only after the DNR determines it is feasible to produce prairie plant seed on the land.

4. *Minnesota Peatland Protection Act*

The Minnesota legislature has enacted the Peatland Protection Act (PPA).²⁰² The purpose of this legislation is to protect the unique scientific, aesthetic, vegetative, hydraulic, geological, wildlife, wilderness, and educational values of Minnesota's peatlands. In support of this goal, the Minnesota legislature created the peatland management system by establishing and designating certain core areas of peatland as scientific and natural areas.

Activities prohibited in these designated areas include surface use or mineral use if such use would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other features of the peatland. Activities that are not prohibited include hunting, fishing, research, and control of forest insects, disease, and wildfires.

5. *Minnesota Wild Rice and Other Aquatic Vegetation*

Minnesota has state ownership of any wild rice or other aquatic vegetation growing in public waters. Destruction of the wild rice and other aquatic vegetation is prohibited unless the activity is conducted under an appropriate license or unless the actor is a member of an indigenous or native population.²⁰³

²⁰¹ MINN. STAT. ANN. § 84.96 (West 1995).

²⁰² MINN. STAT. ANN. §§ 84.035 *et seq.* (West 1995).

²⁰³ MINN. STAT. ANN. §§ 84.091 and other scattered sections (West 1995 & Supp. 2001). *See* § 84.091(3) for licensing requirements, and § 84.111 for methods and hours of harvest allowed and prohibited.

6. *Other Minnesota Cost-Share, Loan, and Grant Programs to Protect Natural Resources*

a. *Cost-Share Programs*

Minnesota has a wide assortment of cost share programs available to agricultural producers that address environmental problems or impacts.²⁰⁴ The following list is representative of such programs offered within the state of Minnesota; however, the list does not include federal programs, and the list may not include all state programs available:

- Cooperative Opportunities for Resource Enhancement (CORE) Program; contact the DNR for more information; the goal is to improve fish habitat or angler use on Minnesota's streams and lakes; the program includes stream and lake habitat improvement, fish population management, development of fishing waters, and experimental, restrictive, and managed fish harvests; program funding varies;
- Deer Habitat Improvement Program; contact the DNR for more information; the goal is to develop, restore, and maintain deer habitat; the program includes cost-sharing up to 100% of agricultural food plots for deer; a waiting list exists for participation; program funding is limited because funds are derived from a surcharge on deer hunting licenses;
- Erosion, Sediment Control, and Water Quality Cost-Share Program; contact soil and water conservation districts; the goal is to encourage landowners who install permanent, nonproduction-oriented practices designed to protect and improve soil and water resources such as strip cropping, terracing, animal waste control systems, and field windbreaks; cost-share funding up to 75% is available for high priority projects;
- Deer Hunters Association; contact is the same; the goal is to promote and develop quality deer herds; program funding for deer habitat improvement projects such as food plots or seeding may be available;
- Minnesota Forestry Association (MFA) Program; contact the DNR; the goal is to encourage systems that conserve water quality, soil, and other natural resources and to enhance the timber, wildlife, recreational, aesthetic, and environmental benefits of private woodlands; the program covers a wide range of projects; cost-share funding of 50% or 65% for hardwood planting is usually available but landowners must have 20 or more acres and have a comprehensive forest stewardship plan and a MFA project plan to participate;

²⁰⁴ University of Minnesota Extension Service, FINANCIAL AID TO PRIVATE LANDOWNERS, *available at* <http://www.extension.umn.edu/distribution/naturalresources/> (last visited on Nov. 1, 2001).

- ReLeaf Community Forestry Grants Program; contact the DNR; the goal is to reduce energy consumption during peak heating and cooling periods and reduce carbon dioxide buildup in the earth's atmosphere; matching program funds are usually available for community windbreaks, shelterbelts, and living snowfences and for the protection of oak forests from oak wilt and the preservation of existing trees; cost-share funding up to 50% may be available but funding may not exceed \$25,000 per participant;
- Sharp-tailed Grouse Society; contact the DNR; the goal is to improve sharp-tailed grouse habitat on private lands; cost-share funding for habitat management and free seed for food plots may be available;
- Minnesota Waterfowl Association; contact the same; the goal is to protect statewide waterfowl resources and improve wetland habitats; cost-share funding may be available to restore or to enhance wetlands and upland nesting cover;
- Minnesota White Pine Cost-Share Incentives Program; contact the DNR; the goal is to increase white pine in its natural range area; 50% cost-share program funding is available but landowners must have a comprehensive forest stewardship plan and protect the planted area for 10 years from destructive grazing and fire;
- Pheasant Habitat Improvement Program (PHIP); contact the DNR; the goal is to restore or maintain pheasant habitat; the program includes establishing food plots, planting trees, restoring wetlands, and improving nesting cover; cost-share funding up to 75% may be available;
- Stewardship Incentive Program (SIP); contact the DNR; the goal is to encourage systems that conserve water quality, soil, and other natural resources and to enhance the timber, wildlife, recreational, aesthetic, and environmental benefits of private woodlands; the program covers a wide range of projects; cost-share funding of 50% or 65% for hardwood planting is usually available but may not exceed \$10,000.00 per year per participant; landowners must have at least 20 acres but not more than 1000 acres, with limited exceptions, and have a comprehensive forest stewardship plan; program funding may be limited;
- Wildlife Damage Management Program; contact the DNR; the goal is to provide emergency wildlife damage abatement materials to increase tolerance for wildlife on private lands; the program includes hunting management, temporary fences, fence construction, and lure/food plots; program funding up to \$3,000 in damage abatement materials, \$750 for stored crop damage, and \$500 for flightless geese damage may be available;

b. Loan Programs

- Agriculture Best Management Practices (BMPs) Loan Program;²⁰⁵ contact soil and water conservation districts; the goal is to implement practices listed as priorities in locally developed water plans that prevent or mitigate nonpoint source water pollution; the program includes animal waste control facility improvements, terraces, grass waterways, conservation tillage equipment, and abandoned well sealing; program repayment is directed to the local government units as 2 to 10 year loans in amounts up to \$50,000 with interest rates up to 3% plus a one-time origination loan fee.

c. Grant Programs

- Forestry Legacy Program; contact the DNR, but grants are actually from the U.S. Forest Service; the goal is to conserve and to protect important forest land from conversion to nonforest uses; the program includes the purchase of conservation easements or fee simple ownerships from landowners;
- Minnesota Land Trust; contact is the same; the goal is to place open spaces in Minnesota in perpetual conservation easements; although no actual payments exist, the donated easement is considered a charitable contribution of the right to develop the land that lowers the estate valuation and property taxes and provides other tax benefits to the landowner;
- Permanent Wetland Preserves Program; contact soil and water conservation districts or Minnesota Board of Water and Soil Resources; the goal is to protect wetlands, either natural or restored; the program includes type 1, 2, 3, and 6 wetlands;²⁰⁶ usually areas must be 2.5 to 5 acres; program payment rates are adjusted annually and vary according to wetland location, whether the land is classified as agricultural or non-agricultural, and the tax assessor's average market value of the land.

²⁰⁵ MINN. STAT. ANN. § 41B (West 1998 & Supp. 2001).

²⁰⁶ Type 1 is seasonally flooded basins or upland flats, type 2 is inland fresh meadows, type 3 is shallow marshes, and type 6 is shrub swamp wetlands.

VII. ENFORCEMENT OF STATE ENVIRONMENTAL LAWS

As with federal environmental laws, violators of state environmental laws and regulations face substantial penalties. Specific penalties vary to some degree with each statute. However, penalties generally include both civil and criminal fines. Additional fines can be assessed for each day that a violation occurs. For severe or repeated violations, imprisonment may be imposed. State agencies may also bring court proceedings or proceedings before an administrative tribunal to enjoin prohibited activities and force violators to comply with the statute. In some instances, citizens may file lawsuits against violators to enforce the requirements of the environmental laws. As with federal statutes, state laws afford agricultural producers the right to administrative and/or judicial review of any agency decisions.

VIII. OTHER MINNESOTA STATUTES AFFECTING AGRICULTURE

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

A. Minnesota Dead Animal Disposal

Minnesota law addresses dead animal disposal.²⁰⁷ Every domestic animal that dies or is killed by means other than slaughter for human or animal consumption must be disposed as soon as possible by:

- Burying the carcass at least three feet below the ground;
- Thoroughly burning the carcass; or
- Transporting the carcass to a rendering plant permitted for disposal.

If transportation of the carcass includes travel on a public road, the carcass must be placed in a leakproof container.²⁰⁸ Composting for animal disposal is allowed for poultry carcasses only.²⁰⁹

²⁰⁷ MINN. STAT. ANN. § 35.82(2) (West 1998 & Supp. 2001).

²⁰⁸ MINN. STAT. ANN. § 35.82(2) (West 1998 & Supp. 2001). Specific regulations control the frequency with which and the type of insecticide which must be used in order to properly sanitize trucks used to transport carcasses. Minn. R. §§ 1700, 1800, 1900, 2000 (2001).

²⁰⁹ MINN. R. § 1719.4000 (2001).

Failure to properly dispose an animal carcass is considered a public nuisance, and a civil lawsuit may be brought against the animal owner. Violators of dead animal disposal laws are subject to criminal charges for such actions.²¹⁰

B. Minnesota Farmland Preservation

1. Minnesota Zoning Ordinances

Minnesota uses zoning ordinances to protect its farmland. The state delegates planning and zoning functions to local and county governments.^{211, 212} Generally, agricultural zoning consists of exclusive or nonexclusive agricultural use ordinances.

Exclusive agricultural zoning ordinances prohibit all non-farm dwellings on land that is agriculturally zoned. Nonexclusive agricultural zoning does not prohibit non-farm uses, but it discourages non-farm activities by requiring large minimum lot sizes. Determinative factors that usually guide whether zoning is exclusive or nonexclusive, i.e., restricted to agricultural use only or simply require a large minimum lot size, are farm performance and present use.²¹³

2. Minnesota Land Protection and Preservation

a. Conservation Easements

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

Generally, a conservation easement restricts land use of a particularly described land from uses that would be contrary to conservation purposes. Conservation easements are a popular tool used to prevent or restrict the development or conversion of farmland. A

²¹⁰ MINN. STAT. ANN. § 35.82(2)(c) (West 1998 & Supp. 2001).

²¹¹ MINN. STAT. ANN. §§ 17.80 to .84, 40A.01, .18 (West 1998 & Supp. 2001).

²¹² The 1997 Community-based Planning Act sets forth statewide guidelines and 11 goals to guide community planning including conservation and land-use planning; some state funding may be available for local planning assistance; the act emphasizes long-range, comprehensive planning and cooperation with neighboring communities; *see* MINN. STAT. ANN. § 462.3535 (West 2001).

²¹³ Suggested resources for planning and zoning are: Minnesota Department of Agriculture, LEGAL ISSUES INVOLVED IN RURAL PLANNING AND ZONING REGULATION, PLANNING AND ZONING FOR ANIMAL AGRICULTURE IN MINNESOTA: A HANDBOOK FOR LOCAL GOVERNMENT, Chpt. 3, 1996, and Minnesota Department of Agriculture, EVALUATION OF MINNESOTA AGRICULTURAL LAND PRESERVATION PROGRAMS, 1999.

conservation easement represents a property interest in the form of a legally binding, legally recorded agreement often referred to as an easement deed. The easement deed usually gives an entity or trust organization specific rights to control and protect the land which is typically agricultural land, forested lands, wildlife areas, wetlands, lands of ecological importance, or open spaces.²¹⁴

The purpose for a conservation easement or a property interest restriction is to maintain land and water areas predominantly in their natural, scientific, open, or wooded state as a suitable habitat for fish and wildlife. Aside from the development or conversion restrictions, the landowner, otherwise, retains all other rights to use land subject to a conservation easement for purposes that do not interfere with the conservation purposes stated in the conservation easement agreement.²¹⁵ Generally, conservation easement agreements are individualized to fit the needs and desires of the landowner. Depending on the length of the easement, donors of easements may be eligible for certain tax reduction benefits including property, income, or estate taxes.²¹⁶ Easement donations that are given in perpetuity inure maximum benefits. The DNR has the authority to create conservation easements either in perpetuity or for a defined period.

Minnesota encourages the retirement of certain lands from production including:

- Marginal and highly erodible land;
- Land adjacent to public waters; and
- Crop production land where drainage systems were essential for prior crop production.

Minnesota also encourages the reestablishment of perennial vegetative cover on such lands. Keeping marginal and highly erodible agricultural land out of crop production protects the soil as well as water quality and sustains fish and wildlife habitat in those areas.

Minnesota law authorizes the DNR to impose conservation restrictions upon the land. This statutory term means that DNR may forbid or limit structures, landfills, vegetation, loam, gravel, surface use, and activities detrimental to conservation. Conservation restrictions may be in the form of an order of taking or in an easement, covenant, or condition in any deed, will, or other legal instrument executed by or for the landowner.²¹⁷

²¹⁴ The easement does not require public access to those lands.

²¹⁵ The landowner retains title and the right to sell, devise, restrict public access, and use unless the use is contrary to the conservation easement agreement; generally, the right to develop is restricted.

²¹⁶ Most tax benefits do not attach unless the easement is a perpetual easement, i.e., an easement in perpetuity.

²¹⁷ MINN. STAT. ANN. § 84.65(1) (West 1995).

b. Purchase of Development Rights

Purchase of Development Rights (PDR) programs are another popular means to preserve and protect farmland found in some states. In PDR programs, a state or local government acquires farmland and then extinguishes the right to construct dwellings and commercial buildings on the land. Compensation is generally targeted at landowners who have farmland which is prime development land or is subject to becoming prime development land. Compensation paid to the landowner is given in exchange for the landowner's relinquishment of the right to develop the property. Minnesota adopted the PDR program in 1997.²¹⁸

c. Transfer of Development Rights

Transfer of Development Rights (TDR) programs have elements somewhat similar to other conservation programs including the protection of land areas. However, the concept is that the landowner of a sending area, an area where conservation resources are presently located, transfers that land's correspondent right to develop the potential of that land, which is considered a severable, transferable, and marketable property interest, to the landowner of a recipient or receiving area in exchange for value. Thus, the sending area may not be developed, but the landowner is reimbursed for the loss of the right to develop that land. Minnesota adopted the TDR program in 1997.²¹⁹

d. Agricultural Preserves

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

The Minnesota Agricultural Land Preservation Act (ALPA)²²⁰ allows the formation of agricultural preserves or districts at the local level. Agricultural preserve programs allow landowners to form identified areas where commercial agriculture is particularly encouraged and protected. Program enrollment for the agricultural land preservation is voluntary and taken by application.^{221, 222} Enrollment in agricultural preserves accords the landowners within the

²¹⁸ MINN. STAT. ANN. § 394.25 (West 1997 & Supp. 2001), § 462.357 (West 2001).

²¹⁹ MINN. STAT. ANN. § 394.25 (West 1997 & Supp. 2001), § 462.357 (West 2001).

²²⁰ MINN. STAT. ANN. §§ 40A *et seq.* (West 1998 & Supp. 2001).

²²¹ MINN. STAT. ANN. § 40A.05(9) (West 1998 & Supp. 2001).

²²² Additional information may be obtained from SAVING AMERICA'S FARMLAND: WHAT WORKS, AMERICAN FARMLAND TRUST, 1997.

preserve certain protections from urban encroachment, tax credits, some degree of protection from eminent domain, annexation, public utility development (unless desired), and relief from most added property assessments.²²³

Before enrollment can take place, the agricultural preserve must be formed. The formation of the preserve requires that the county have an MDA-approved agricultural land preservation plan with an implementation procedure.²²⁴ The county's land use plan may include designations of land suitable not only for long-term agricultural use but also the designation of urban expansion zones.²²⁵ Nonetheless, enrollees' land for the agricultural land preserve must be located in an area zoned long-term agricultural use, and additionally, a restrictive covenant²²⁶ pertaining to the exclusive land use must be placed on the deed to property.²²⁷

Land within such preserves must be farmed and managed according to sound soil and water conservation management practices. Applications for enrollment in an agricultural preserve program must include a legal description of the area and the name and address of the landowner along with the restrictive covenant. Land may be enrolled in the agricultural land preserve program whether or not it is homestead land.

Normal agricultural practices within an agricultural preserve may not be restricted or regulated by local government unless there is some direct relationship between the regulation and public health or safety. Nonetheless, land within an agricultural preserve which is located within a township may be annexed to a municipality. Commercial and industrial uses are not permitted within the preserve except those which are:

- Small on-farm commercial or industrial operations important to farming in the agricultural preserve area;

²²³ Some assessments require repayment if land is withdrawn from enrollment in the program.

²²⁴ The formation of the agricultural preserve entails the county submitting their proposed agricultural land preservation plans to the MDA which determines the land usage identification, addresses land usage integration with other plans, and makes other determinations essential to an agricultural use designation; *see* MINN. STAT. ANN. §§ 40A.04, .05(2) (West 1998).

²²⁵ Urban zones generally include residential density requirements, minimum lot sizes, and standards and procedures for decisions regarding rezoning, subdivision, and parcel divisions; *see* MINN. STAT. ANN. § 40A.05(3) (West 1998).

²²⁶ The restrictive covenant is a signed and witnessed agreement by the landowner that the land will be kept in agricultural use and that it will be kept in compliance with the agricultural land preserve law. The agreement is filed at the court house with the land description, and the agreement is binding on the landowner, i.e., the agreement runs with the land and limits use of land to agricultural use.

²²⁷ These restrictive covenants may be terminated by either the landowner or the county, however, the land will remain under the restrictions of the covenant for eight years after notification of the desire to terminate. The landowner may rescind the notice of termination within the first two years after the notice was given. Otherwise, no expiration may occur except after determination by the governor that a public emergency exists; *see* MINN. STAT. ANN. § 40A.05(11) (West 1998).

- Utilization of existing farm buildings for storage that does not disrupt the integrity of the area; and
- Small commercial utilization of existing farm buildings for trades such as carpentry, small mechanics, and similar activities.

Although municipal authorities may enforce any corrective measures imposed upon a landowner within a preserve for violations of generally accepted practices, the landowner may in turn ask the district for assistance in planning, designing, and applying practices which reduce soil loss. Failure of the landowner to implement corrective measures, upon being advised that such measures must be implemented, subjects the landowner to civil penalties.²²⁸

e. Metropolitan Agricultural Preserve Program

The Metropolitan Agricultural Preserve Program is somewhat similar to the Agricultural Land Preserve Program; however, it is a geographically limited program. Only land within the seven-county Minneapolis/St. Paul metropolitan area may be enrolled.²²⁹

f. Resources Fund/Reinvest in Minnesota Program

Minnesota supports a Resources Fund Program which provides money for capital acquisitions and betterment projects of public land and for conservation easements and improvements of private land. Money from this fund is limited to water quality improvement, soil erosion prevention, and fish and wildlife conservation, enhancement, and habitat improvement.²³⁰

3. Minnesota Taxation Programs

Land used for agricultural purposes generally receive a preferential taxation status in Minnesota. The state utilizes a preferential tax assessment program called the green acres program to protect agricultural producers from paying escalating land taxes due to increased land values of surrounding non-agricultural property such as land that has been developed or that has experienced urban encroachment. An assessment is described as preferential because the assessment operates as an incentive to maintain the land in its current agricultural use rather than to change the agricultural land into a new or more developed use.

A unit of ten or more acres of real estate is entitled to preferred assessment valuation and tax deferment only if it is a homestead and it is actively and exclusively devoted to agricultural

²²⁸ Civil penalties may not exceed \$1,000.

²²⁹ MINN. STAT. ANN. § 473H (West 2001).

²³⁰ MINN. STAT. ANN. § 84.95 (West 1995), §§ 116P.01 - .13, 103F.501-535 (West 1997 & Supp. 2001).

use.²³¹ Property is considered to be actively and exclusively in agricultural use when at least one third of the total family income of the landowner is derived from the property itself or when the total income from the agricultural production involving the land including land rental is in excess of \$300 plus \$10 per tillable acre **and** the land is primarily devoted to agricultural use. Added values resulting from non-agricultural factors are not considered when assessing the land.

The application for preferred assessment must be filed by May 1 of the year prior to the year in which taxes are payable. Once land qualifies, it continues in an approved status until it no longer qualifies. However, when the land no longer qualifies for preferential assessment, the deferred taxes for the previous three years are charged to the landowner. (This is often referred to as a three-year rollback.)

C. Minnesota Right-to-Farm Statute and Nuisance Law

Producer Note: Agricultural producers may be confronted with complaints of local residents. These problems may originate due to odors, flies, rodents, or dust generated by the operation. Resulting lawsuits or court actions in these instances are usually based on a nuisance theory, and in some cases, a right-to-farm defense may apply.

The Minnesota right-to-farm statute is a protection provided to farming operations through state legislation. Under this law, the legal liability of agricultural operations arising from both public and private nuisance claims is curtailed.²³² Specifically, the statute sets forth that:

An agricultural operation which is a part of a family farm is not and shall not become a private or public nuisance after two years from its established date of operation if the operation was not a nuisance at its established date of operation.²³³

However, the legislative right-to-farm protection does not apply when:

- A condition or injury results from:
 - Negligent or improper operation of an agricultural operation;
 - Operation activities are contrary to commonly accepted agricultural practices; or

²³¹ MINN. STAT. ANN. § 273.111(3) (West 1999 & Supp. 2001).

²³² MINN. STAT. ANN. § 561.19(2) (West 2000).

²³³ MINN. STAT. ANN. § 561.19(2) (West 2000).

- Operation activities are contrary to applicable state or local laws, ordinances, rules, or permits;
- An agricultural operation causes injury or direct threat of injury to the health or safety of any person;
- Pollution or a change in the condition of the waters of the state occurs;
- Overflow of waters on the lands of any person occurs;
- The operation is an animal feedlot facility with a swine capacity of 2,500 or more animals or a cattle capacity of 1,000 animals or more; or
- Prosecution occurs for the crime of public nuisance or an abatement action is ordered by a public authority for a public nuisance.

D. Minnesota Burning Prohibitions

Generally, open fires without the written permission of the DNR, a forest officer, or an authorized fire warden are prohibited. Occupants of a property where any unauthorized fire occurs are required to promptly report the fire to the nearest forestry office, fire department, or other proper authority. Failure to report an unauthorized fire is a misdemeanor, and the occupants are deemed to be negligent if the fire spreads and causes damage to another person, to that person's property, or to the state.

Controlled burning is not allowed without a DNR permit. The DNR has authority to issue individual permits to burn vegetative materials as well as other materials. Such permits must be in written form, prescribe the time and conditions under which a fire may occur, and identify what materials are permissible to burn. Violating or exceeding permit conditions constitutes a misdemeanor and is cause for the permit to be revoked.

The DNR also has authority to establish a controlled burning program on public and private land in order to manage prairie land, to reduce wildfire hazards, or to propagate wildlife that require new vegetative growth and brush habitats. The DNR offers instructional manuals to explain how controlled burning is to be done. Technical assistance for controlled burns in the form of plan development, demonstrations, personnel assistance, and financial assistance are also available.²³⁴

²³⁴ MINN. STAT. ANN. § 84.97 (West 1995).

Notwithstanding any law or rule to the contrary, some smaller towns or governmental units may allow the open burning of dried leaves within a city between September 15 and December 1 each year as long as the open burning minimizes air pollution and fire danger and meets any other hazard or nuisance prevention conditions.²³⁵

E. Minnesota Shoreland Management Grants

The DNR may provide grants to local governments to administer, monitor, enforce, or adopt state or local shoreland management plans or ordinances as well as to develop and implement comprehensive lake or river shoreland management strategies.²³⁶

F. Minnesota Environmental Policy Act/MEPA

The Minnesota Environmental Policy Act (MEPA)²³⁷ was solely created by the state legislature. It was not the result of or in response to a federal mandate. The MEPA sets forth a comprehensive environmental policy that requires persons planning to engage in certain actions in the state to use all practicable methods to create a harmonious balance between man and nature. The MEPA imposes an environmental assessment procedure on certain proposed actions.

The MEPA establishes that all government actions and many private actions that significantly impact or that could potentially impact the environment must first have an environmental assessment (EA) or environmental impact study performed. If the EA results in a finding of no significant impact (FONSI), further review is not necessary, and the action may lawfully proceed. If, however, the EA determination is that the action exceeds the FONSI threshold, an environmental impact statement (EIS) must be prepared to determine the exact nature of the significant or potentially significant impact. The EIS is then submitted to the Environmental Quality Council for review, and approval must be obtained before the action may lawfully be engaged. Various Minnesota laws provide helpful threshold criterium for the determination of when an EA or an EIS is required.

An EIS is mandatory for any major governmental action or any major private action (the word major meaning more than local significance) that has or may have significant environmental effects. The word actions refers to:

- All state and local agency actions;
- Some private actions including new agricultural operations; and

²³⁵ MINN. STAT. ANN. § 116.082 (West 1997 & Supp. 2001).

²³⁶ MINN. STAT. ANN. § 84.975 (West 1995). See for more criteria considered in making grants.

²³⁷ MINN. STAT. ANN. § 116D (West 1997 & Supp. 2001) and MINN. R. § 4410 (2001).

- Any other actions for which Minnesota citizens may have concern if this concern is also represented by a petition having 500 voter signatures.

In preparing the EIS, various facets of environmental evaluation must be addressed such as the impact to air, water, land, plants, animals, historic sites or buildings, and cultural resources.

Besides the necessary application and steps in obtaining a permit, the MEPA has a major effect on many agricultural operations including the conditions or content of a permit which could include restrictions, limitations, and subsequent monitoring and reporting.²³⁸ Operations such as feedlots are affected in particular.

G. Minnesota Environmental Rights Act/MERA

The Minnesota Environmental Rights Act (MERA) is a broad grant of judicial standing to citizens also referred to as the right to bring civil actions against public nuisances that affect natural resources within the state.²³⁹ Specifically, MERA allows any person to sue for declaratory or equitable relief in the name of the state in order to protect the air, water, land, or other natural resources from pollution, impairment, or destruction.²⁴⁰

Persons are broadly defined in the MERA to include any natural person, organization, or governmental unit, but the definition excludes a family farm, family farm corporation, or a bona fide farmer corporation.²⁴¹ This exclusion was likely intended to protect family farm entities from being sued under MERA.²⁴² However, the ambiguity of the exclusion could be interpreted to prevent family farm entities from bringing actions under MERA as well.²⁴³ Even taking this last interpretation to be accurate, the MERA allows individual farmers to bring actions as plaintiffs while farm entities may not.

The types of natural resources protected under MERA include mineral, animal, air, water, land, timber, soil, quietude, and recreational, botanical, and historical resources. Scenic and

²³⁸ MINN. STAT. ANN. § 116D (West 1997 & Supp. 2001) and MINN. R. § 4410 (2001).

²³⁹ MINN. STAT. ANN. § 116B.03(1) (West 1997).

²⁴⁰ MINN. STAT. ANN. § 116B.03(1) (West 1997).

²⁴¹ MINN. STAT. ANN. § 116B.02(2) (West 1997).

²⁴² MINN. STAT. ANN. § 116B.03(1) (West 1997).

²⁴³ *County of Freeborn v. Bryson*, 210 N.W.2d 290 (Minn. 1973), involved whether a family farm as an entity could bring a MERA action. The court did not rule on that question but held that an individual who happens to own and operate a farm could bring the action. *Id.* at 295. On appeal and later remand, the court narrowed the exclusion even more to allow family farms protection as defendants under the act but only to the extent that the farmers are engaged in farming or farming-related activities. 243 N.W.2d 316 (Minn. 1976).

aesthetic resources are protected to the extent those resources are owned by a governmental unit.²⁴⁴

In order to maintain a cause of action in a MERA action, if a granted permit governs the defendant's conduct or if an environmental standard governs the conduct, the plaintiff must establish that the defendant's conduct violates or is about to violate the standard or the permit.²⁴⁵ However, if the defendant's conduct does not fall within governance of a permit or standard, the plaintiff must show that the defendant's conduct has or is likely to cause the pollution, impairment, or destruction of the air, water, land, or other natural resource.²⁴⁶ In the latter case, the defendant has an affirmative defense to the action if it can be shown that there is no feasible and prudent alternative and that the conduct is consistent with and reasonably required for promotion of the public health, safety, and welfare. Economic considerations alone do not constitute a defense.²⁴⁷

Public nuisance claims are not allowed under MERA if such legal actions would challenge conduct by the defendant pursuant to or in compliance with a regulation, order, or permit issued involving such conduct.²⁴⁸

H. Other Minnesota Agricultural Financing Programs

1. Minnesota Clean Water Partnership Law

The legislative purpose of the Clean Water Partnership Law (CWPL)^{249, 250} is to protect and improve surface and groundwater in the state. This purpose is effected through financial and technical assistance from the PCA to local units of government including soil and water conservation districts, watershed districts, and any other special purpose district or authority exercising jurisdiction in water and in related land resources management at the local level to

²⁴⁴ MINN. STAT. ANN. § 116B.02(4) (West 1997).

²⁴⁵ MINN. STAT. ANN. § 116B.04 (West 1997).

²⁴⁶ MINN. STAT. ANN. § 116B.04 (West 1997).

²⁴⁷ MINN. STAT. ANN. § 116B.04 (West 1997).

²⁴⁸ MINN. STAT. ANN. §§ 116B.03(1), .04 (West 1997). Even though some reliance may be placed on compliance with the permit or standards, if more than one standard applies, the more stringent of the standards will govern the conduct. Additionally, actions in the nature of temporary injunctions may still be brought, even though a standard or permit is involved. *Id.* § 116B.10. Such actions may be brought challenging the standard or permit on the grounds that it is inadequate. Relief may be granted in such cases to prevent irreparable damage to the state's resources.

²⁴⁹ MINN. STAT. ANN. §§ 103F.705 to .761 (West 1997 & Supp. 2001).

²⁵⁰ See MN-21 for additional information regarding CWPL.

control water pollution from nonpoint source pollution that may be associated with BMPs in land use and land management activities.

The PCA may award grants to cover up to fifty percent (50%) of the eligible cost for the development of a diagnostic study and implementation plan including the application of that plan. The PCA determines which costs are eligible costs.

The PCA may also award loans up to one hundred percent (100%) of the costs associated with BMPs including associated administrative costs. Loans may also be used to pay for eligible costs that exceed the fifty percent (50%) grant assistance. The interest rate is usually at or below market rate, and the term may not exceed twenty (20) years.

The local unit of government applying for loan assistance must consult with the local soil and water conservation districts and watershed districts and act in accordance with a comprehensive water plan, a surface water management plan, and an overall plan or any other local plan responsive to the Comprehensive Local Water Management Act.²⁵¹ Determinative factors for receiving loans include:

- The degree of water quality improvement or protection relative to the cost of implementing the BMPs;
- The feasibility of proposed BMPs as a means to abate or prevent nonpoint source water pollution;
- The consistency of project goals and objectives with the state water quality management plans, statewide resource assessments, and other applicable state and local resource management programs.

The PCA may, at any reasonable time, inspect any project and review the expenditure of financial assistance funds granted by the agency to determine whether the local unit of government is in compliance. The PCA may bring a civil action in district court against a local governmental unit to recover any financial assistance funds used in violation of the CWPL.

2. Minnesota Rural Finance Authority

The Minnesota Rural Finance Authority division of the MDA offers a variety of loan programs in conjunction with participating lenders to help producers to purchase agricultural land, breeding livestock, and machinery or to make agricultural improvements in any farm related purpose including livestock production or to invest in an agricultural processing facility or to restructure loans and reorganize debt. Restrictions usually apply as to the applicant's

²⁵¹ Generally, the Comprehensive Local Water Management Act demonstrates a local commitment to water quality protection or improvement by providing an inventory of existing physical and hydrologic information on the area and a general identification of water quality problems and goals.

maximum net worth, and in the Beginning Farmer Program, there is a restriction of having no prior farmland ownership greater than thirty percent (30%) of the county's median farm size. Interest rate varies as do maximum loan amounts and required equity.

Currently, the various loan programs are identified as Basic Farm, Seller Assisted, Agricultural Improvement, Livestock Expansion, Restructure II, and Value-Added Stock Loans. No origination fees are required; however, there is a nominal non-refundable application fee. Applicants, of course, must be residents of Minnesota, and the property must be located in Minnesota. Other requirements vary with the program. Agricultural producers should contact the Rural Finance Authority division of the MDA for more detailed information.²⁵²

3. *Minnesota State Cost-Share Program*

In Minnesota, although state law may mandate that conservation practices be implemented, a land occupier may not lawfully be required to establish soil conservation practices unless there are state cost-sharing funds of seventy-five percent (75%) or more available and approved for that particular land.²⁵³ Depending on the location of the land and its priority in the soil and water conservation district's long-range plans, additional percentages for cost-sharing funds may be available. (Also see page MN- 23 and 44 to 46 for related information.)

²⁵² MINN. STAT. ANN. § 41B (West 1997 & Supp. 2001) and *available @* <http://www.mda.state.mn.us/AGFinance/> (last visited Nov. 1, 2001).

²⁵³ A cost-share of only fifty percent (50%) is necessary if the application is 90 days or more after a court-ordered implementation of a plan and the time schedule is either prepared by the landowner or the court or it is within 90 days after a mediated written agreement; *see* MINN. STAT. § 103F.445 (West 1997 & Supp. 2001).

Appendix A - Agencies

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

State Agencies:

Cooperative Extension Service

240 Coffey Hall
1420 Eckles Avenue
St. Paul, MN 55108-6070
(612) 624-3717
(612) 624-7749 fax
<http://www.extension.umn.edu>

Department of Agriculture

90 West Plato Boulevard
St. Paul, MN 55107-2094
(612) 297-2200 or
(800) 967-2474 toll free
(612) 297-5522 fax
<http://www.mda.state.mn.us>

Divisions within MDA include:

Agricultural Development
Agricultural Finance
Agricultural Marketing Services
Agricultural Planning
Agricultural Statistics
Agronomy and Plant Protection
Dairy and Food Inspection
Finance and Budget
Food Inspection
Grain and Produce Inspection
Human Resources
Information Services
Laboratory Services

Department of Health

Environmental Health Division
121 East Seventh Place, Suite 220
P.O. Box 64975
St. Paul, MN 55164-0975
(651) 215-0700
(651) 215-0979
<http://www.health.state.mn.us/>

Department of Natural Resources

500 Lafayette Road
St. Paul, MN 55155-4040
(651) 296-6157 or
888-MINNDNR toll free
(651) 297-3727 fax
<http://www.dnr.state.mn.us/>

Divisions within DNR include:

Ecological Services
(651) 296-2835
(651) 296-1811 fax
Enforcement
(651) 296-4771
(651) 297-3727 fax
Fisheries
(651) 296-3325
(651) 297-4916 fax
Forestry
(651) 296-4484
(651) 296-5954 fax
Lands & Minerals
(651) 296-4807
(651) 296-5939 fax
Parks & Recreation
(651) 296-9223
Trails & Waterways
(651) 297-1151
(651) 297-5475 fax
Waters
(651) 296-4800
Wildlife
(651) 296-3344
(651) 297-4961 fax

Pollution Control Agency

520 Lafayette Road North
St. Paul, MN 55115-4194
(612) 296-6300 or
(800) 657-3864 toll free
(800) 422-0798 emergency 24-hour
(651) 297-8687 fax, general
(612) 297-1456 fax
<http://www.pca.state.mn.us/>

4 Divisions within PCA include:

1. Environmental Outcomes
 - Standards and Assessment
 - Monitoring and Analysis
 - Information and Reporting
2. Fiscal Services
3. Policy and Planning
4. Regional Environmental Management
 - (651) 296-7202 Main
 - (218) 825-3054 Brainerd
 - (218) 846-0730 Detroit Lakes
 - (218) 723-4665 Duluth
 - (320) 214-3794 Willmar

Board of Water and Soil Resources

One West Water Street, Suite 250
St. Paul, MN 55107-2039
(651) 296-3767
(651) 297-5615 fax
<http://www.bwsr.state.mn.us/>

Other Area Offices for WSR:

Bimidji
(218) 755-4235
(218) 755-4201 fax
Brainerd
(218) 828-2383
(218) 828-6036 fax
Duluth
(218) 828-2383
(218) 828-6036 fax
Fergus Falls
(218) 736-5445
(218) 736-7215 fax
Metro
(612) 282-9969
(612) 284-0000 fax
Marshall
(507) 537-6060
(507) 537-6368 fax
New Ulm
(507) 359-6074
(507) 359-6018 fax
Rochester
(507) 285-7458
(507) 280-2875 fax