

# **STATE ENVIRONMENTAL LAWS AFFECTING MONTANA AGRICULTURE**

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

**A Project of the**

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

**through the**

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



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## **The Project Participants**

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

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

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

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

### **Natural Resources Conservation Service**

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

### **U.S. Environmental Protection Agency**

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

## Disclaimer

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

This guide has been prepared in part with funding from the Natural Resources Conservation Service (NRCS) cooperative agreement number NRCS 68-75-5-174 and the United States Environmental Protection Agency (EPA) grant number CX-825088-01-0.

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 December, 2002. Updates of the information contained in the guide will occur on an as needed basis and be available on the internet.

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

## Quick Reference Guide

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

<b>Regulatory Area</b>	<b>Type of Activity</b>	<b>Permit Required</b>	<b>Agency</b>
Water Quality <i>pp. 1-6</i>	Livestock and aquaculture operations, depending on size	MPDES permit	Montana (MT) Department of Environmental Quality (DEQ)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit	U.S. Army Corps of Engineers with Environmental Protection Agency (EPA) and DEQ
Groundwater <i>pp. 6-7</i>	Groundwater discharge	MGWPCS permit; groundwater management plan restrictions	DEQ, MT Department of Agriculture (MDA)
Air Quality <i>pp. 8-9</i>	Grain terminals and grain elevators, other stationary sources	Permit required	DEQ or local air control agency
	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance suits	DEQ
	Burning	Permit required in certain circumstances	DEQ or local air control agency
Solid Waste and Hazardous Waste <i>pp. 10-12</i>	Storage, treatment, or disposal of solid waste	No permit required for disposal of most agriculture solid waste	DEQ
	Storage treatment or disposal of hazardous waste	Permits required	DEQ and EPA

<b>Regulatory Area</b>	<b>Type of Activity</b>	<b>Permit Required</b>	<b>Agency</b>
Pesticides and Chemigation <i>pp.</i> 13-15	Sale, distribution & transport of pesticides	Registration, license	MDA and EPA
	Application of pesticides	Licenses, restrictions, record keeping, special requirements	MDA, DEQ, and EPA
	Disposal of pesticide containers	Special requirements	MT DEQ and EPA
Wildlife Protection <i>pp.</i> 15-16	Taking of wildlife, endangered, threatened species	Permits or licenses required; some absolute prohibitions	U.S. Fish and Wildlife Service; MT Department of Fish, Wildlife, and Parks (DFWP)

# STATE ENVIRONMENTAL LAWS AFFECTING MONTANA AGRICULTURE

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

## I. MONTANA WATER QUALITY LAWS AND REGULATIONS

### A. Montana General Overview

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

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

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

#### 1. Montana State Agencies

The State Department of Environmental Quality (DEQ) administers the majority of Montana environmental laws. The DEQ is organized in divisions and, within each division, into bureaus. The DEQ administers state and federal laws pertaining to air quality, surface water quality, solid waste, hazardous waste, and some, but not all, state laws regulating groundwater quality.

The Board of Environmental Review (BER) is a quasi-judicial body appointed by the Governor. It promulgates rules to be followed by the DEQ in administering the Montana Clean Air Act and the Montana Water Quality Act. It also adopts state solid waste management and resource recovery plans. In certain cases, the DEQ regulatory actions and other decisions may be appealed to the Board.

Under Montana law, the BER may set forth a rule that is more stringent than comparable federal regulations only if it finds, following a public hearing, that the proposed rule will protect or mitigate the harm to public health or the environment. It must also find that compliance with the rule can be achieved through the use of current technology.

The Montana Department of Agriculture (MDA) administers the Montana Agricultural Chemical Groundwater Protection Act and other state laws regulating the sale and use of pesticides.

The Department of Natural Resources and Conservation (DNRC) is responsible for state water resource programs and for conservation districts. The state Board of Water Well Contractors is part of DNRC.

The Department of Fish, Wildlife, and Parks (FWP) administers state fish and game laws and, together with local land management boards, administers the Montana Natural Streambed and Land Preservation Act.

## **2. *Montana Constitution***

The Montana Constitution provides that “the right to a clean and healthful environment” is an inalienable right of all people.<sup>1</sup> The Constitution specifically requires that “the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations”.<sup>2</sup> These constitutional provisions provide support for environmental legislation enacted by the Montana legislature.

### **B. *Montana Water Quality Laws***

The Montana Water Quality Act<sup>3</sup> (WQA) is the principal water quality law in the state. It covers both surface water and groundwater. It implements portions of the federal Clean Water Act (CWA) and the federal Safe Drinking Water Act (SDWA). Montana administers the delegated NPDES permit program as the Montana Pollution Discharge Elimination System (MPDES) program.

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<sup>1</sup> Mont. Const. Art. II § 3.

<sup>2</sup> Mont. Const. Art. IX § 1.

<sup>3</sup> § 75-5-101 *et seq.*, MCA (MCA refers to the Montana Code Annotated).

## **1. *Water Quality Standards***

The WQA requires the BER to establish the classification of all state waters in accordance with their present and future most beneficial uses and to adopt water quality standards for surface water and for groundwater.<sup>4</sup> These standards establish and protect beneficial uses of the water such as domestic supply, industrial supply, livestock watering, irrigation, wildlife, and recreation. Water quality standards are the basis for setting effluent limits, along with other site-specific factors, that are in permits issued by DEQ under the WQA.

## **2. *Nondegradation Policy***

The Montana Water Quality Act and the Administrative Rules of Montana describe a detailed nondegradation policy for both state surface water and groundwater.<sup>5</sup> It is unlawful to cause significant degradation of the quality of water without prior authorization. An authorization to degrade cannot be granted without an extensive cost-benefit analysis and full consideration of other non-degrading alternatives. However, an authorization to degrade cannot violate water quality standards. A number of activities are exempted from the nondegradation significance review. These include:

- Nonpoint sources in existence prior to April 29, 1993;
- New nonpoint sources that follow reasonable land, soil, and water conservation practices;
- Land application of manure and sewage sludge;
- Use of agricultural chemicals under an approved agricultural groundwater management plan;
- Nonpoint source activities that cause short-term changes in water quality and result from streambed preservation activities or permitted water uses; and
- Dam maintenance and repair that cause short-term changes in water quality.<sup>6</sup>

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<sup>4</sup> § 75-5-301, MCA; ARM 17.30.601 to .602 (ARM refers to the Administrative Rules of Montana).

<sup>5</sup> § 75-5-303, MCA.

<sup>6</sup> § 75-5-317, MCA.

### **3. *Montana General Discharge Prohibition***

Regulations adopted under the Montana WQA impose a number of general prohibitions on discharges to Montana surface waters.<sup>7</sup> Prohibited discharges from industrial, municipal, and agricultural sources include those that:

- Form objectionable sludge deposits beneath the surface or on shore lines or create debris, scum, oil film, grease, or other floating materials;
- Produce odors, colors, or conditions which create a nuisance or render fish undesirable or inedible;
- Create concentrations or combinations that are toxic to human, animal, plant, or aquatic life;
- Produce undesirable aquatic life;
- Violate surface water quality standards; or
- Cause pollution of surface waters due to the manner or location of disposal.

Under these regulatory criteria, the DEQ may also order the elimination or minimization of pollution resulting from nonpoint sources including irrigation, logging, and overgrazing.

### **4. *Montana Pollutant Discharge Elimination System***

Under the delegated NPDES permit program, called MPDES in Montana, most point source discharges into state surface waters require a permit from the DEQ.<sup>8</sup> Agricultural operations requiring permits include concentrated animal feeding operations (CAFOs), concentrated aquatic animal feeding facilities, and aquaculture operations.

Montana has adopted the federal rules for determining when an animal or aquatic feeding operation requires a permit. Montana regulations incorporate by reference those portions of the EPA regulations. In addition, the DEQ may, on a case-by-case basis, require any animal or aquatic feeding operation to apply for a permit when the DEQ determines that the operation is a significant contributor of pollution to state waters. Discharges into aquaculture projects require a MPDES permit under state regulations, which also incorporate the corresponding federal regulations for aquaculture operations.<sup>9</sup>

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<sup>7</sup> ARM 17.30.637.

<sup>8</sup> § 75-5-401, MCA; ARM 17.30.1201 to .1387.

<sup>9</sup> ARM 17.30.1330 to .1331.

**Producer Note:** Concentrated aquatic animal production facility means a hatchery, fish farm, or similar facility. An aquaculture project refers to the confinement of a cultivated species within a limited portion of state waters, the intentional discharge of pollutants into those waters in order to feed such species, and the harvesting of the species within the confined area.

*a. Exclusions from the MPDES Program*

Montana law specifically excludes several types of discharges from the MPDES program. The following agricultural activities do not require a MPDES permit:<sup>10</sup>

- Crop cultivation, grazing, orchard production, and similar agricultural activities that may cause nonpoint source pollution;
- Return flows from irrigated agriculture; or
- Discharges of dredged or fill materials that are regulated under Section 404 of the federal Clean Water Act.

*b. General Permits under MPDES Program*

Some agricultural operations that require MPDES permits may be covered by general permits.<sup>11</sup> If so, they need not apply for individual permits. For example, general permits have been issued for certain types of CAFOs and fish farms. A producer seeking to operate under a general permit must nevertheless apply to the DEQ for authorization. If the DEQ denies such authorization, the producer must then apply for an individual permit. Authorization to operate under a general permit can be denied based on one or more of the following factors:

- The operation will be unable to comply with any applicable limitations, standards, or prohibitions;
- The discharge is different in degree or nature from the discharges reasonably expected from the activity;
- Similar applications have been denied or revoked; or
- The operation is located in an area of unique ecological or recreational significance.

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<sup>10</sup> ARM 17.30.1310.

<sup>11</sup> ARM 17.30.1341.

**Producer Note:** Producers should consult with the DEQ to determine if any of their operations are covered by general permits or if they need to apply for individual permits for those operations.

**Producer Note:** General permits for CAFOs contain requirements for land application of manure. Manure must be applied in such a manner as to prevent all pollutants from entering surface waters and to prevent nitrate-nitrogen from entering groundwater in excess of 10 milligrams per liter. Furthermore, manure must not be applied in excess of agronomic rates.

## 5. *Montana Groundwater Pollution Control System and Montana Agricultural Chemical Groundwater Protection Act*

There are three groundwater quality programs in Montana, two of which may apply to agricultural operations. The two programs applicable to agriculture are the Montana Groundwater Pollution Control System (MGWPCS) and the Montana Agricultural Chemical Groundwater Protection Act (MACGWPA). Operations that discharge pollutants into groundwater must apply to the DEQ for a MGWPCS permit.<sup>12</sup> Examples of activities requiring a permit include injection wells and waste containment facilities that leach into aquifers. Permits must comply with effluent limitations and state groundwater quality standards.

The MGWPCS contains several exclusions. Activities that are regulated under federal law or under other state laws may not require a MGWPCS permit. No permit is required for agricultural irrigation facilities or for the disposal of household waste on one's own property.

The MACGWPA<sup>13</sup> is administered jointly by the MDA and the DEQ. The MACGWPA covers both pesticides and fertilizers. Under the MACGWPA, the DEQ establishes groundwater standards for agricultural chemicals that are subject to a federal standard and either 1) have been detected in Montana groundwater or 2) are predicted by the DEQ to appear in groundwater.

The MDA prepares agricultural chemical groundwater management plans designed to protect groundwater from degradation. There are two types of plans, general management plans (GMPs) and site specific management plans (SMPs). The GMP provides information on groundwater conditions, chemical characteristics, and recommendations of best management practices to minimize groundwater pollution.

Site specific management plans (SMPs) are prepared for particular regions in the state or for specific chemicals. An SMP must set forth requirements designed to prevent or minimize

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<sup>12</sup> ARM 17.30.1001to .1045.

<sup>13</sup> § 80-15-101 *et seq.*, MCA.

groundwater contamination. These requirements may include limitations on the chemical's use (either geographical or by rate and time of application), special certification requirements for applicators, setback areas around wells, and adoption of alternative pest management techniques and soil fertility practices. The MACGWPA requires a SMP be prepared whenever:

- An agricultural chemical is found in groundwater in an amount equal to or exceeding 50% of permitted levels;
- A trend of increased levels of a chemical in groundwater is detected;
- Agricultural chemicals have migrated from the point of detection;
- EPA proposes to cancel or suspend a chemical registration; or
- Chemicals with the ability to migrate are applied in areas where groundwater is vulnerable to contamination.<sup>14</sup>

The MACGWPA makes it unlawful to violate any provision of an SMP, any order issued pursuant to the act, or any provision of the act. Both the DEQ and the MDA have monitoring and enforcement authority under the act.

## **6. *Montana Spill Reporting***

Any person who is responsible for a spill or an unanticipated discharge of any pesticide, herbicide, or other toxic substance which will lower groundwater quality to levels below Montana groundwater standards must report the spill to the DEQ and also to the MDA pesticide specialist as soon as possible.<sup>15</sup>

## **7. *Montana Natural Streambed and Land Preservation Act***

The Natural Streambed and Land Preservation Act (NSLPA)<sup>16</sup> requires approval by the local conservation district or board of county commissioners of any project that physically alters or modifies a stream. The primary focus of the NSLPA is to minimize soil erosion and sedimentation and, thus, preserve water quality. The local board must notify the state FWP which in turn may request a site inspection. Site inspections are conducted by a team consisting of a FWP representative, a board representative, and the applicant. Each team member makes a

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<sup>14</sup> § 80-15-212, MCA; ARM 4.11.301 to .307.

<sup>15</sup> ARM 17.30.1045.

<sup>16</sup> § 75-7-101 *et seq.*, MCA.

recommendation to deny, approve, or modify the request. The local board makes the final decision on the project. Similar provisions exist for lake shores.<sup>17</sup>

## **II. AIR QUALITY**

### **A. Montana Air Quality Laws and Regulations**

#### ***1. Montana Agricultural Air Emissions***

The Montana Clean Air Act<sup>18</sup> charges the DEQ and county governments with regulating air quality in the state. The state BER adopts the air quality standards, emission control requirements, and other regulations enforced by the DEQ. The following Montana counties have local air control agencies: Cascade, Flathead, Lewis and Clark, Lincoln, Missoula, Silver Bow, and Yellowstone.

In general, stationary sources of air pollution require a permit from the DEQ or the local control board before constructing, operating, replacing, or relocating any equipment or process that may cause air pollution. Any source of air pollution, not affected by a local air control agency, with the potential to emit (PTE) greater than 25 tons per year (TPY) of any regulated pollutant will require a state of Montana air quality preconstruction permit. Further, any source of air pollution with the PTE greater than 100 TPY of any regulated air pollutant, PTE greater than 10 TPY of any single hazardous air pollutant (HAP) or 25 TPY of a combination of all HAPs, or the PTE greater than 70 TPY of particulate matter less than 10 microns aerodynamic diameter (PM<sub>10</sub>) in a serious PM<sub>10</sub> nonattainment area will require a Title V major source air quality operating permit. Sources of air pollution meeting the preconstruction permit emission threshold but not the Title V major source operating emission threshold will operate under the preconstruction permit. Sources locating in an area regulated by a local air control agency will be subject to local air quality requirements as appropriate.

With the exception of the fluoride standard and open burning discussed below, agricultural activities have few special air quality requirements. Most agricultural operations will not require air quality permits. On-farm incinerators and grain elevators may be exceptions. Montana law specifically exempts agricultural activities associated with the planting, production, harvesting, and storing of crops from applicable standards.<sup>19</sup>

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<sup>17</sup> § 75-7-201 *et seq.*, MCA.

<sup>18</sup> §75-2-101 *et seq.*, MCA.

<sup>19</sup> ARM 17.8.308.

**Producer Note:** Producers should be aware that air emissions from concentrated animal feeding operations (CAFOs) may be the subject of air quality regulations in the future. Montana has established air quality standards for hydrogen sulfide, a major emission from some CAFOs. However, these standards have yet to be applied to any animal operations.

a. *Fluoride in Forage Standard*

High fluoride levels in forage have had adverse effects on the health of humans and livestock in certain parts of Montana. The DEQ now enforces a standard for allowable fluoride concentrations in vegetation in lieu of adopting an ambient air quality standard for fluoride.<sup>20</sup>

2. *Montana Open Burning*

Montana law prohibits the open burning of certain categories of substances. These include: food waste, styrofoam and plastics, waste generating noxious odors, wood and wood by-products that have been coated, painted, stained, treated, or contaminated by a foreign material unless open burning is allowed under the Administrative Rules of Montana (ARM 17.8.615 or ARM 17.8.615), poultry-litter, animal droppings, dead animals, tires, rubber materials, asphalt shingles, tar paper, automobile bodies and interiors, insulated wire, treated lumber and timbers, oil or petroleum products, pathogenic wastes, hazardous wastes, Christmas tree waste, asbestos materials, and standing or demolished structures that may contain asbestos.<sup>21</sup>

Essential agricultural burning is permitted throughout the entire year; however, certain restrictions apply from September 1 through the end of February. Specific permission to burn may be required from December 1 through the end of February depending on the geographical location of the proposed burn. Major open burning sources, those which emit more than 500 tons per calendar year of carbon monoxide, or 50 tons per year of any other regulated pollutant except hydrocarbons, must obtain a major open burning permit from the DEQ or the local air control agency. No permit is required for minor open burning sources conducting essential agricultural open burning, but such sources may have to comply with timing restrictions and local rules.<sup>22</sup>

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<sup>20</sup> § 75-2-202 (2), MCA; ARM 17.8.230.

<sup>21</sup> ARM 17.8.604; see generally ARM 17.8.601to .612.

<sup>22</sup> ARM 17.8.601to .612.

### III. SOLID WASTE AND HAZARDOUS WASTE

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

#### A. Montana Solid Waste and Hazardous Waste Laws and Regulations

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

##### 1. *Montana Solid Waste*

Montana's solid waste management laws impose requirements on solid waste that do not otherwise qualify as hazardous waste (see discussion of hazardous waste below). These laws give the most attention to the regulation of public and private landfills. The principal solid waste law in Montana is the Montana Solid Waste Management Act (SWMA).<sup>23</sup> The SWMA is administered by the DEQ. The provisions of the act do not apply, however, to the disposal of solid waste generated by agricultural operations upon land owned or leased by the producer provided the disposal does not create a nuisance, create a public hazard, or violate laws governing the disposal of solid waste.<sup>24</sup>

##### 2. *Montana Hazardous Waste*

Wastes deemed to be hazardous are regulated to a greater extent than other solid waste under both Montana and federal law. Montana has federal authorization to operate its own hazardous waste program under the federal Resource Conservation and Recovery Act (RCRA). The DEQ administers this program through Montana Hazardous Waste and Underground Storage Tank Act.<sup>25</sup>

The Montana definition of hazardous waste closely follows the federal definition. The Montana Act's definition reads:

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<sup>23</sup> § 75-10-201 *et seq.*, MCA.

<sup>24</sup> § 75-10-214 (1)(a), MCA.

<sup>25</sup> § 75-10-401 *et seq.*, MCA.

“Hazardous waste” means a waste or combination of wastes that because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

- Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed or otherwise managed.<sup>26</sup>

Hazardous wastes are more specifically defined in DEQ and EPA regulations which list specific substances determined to be hazardous.<sup>27</sup>

**Producer Note:** Montana producers should check with the DEQ to determine whether any chemicals or other substances used in their operations have been listed as hazardous and to determine the regulatory requirements for any such substance.

Persons who generate or transport hazardous wastes are subject to extensive regulatory requirements under Montana law. These include record keeping requirements, storage requirements, standards for equipment, containers, and buildings, disposal restrictions, permit requirements, emergency planning, and personnel training. The degree of the hazard and the quantity of waste generated determine the extent of the regulation.

Certain wastes generated by agricultural operations have been excluded from the definition of hazardous waste. These include wastes from the growing and harvesting of crops and from the raising of animals if wastes are returned to the soil as fertilizer, irrigation return flows, and point source discharges regulated under the federal Clean Water Act and the Montana Water Pollution Control Act (WPCA).<sup>28</sup> Pesticides are subject to special rules (see discussion below).

### 3. *Montana Underground Storage Tanks*

The DEQ has adopted a comprehensive set of rules for the regulation of underground storage tanks (USTs) that parallel the federal requirements for USTs under RCRA.<sup>29</sup>

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<sup>26</sup> § 75-10-403 (8), MCA.

<sup>27</sup> ARM 17.54.301 *et seq.*; 40 CFR § 261.

<sup>28</sup> ARM 17.54.307.

<sup>29</sup> ARM 17.56.101 *et seq.*

A UST is defined as a tank, or combination of tanks, used to contain regulated substances with at least 10% of its volume below the ground. The definition also includes underground pipes that are connected either to underground or aboveground storage tanks. Regulated substances include petroleum products as well as hazardous substances.

The DEQ regulations do not cover home heating oil tanks and tanks on farms and at residences that are used to store motor fuel for non-commercial purposes if those tanks were installed prior to April 27, 1995.

**Producer Note:** Montana's UST law is in some respects more stringent than the federal law. For example, the Montana law covers heating oil tanks and farm motor oil tanks installed after April 27, 1995 which the federal law does not. The Montana law also covers tanks located in basements, cellars, shafts, and tunnels. The federal law does not. Unlike the federal law, the Montana law covers underground piping to aboveground tanks. There are other differences as well. Producers should consult the DEQ if they have any question whether the Montana law covers their tanks.

For tanks that are covered, the law imposes a number of requirements. These include:

- Reporting releases and spills from the tanks;
- Implementing leak detection systems;
- Record keeping;
- Meeting design and performance standards;
- Remediation requirements;
- Closure requirements; and
- Financial assurance requirements.

Requirements differ for new tanks versus existing tanks.

#### ***4. Montana Emergency Planning and Community Right-to-Know***

Montana has passed legislation<sup>30</sup> implementing requirements similar to those of the federal Emergency Planning and Community Right-to-Know Act (see federal section).

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<sup>30</sup> § 50-78-301, MCA.

#### IV. PESTICIDES AND CHEMIGATION

**Producer Note:** Use of pesticides and other farm chemicals is regulated by federal statutes. Most states have some form of licensing or certification requirements controlling those who use pesticides. In addition, if a producer employs agricultural workers, there are regulations which address safety concerns about pesticide use by or around those workers. Montana does not address chemigation in statutes or rules.<sup>31</sup>

##### A. Montana Pesticide Laws and Regulations

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

##### 1. Montana Pesticides

Montana regulates pesticides in several ways in addition to those provided in the Montana Agricultural Chemical Groundwater Management Act (discussed below). The Montana Pesticides Act (MPA)<sup>32</sup> requires that all pesticides that are distributed, sold, transported, or offered for sale within the state be registered with the Montana MDA. It is illegal to sell, distribute, or transport unregistered pesticides. The MDA enforces pesticide labeling requirements as part of the registration process.

The MPA also makes it unlawful to discard any pesticide or container in a manner that causes injury to humans, domestic animals, or wildlife or that pollutes any waterway. Similarly, it is illegal to handle, transport, store, display, or distribute pesticides or pesticide containers in a manner that endangers humans, the environment, or food products.<sup>33</sup>

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<sup>31</sup> Information regarding chemigation was provided by George Algard, Bureau Chief of the Agricultural Sciences Division, Technical Services Bureau, of the Montana Department of Agriculture on July 20, 1999.

<sup>32</sup> § 80-8-101 *et seq.*, MCA.

<sup>33</sup> § 80-8-305 (1), MCA.

Other pesticide rules include:

- Prohibitions and restrictions on the use of certain pesticides;
- Minimum requirements and certification<sup>34</sup> requirements for pesticide applicators;<sup>35</sup> and
- Record keeping requirements regarding pesticide use.

### 2. *Montana Pesticide Container Disposal*

The MDA has adopted rules for the rinsing and disposal of pesticide containers and for the disposal and recycling of waste pesticides and pesticide containers.<sup>36</sup> In general, pesticide containers must be triple rinsed with a solvent capable of removing the chemical from the container. Containers can be disposed at approved landfills, approved recycling centers, and (in some cases) on the agricultural producer's property. Producers should take note that it is illegal to burn pesticide containers including all paper, cardboard, plastic, and metal containers.

**Producer Note:** Producers should refer to the MDA regulations and consult with the departmental representatives to determine the specific disposal requirements applicable to the specific pesticide used.

### 3. *Montana Toxic Spill Notification*

All spills or releases of hazardous materials or other wastes, regardless of size, that pollute or threaten to pollute state waters must be contained, removed, and managed to protect water quality.<sup>37</sup> Spills shall be reported immediately to the Montana's Disaster and Emergency Services Division (DES) 24-hour phone number (406) 841-3911 or the Montana DEQ at (406) 444-4643.

The following types of agriculture spills are not required to be reported provided the spilled material does not enter or threaten to enter state water and the spill is immediately contained, removed, properly treated, or disposed in accordance with state regulations:

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<sup>34</sup> Applicators may be certified to purchase restricted use pesticides (RUPs) by attending training workshops, e.g., workshops sponsored by the MDA or Montana Cooperative Extension Service.

<sup>35</sup> § 80-8-20 *et seq.*; MCA; ARM 4.10.201.

<sup>36</sup> ARM 4.10.801 to .808.

<sup>37</sup> § 75-5-101, MCA; ARM 17.30.1045.

- Twenty-five (25) gallons or less of refined crude oil products, including but not limited to, gasoline, diesel fuel, aviation fuel, asphalt, road oil, kerosene, fuel oil, and derivatives of mineral, animal, or vegetable oils.

Producers may contact the Enforcement Division within the DEQ for further information and details at (406) 444-0379.

## V. PROTECTION OF WILDLIFE

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

### A. Montana Wildlife Protection Laws and Regulations

**Producer Note:** Many states have additional measures which either enhance protections under federal laws or address issues peculiar to wildlife found within the state. Montana has laws protecting wildlife.

Montana has enacted a variety of laws to protect wildlife and to regulate their harvesting in the state. These laws may affect agricultural activities. The Montana FWP administers the laws.

#### 1. *Game Laws*

FWP administers state hunting and fishing laws. These include laws regarding hunting and fishing licenses, hunting and fishing seasons, and other requirements for the taking of game species. There are special requirements for taking animals that are causing damage to crops or livestock.<sup>38</sup>

#### 2. *Endangered Species*

FWP maintains a list of endangered wildlife species indigenous to Montana. Montana makes it unlawful for any person to take, possess, transport, or sell any species appearing on the state list or any endangered native or foreign fish or wildlife species listed under the federal Endangered Species Act.<sup>39</sup>

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<sup>38</sup> §§ 87-3-130, 87-1-225, 87-30501, 87-5-209, 81-2-121, MCA.

<sup>39</sup> § 87-5-107, MCA.

### 3. *Nongame Species*

Montana laws also make it illegal to take, possess, transport, or sell any nongame wildlife deemed by FWP to be in need of management.<sup>40</sup>

## VI. ENFORCEMENT OF STATE ENVIRONMENTAL LAWS

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

## VII. OTHER LAWS THAT AFFECT MONTANA AGRICULTURE

### A. *Montana Grazing*

Montana recognizes that agricultural production is necessary to the livelihood and well being of all its citizens. Retaining the use of public lands for grazing also protects the ranching heritage. Livestock grazing can be used as a management tool to maintain or enhance range resources since it has been shown to benefit watersheds, wildlife, water quality, and recreation. Generally, grazing on public lands must be authorized by a grazing permit, and fees are charged based on animal unit<sup>41</sup> months.<sup>42</sup>

#### 1. *Multiple Use and Sustained Yield Act*

The Multiple Use and Sustained Yield Act (MUSYA) of 1960<sup>43</sup> requires the National Forests<sup>44</sup> to be managed and administered for intensive use, protection, and development under

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<sup>40</sup> § 87-5-106, MCA.

<sup>41</sup> An animal unit is each cow, bull, steer, heifer, horse, or mule 6 months of age or older at the time of entering the land or which becomes 12 months of age during the permitted use; or each weaned cow, bull, steer, heifer, horse or mule regardless of age; or five adult sheep or goats; or 5 weaned sheep or goats regardless of age; see 36 C.F.R. § 222.50(c).

<sup>42</sup> A unit month is one unit of grazing for one month or one unit of use for one month; see 36 CFR §222.50(c).

<sup>43</sup> 43 USC § 1901.

<sup>44</sup> 43 USC § 316.

principles for "multiple use and sustained yield of the several products and services".<sup>45</sup> The multiple-use concept insures that no individual resource value is given priority in vegetation management decisions. Thus, consideration must be given to outdoor recreation, livestock grazing, timber harvesting, watershed protection, and wildlife to serve the best interests of the American people. The intent is that these rangeland resources be maintained in perpetuity so that future generations will have the opportunity to use and enjoy them.

## 2. *Wilderness Act*

The Wilderness Act of 1964 was established to provide a National Wilderness Preservation System for "the permanent good of the whole people" and "for the use and enjoyment of the American people... wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." The Act defines a wilderness as "an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain."

The Montana Wilderness Act,<sup>46</sup> was established to preserve areas in their natural roadless condition as a vital component of protecting the biodiversity of lands in Montana and securing and maintaining habitat for threatened and endangered species." Wilderness areas in Montana range from the badlands of eastern Montana to the peaks of the Rocky Mountains in the western part of the State. These areas have a wide variety of landforms, ecosystems, and other natural features. These wilderness areas provide outstanding opportunities for solitude and unconfined recreation.

Nonetheless, the Wilderness Act reduced the ability to graze vast regions of the west. Grazing permits on public rangelands are an integral part of the Montana livestock producer's economic unit. Since it may be difficult to find private sources of "summer ground," the loss of summer grazing permits<sup>47</sup> can negatively affect the economic stability of a livestock operation.<sup>48</sup>

The grazing of livestock within wilderness areas established prior to the Act are permitted to continue with the following guidelines:

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<sup>45</sup> 16 USC § 531.

<sup>46</sup> 16 USC §1121.

<sup>47</sup> Under *United States v. Fuller* (409 U.S. 488, 1973), the Supreme Court held that the Taylor Act created no property rights, that no compensation was due under the Fifth Amendment Takings Clause. The reasoning was that grazing permits were somewhat analogous to water rights, i.e., a use right only. Regulations provide that grazing permits or leases convey no right, title, or interest held by the United States; *see* 43 CFR § 4130.3.

<sup>48</sup> An appeal of any reduction in grazing must be taken within 30 days after receipt of a final grazing decision; *see* Pub. L. No. 96-126 (1979).

- Practical necessity and reasonableness are used to determine the suitability of maintaining structures and facilities using motorized equipment and vehicles;
- Structures and facilities can be constructed and replaced, but new construction should be primarily for resource management and protection rather than for accommodating livestock grazing;
- The construction and repair of structures and facilities should be conducted with natural materials unless doing so involves unreasonable additional costs;
- Motorized equipment can be used in emergencies involving sick animals or the placement of feed;
- The wilderness designation cannot be used as a criterion to reduce the number of grazing livestock, and it is possible to increase animal numbers in wilderness although the administering agency has extensive authority in the application of these rules;
- Grazing previously phased out by administrative action cannot be reopened to grazing, regardless of grazing history.

### **3. *Public Rangelands Improvement Act***

In 1978, Congress recognized that federally managed lands were producing "less than their potential for livestock, wildlife habitat, recreation, forage, water conservation, and soil conservation benefits" and that unsatisfactory conditions on rangeland could "prevent expansion of the forage resource and resulting benefits to livestock and wildlife production." In order to eliminate such unsatisfactory conditions, Congress, through the Public Rangelands Improvement Act, called for intensive planning, management, and improvement of the condition of the federally managed rangelands so that "they become as productive as feasible for all rangeland values."

#### **B. *Montana Noxious Weed Law***

Noxious weeds pose a serious ecological and environmental threat to Montana lands. The Montana County Noxious Weed Control Act<sup>49</sup> establishes the control and management of noxious weeds and protects Montana lands from noxious weed displacement for agriculture, forestry, livestock, wildlife, or other beneficial uses. Noxious weeds displace native plant communities, alter wildlife habitat, and reduce forage for wildlife and livestock. They may also increase soil surface runoff and sedimentation into streams.

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<sup>49</sup> § 7-22-2101 to 2153, MCA.

Montana's noxious weed laws support the federal Public Rangeland Improvement Act, which virtually mandates cooperation in noxious weed control in order to improve unsatisfactory conditions of federally managed rangelands. Under Montana law, it is unlawful for any person to permit any noxious weed to propagate or produce seeds on his or her land unless the landowner adheres to the noxious weed management program of their county or has entered into and is in compliance with a written noxious weed management plan for their property. To be valid, this written noxious weed management plan must be approved and signed by the district weed board chairman.<sup>50</sup>

The MDA has authority to designate which weeds are noxious statewide.<sup>51</sup> Noxious weeds are classified as category 1, 2, or 3 weeds. Weeds are placed into the appropriate category dependent upon the presence of the weed in the state, the level of infestation and ability of the weed to spread. Weed Management District boards, following public notice and a hearing, may designate countywide noxious weeds. These boards also determine what chemicals, materials, or equipment may be made available to persons controlling weeds on their own lands, perform mapping activities, and conduct educational programs. Technical assistance for identification and control of noxious weeds is available from weed districts, extension offices and the MDA.

The Act provides for a process of managing noxious weed populations on properties where control efforts are not occurring. Essentially, the weed district boards make an attempt to notify the landowner of the condition and provide an opportunity for the landowner to address the cited problems. When such measures fail, the weed district board intervenes. Additional information on noncompliance with the Act may be found in 7-22-2123.

The MDA's Noxious Weed Program administers a noxious weed grant program. The grant program provides landowners the opportunity to apply for grants that address the noxious issue. Grants work on a cost share basis. Information is available from local weed districts and from MDA.

### **C. Montana Organic Certification**

Montana passed legislation for a state organic certification program to be administered by the MDA in 1999. The legislation gave the MDA the authority to develop a plan for state organic certification. As directed by the legislation, the MDA initiated two petition processes involving certified organic growers and handlers in Montana. In April 2001, approximately 70% of Montana's certified organic operators petitioned the MDA to develop an Organic Certification

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<sup>50</sup> § 7-22-2116, MCA.

<sup>51</sup> Category I Noxious weeds include Canada Thistle, Field Bindweed, Whitetop, Leafy Spurge, Russian Knapweed, Spotted Knapweed, Diffuse, Knapweed, Dalmatian Toadflax, St. Johnswort, Sulfur Cinquefoil, Common tansy, Ox-eye Daisy and Houndstongue. Category II Noxious weeds include Dyers Woad, Purple Loosestrife, Tansy Ragwort, Meadow Hawkweed complex, Orange Hawkweed, Tall Buttercup and Tamarisk. Category III Noxious weeds include Yellow Starthistle, Common Crupina, and Rush Skeletonweed.

Program and to submit the program to the USDA for approval. Upon accreditation of the program by the USDA, a second petition was conducted. In May 2002, approximately 80% of the original petitioners directed the MDA to implement the state Organic Certification Program.

On October 22, 2002, the USDA implemented its National Organic Program (NOP) as authorized by the Organic Foods Production Act (OFPA). Under this legislation, anyone labeling, marketing or otherwise claiming products as “organic” must adhere to the production and handling regulations of the NOP. As part of the enforcement of the NOP, all organic producers and handlers (except those specifically exempt or excluded by the rule) must be certified by an USDA-accredited certifying agent. The state Organic Certification Program administered by the MDA, was USDA-accredited in April 2002 and began offering organic certification services to Montana’s producers and handlers in May 2002. While the MDA’s program is the only certifying agency based in Montana, producers and handlers may seek certification from an USDA-accredited agent. The NOP maintains a list of accredited certifying agents on its web site: <http://www.ams.usda.gov/nop/index.htm>. An organic labeling law, the “Montana Truth in Labeling Act for Organic Foods,”<sup>52</sup> which was administered by the Department of Public Health and Human Services, sunset upon the implementation of the state organic certification program. Producers and handlers may contact the MDA for more information on organic certification. Information is also available on the program at <http://www.agr.state.mt.us/certific/organicProgram.shtml>.

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<sup>52</sup> §50-31-221 *et seq.* MCA.

## Appendix A - Agencies

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

### State Agencies:

#### 24 Hour Disaster & Emergency Services Number (406) 841-3911

#### Department of Agriculture

P. O. Box 200201  
Helena, MT 59620  
(406) 444-3144  
(406) 444-5409 fax  
<http://agr.state.mt.us>

##### Agriculture Development Division

(406) 444-2402  
(406) 444-9442 fax

##### Agricultural Sciences Division

(406) 444-5400  
(406) 444-5409 fax

#### Department of Environmental Quality

Lee Metcalf Building  
1520 East Sixth Avenue  
P.O. Box 200901  
Helena, MT 59620-0901  
(406) 444-2544  
(406) 444-1804 fax  
<http://www.deq.state.mt.us>

##### Board of Environmental Review

(406) 444-2544  
(406) 444-1804 fax

##### Centralized Services Division

(406) 444-2442  
(406) 444-1804 fax  
Enforcement Division  
(406) 444-0379  
(406) 444-1923 fax

##### Permitting and Compliance Division

(406) 444-5270  
(406) 444-1374 fax

##### Air & Waste Management Bureau

(406) 444-3490  
(406) 444-1499 fax

##### Environmental Management Bureau

(406) 444-4953

(406) 444-1374 fax

##### Industrial & Energy Minerals Bureau

(406) 444-4970

(406) 444-1923 fax

##### Water Protection Bureau

(406) 444-3080

(406) 444-1374 fax

##### Planning Prevention & Assistance Division

(406) 444-6697

(406) 444-6836 fax

##### Pollution Prevention Bureau

(406) 444-4643

(406) 444-6836 fax

##### Resource Protection Bureau

(406) 444-2478

(406) 444-6836 fax

##### Remediation Division

(406) 444-1420

(406) 444-1901 fax

##### Hazardous Waste Site Cleanup

(406) 444-1420

(406) 444-1901 fax

#### Department of Natural Resources & Conservation

1625 11<sup>th</sup> Avenue  
Helena, MT 59620

(406) 444-2074

(406) 444-2684 fax

<http://www.dnrc.state.mt.us>

##### Conservation and Resource Development Division (Conservation Districts)

(406) 444-6667

(406) 444-6721 fax

##### Forestry Division (Missoula)

(406) 542-4300

(406) 542-4217 fax

##### Oil & Gas Conservation Division

(406) 656-0040

(406) 657-1604 fax

##### Trust Land Management Division

(406) 444-2074  
(406) 444-2684 fax  
Agriculture & Grazing Management  
Bureau  
(406) 444-2074  
(406) 444-2684 fax  
Water Resources Division  
(406) 247-4415  
(406) 247-4416 fax

**Department of Fish, Wildlife, and Parks**

1420 East Sixth Avenue  
P.O. Box 200701  
Helena, MT 59620  
(406) 444-3186  
(406) 444-4952 fax  
<http://www.fwp.state.mt.us>

**Department of Public Health & Human Services**

111 North Sanders  
Helena, MT 59620 or  
P.O. Box 4210  
Helena, MT 59604-4210  
(406) 444-5622  
(406) 444-1970 fax  
<http://www.dphhs.state.mt.us>

**Environmental Quality Council**

P.O. Box 201704  
State Capitol  
Helena, MT 59620-17  
(406) 444-3742