

**STATE ENVIRONMENTAL LAWS
AFFECTING
NEW MEXICO AGRICULTURE**

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

A Project of the

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

through the

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



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

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The Project Participants

National Association of State Departments of Agriculture Research Foundation

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

National Center for Agricultural Law Research and Information

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

Natural Resources Conservation Service

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

U.S. Environmental Protection Agency

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

Disclaimer

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

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The contents and 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 May 2003.

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. 1-4</i>	Livestock and aquaculture operations, depending on size	NPDES permit and state discharge plan	EPA Regional Office and New Mexico Environment Department
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit and state conditional use determination	US Army Corps of Engineers with EPA and New Mexico Environment Department approval
Ground Water Supply <i>pp. 4-6</i>	Water well construction, repair and plugging, and to appropriate water.	Permit required for all wells; must be performed by licensed driller if casing size is greater than 2-3/8 inches outside diameter.	New Mexico Office of the State Engineer
	Change in purpose or place of use, or change in location of use.	Permit required for all actions.	

Regulatory Area	Type of Activity	Permit Required	Agency
Surface Water Supply	<p>Stock pond construction</p> <p>Irrigation diversions [pre-1907 rights]</p> <p>Irrigation diversions [post-1907 rights]</p> <p>Change in purpose or place of use, or change in location.</p>	<p>Permit required if size greater than 10 acre-feet and height of dam is greater than 10 ft above lowest point on the natural ground.</p> <p>NM Water Code recognizes uses; permit required for change in purpose or place of use, or change in location of use.</p> <p>Permit required.</p> <p>Permit required for all actions</p>	New Mexico Office of the State Engineer
Groundwater <i>pp. 4-6</i>	Groundwater protection	No specific permit, but nondegradation standards apply.	New Mexico Environment Department
Air Quality <i>pp. 6-8</i>	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance suits	EPA Regional Office or New Mexico Environmental Department
	Burning	No permit; may be prohibited	New Mexico Environment Department or Local Air Quality Board
Solid Waste and Hazardous Waste <i>pp. 8-13</i>	Storage, treatment, disposal or transportation of hazardous or solid waste	Permit required for disposal, treatment, storage or transportation activities	EPA Regional Office and New Mexico Environment Department
	Public notice of hazardous waste	No permit	Local Emergency Planning Committee and New Mexico Department of Labor

Regulatory Area	Type of Activity	Permit Required	Agency
Pesticides and Fertilizer <i>pp. 13-16</i>	Application and use of pesticides	State permits required for certain applications; certification may be required	EPA, New Mexico Department of Agriculture
	Record keeping	No permit, but all requirements must be met	New Mexico Department of Agriculture
Wildlife Protection <i>pp. 16-17</i>	Taking of wildlife	Permit required if endangered or threatened species may be affected	U.S. Fish and Wildlife Service and New Mexico Department of Game & Fish

STATE ENVIRONMENTAL LAWS AFFECTING NEW MEXICO AGRICULTURE

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

I. WATER QUALITY

A. New Mexico Water Quality Laws and Regulations

Most states have enacted clean water legislation. While these state statutes usually contain provisions similar to those found in the federal CWA, 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. CWA requirements are enforced along with state enacted statutes and state regulations implemented by the state administrative agencies. Under the CWA, EPA has delegated responsibility for implementing the NPDES permit program to many states; to date, however, they have not done so in New Mexico. The NPDES permit program for the state of New Mexico remains under control of EPA.

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

The state's water quality program is primarily managed by the New Mexico Environment Department (NMED) pursuant to the New Mexico Water Quality Act (WQA).¹ Standards and regulations are promulgated by the Water Quality Control Commission (WQCC).² The NMED and seven other state agencies are considered constituent agencies of the WQCC.³ In addition to

¹ N.M. STAT. ANN. §§ 74-6-1 et seq.

² N.M. ADMIN. CODE § 20.6.2 NMAC, 20.6.4 NMAC.

³ N.M. STAT. ANN. § 74-6-2 (J). The other constituent agencies of the WQCC that have power and responsibilities under the WQA include: 1) the State Engineer and the Interstate Stream Commission, 2) the Department of Game and Fish, 3) the Oil Conservation Commission, 4) the State Park and Recreation Division of the Energy, Minerals, and natural Resources Department, 5) the Department of Agriculture, 6) the Soil and Water Conservation Commission, and 7) the Bureau of Mines and Mineral Resources at the New Mexico Institute of Mining and

the eight representatives of the constituent agencies, a representative from a municipal or county government and three representatives of the public appointed by the governor are members of the WQCC. (Footnote: N.M. Stat. Ann. § 74-6-3.) The WQCC does not have authority, however, to require permits regarding the water used for irrigating for agricultural purposes except in cases of actual hazards to public health.

The water quality program is intended to prevent and abate pollution of water resources within the state and to keep watercourses free of water contaminants that may interfere with human health, animal life, plant life, public welfare, or the use of property.⁴ The state's anti-degradation policy provides that New Mexico's waters are to be managed using the best practicable effluent treatment so that the water's quality and its designated uses are sustained and not compromised.⁵

All surface waters in New Mexico are classified with respect to their existing and attainable uses, and water quality criteria are set according to that which is necessary to maintain those uses.⁶ Groundwater quality standards are set so as to protect all groundwaters for present and potential use as domestic and agricultural water supplies.⁷

Anyone intending to discharge a water contaminant is required to provide notice to the NMED.⁸ A discharge plan approved by the NMED is generally required for any person to directly or indirectly discharge any effluent or leachate such that it may move into groundwater. The NMED may impose conditions on the plan so as to maintain water quality including imposing operational, monitoring, reporting, contingency, and closure requirements.⁹ Among others, discharge plans are not required for:

- Effluent or leachate that will not significantly affect water quality according to NMED standards;
- Water used for irrigating for agricultural purposes; and

Technology.

⁴ N.M. ADMIN. CODE § 20.6.4.9 NMAC.

⁵ N.M. ADMIN. CODE § 20.6.4.8 NMAC.

⁶ N.M. ADMIN. CODE § 20.6.4.101 NMAC et seq. NMAC

⁷ N.M. ADMIN. CODE §§ 20.6.2.3101 et seq. NMAC

⁸ N.M. ADMIN. CODE § 20.6.2.1201 NMAC.

⁹ N.M. ADMIN. CODE § 20.6.2.3104 NMAC.

- Discharges resulting from the storage or transportation of diverted water.¹⁰ Discharge plans will be approved provided the proposed discharge will not result in a hazard to public health nor undue risk to property and the discharge complies with stated effluent limitations.¹¹ Responsible parties are required to promptly provide notice to the NMED and to take corrective action against any actual discharge that, with reasonable probability, may injure or be detrimental to human health, animal life, plant life, or property or that may unreasonably interfere with the public welfare or the use of property.¹²

In the event that contaminant levels exceed regulatory thresholds for groundwater or surface water quality, responsible parties are required to abate the pollution pursuant to an approved abatement plan.¹³ The abatement requirement does not apply to:

- Discharges subject to an effective and enforceable federal NPDES permit;
- Pursuant to a discharge plan, the land application of groundwater contaminated with nitrogen originating from animal or human waste but not otherwise exceeding groundwater quality standards or containing a toxic pollutant; or
- Reasonable operation and maintenance of irrigation and flood control facilities.

An abatement plan is not required, however, if the abatement is conducted pursuant to several other specified regulatory programs including the underground storage tank regulations, the hazardous waste management regulations, or an approved groundwater discharge plan.¹⁴

The NMED has the authority at reasonable times to enter premises, inspect and copy records, and take effluent, contaminant, or receiving water samples for purposes of monitoring compliance with water quality standards.¹⁵ Violations of a NMED requirement or regulations, including water quality standards, or the conditions of any permit issued by the NMED may result in agency compliance orders for suspension or revocation of a permit, injunctive relief, and civil penalties up to \$15,000 per day. Failure to comply with a compliance order or failure to take corrective action required by an agency compliance order may result in a further penalty up to

¹⁰ N.M. ADMIN. CODE § 20.6.2.3105 NMAC.

¹¹ N.M. ADMIN. CODE §§ 20.6.2.1101, 20.6.2.3109 NMAC.

¹² N.M. ADMIN. CODE § 20.6.2.1203 NMAC.

¹³ N.M. ADMIN. CODE §§ 20.6.2.4101 et seq. NMAC.

¹⁴ N.M. ADMIN. CODE § 20.6.2.4105. NMAC.

¹⁵ N.M. ADMIN. CODE § 20.6.2.4107. NMAC.

\$25,000 per day of noncompliance.¹⁶ The NMED has the authority to issue emergency orders when there is an imminent and substantial danger to public health.¹⁷

Even without NMED compliance orders, a court may impose civil penalties up to \$15,000 per day for violations of the WQA statute, of NMED regulations, of WQCC water quality standards, or of an NMED permit.¹⁸

It is a criminal offense to discharge water contaminants without permits and approvals required by the statute and regulations; it is also unlawful to make misrepresentations or omissions in connection with matters covered by the statute. Criminal punishments for a first offense generally include up to 18 months imprisonment and fines up to \$5,000 per violation per day; significantly more substantial penalties are available, however, when the discharge causes a substantial environmental impact or presents a significant danger of causing injury.¹⁹

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.

II. GROUNDWATER

A. New Mexico Groundwater Laws and Regulations

1. New Mexico Groundwater Allocation and Protection

Groundwater quality standards have been established to protect all groundwaters for present and potential use as domestic and agricultural water supplies.²⁰ New Mexico has designated all groundwaters as belonging to the public subject to appropriation for beneficial use.²¹ Anyone desiring to use groundwater for a beneficial use first must acquire a permit for groundwater use from the New Mexico State Engineer. It is unlawful to use or appropriate water without a permit. Permits are granted subject to prior appropriation rights such that the use will not impair existing water rights, the use is not contrary to conservation of water within the state,

¹⁶ N.M. STAT. ANN. §§ 74-6-10.

¹⁷ N.M. STAT. ANN. § 74-6-11.

¹⁸ N.M. STAT. ANN. § 74-6-10.1.

¹⁹ N.M. STAT. ANN. § 74-6-10.2.

²⁰ N.M. ADMIN. CODE §§ 20.6.2.3101 et seq. NMAC.

²¹ N.M. STAT. ANN. § 72-12-1.

and the use is not detrimental to the public welfare.²² Criminal penalties include fines up to \$250 per violation per day.²³

2. New Mexico Artesian Wells

Use of waters from artesian wells (artificial wells deriving their water supply from any artesian stratum or basin) are subject to special restrictions intended to prevent waste.²⁴ As with other wells, drillers of artesian wells must obtain a permit from the New Mexico State Engineer.²⁵ It is unlawful to:

- Cause or permit the water from an artesian well to be wasted by either allowing the water to reach a pervious stratum before coming to the surface, or by allowing the well to discharge unnecessarily upon the surface, unless the waters are to be directed through a supervised irrigation system;²⁶
- Conduct the waters from an artesian well through any ditch, conduit, or channel such that more than 20 percent of the waters are lost between the point of appropriation and the point of beneficial use;²⁷ and
- Use water from any artesian well for the purpose of watering stock, except where the water is carried through pipes to watering troughs fitted with float feeds or other means of control to prevent waste.²⁸

Violations of the artesian well laws and regulations are misdemeanors with criminal penalties up to \$250 per violation per day.²⁹

The state protects its groundwater quality from degradation through its general water quality program, described at NM-9 to NM-10. The groundwater protection regulations establish

²² N.M. STAT. ANN. § 72-12-3.

²³ N.M. STAT. ANN. § 72-12-11.

²⁴ N.M. STAT. ANN. §§ 72-13-1 et seq.

²⁵ N.M. STAT. ANN. §§ 72-13-4; see also Section II.B.2 below.

²⁶ N.M. STAT. ANN. §§ 72-13-6, 72-13-8.

²⁷ N.M. STAT. ANN. § 72-13-9.

²⁸ N.M. STAT. ANN. § 72-13-11.

²⁹ N.M. STAT. ANN. § 72-13-12.

threshold limits for groundwater contaminants and require notice of discharges, discharge plans, and abatement of pollution exceeding the regulatory standards.

3. New Mexico Licensing and Standards for Well Construction

In the interest of protecting the state's groundwater quality, anyone drilling water wells must be licensed by the New Mexico State Engineer, and it is unlawful to produce water through a well drilled in violation of the licensing provisions.³⁰ Violations of the statute may subject a well driller, property owner, or water user to license suspension, revocation, or amendment, injunctions or other equitable relief, civil penalties up to \$1,000 per violation per day plus damages, and criminal penalties up to \$250 per violation per day.³¹

4. New Mexico Underground Injection Control Program

New Mexico's Environment Department (NMED) administers regulations under which effluent disposal wells and in situ extraction wells are subject to water quality controls and permit requirements. Such wells may only be operated pursuant to an approved discharge plan which addresses, among other things, effluent limitations and operating, monitoring, reporting, restoration, and closure requirements.³² Construction must conform to standards for design, materials, chemical and physical characteristics, and mechanical integrity.³³ Under specified circumstances, where the proposed affected aquifer is not usable for domestic or agricultural water supply, the NMED may approve designation of the aquifer for contamination levels exceeding the standard thresholds.³⁴

III. AIR QUALITY

A. New Mexico Air Quality Laws and Regulations

Under New Mexico's Air Quality Control Act,³⁵ air pollution is defined to include particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, or radioactive material in quantities significant enough to injure human health, animal life, or plant life or interfere unreasonably with public welfare, visibility, or the reasonable use of property. New Mexico has vested its Environmental Improvement Board (EIB) with broad regulatory and

³⁰ N.M. STAT. ANN. §§ 72-12-12 et seq.

³¹ N.M. STAT. ANN. §§ 72-12-15 to -16.

³² N.M. ADMIN. CODE §§ 20.6.2.5101 et seq. NMAC.

³³ N.M. ADMIN. CODE §§ 20.6.2.5204, 20.6.2.5205 NMAC.

³⁴ N.M. ADMIN. CODE § 20.6.2.5103 NMAC.

³⁵ N.M. STAT. ANN. §§ 74-2-1 et seq.

enforcement authority over air pollution. In some areas, such as the Albuquerque-Bernalillo County area, both regulatory and enforcement authority may be vested in a county or municipal government that creates a local air quality board for that purpose.³⁶ Local regulations, where applicable, may not be less restrictive than regulations adopted by the Board;³⁷ producers should contact the NMED to see if local regulations are in effect for their area. In general, the EIB's regulations implement but do not significantly supplement federal standards.

Under the EIB's regulations, open burning of combustible materials is generally prohibited. However, open burning for the purpose of agricultural management (excluding timber) directly related to the growing or harvesting of crops and burning for the disposal of fully dried tumbleweeds is permitted subject to the following restrictions:

- The emission of smoke shall not be allowed to pass onto or across a public road or landing strip so as to impair visibility;
- The wind direction at the site of agricultural burning must be such that the smoke will generally be carried away from areas of human habitation.
- No natural or synthetic rubber or petroleum products may be burned (Natural petroleum products may be burned for the purpose of frost control in agricultural operations.);
- The materials to be burned must be as dry as possible, and care must be taken to minimize the amount of dirt on the material being burned;
- All burning, except agricultural burning, must take place between 10:00 a.m. and 4:00 p.m.; and

Open burning for other special purposes, including among others weed abatement, disease and pest control, forestry management, and control of vegetation in irrigation ditches and canals, requires a permit from the NMED.³⁸

The regulations also contain several broad provisions relevant to agricultural producers:

- It is a violation to permit, cause, suffer, or allow the emission of smoke above certain opacity levels from diesel-powered vehicles. This prohibition does not

³⁶ N.M. STAT. ANN. §§ 74-2-3 to -5; see also N.M. ADMIN. CODE 20.2.1 et seq. NMAC. (Albuquerque-Bernalillo County Air Quality Control Board Regulations N.M Admin. Code §§ 20.11.1 et seq. NMAC).

³⁷ N.M. STAT. ANN. § 74-2-4(C).

³⁸ N.M. ADMIN. CODE § 20.2.60 NMAC.

apply to emissions resulting from cold engine start-up or to off-highway vehicles operating in non-urban areas.³⁹

- State or local enforcement authorities may issue emergency orders or seek an injunction or other relief whenever any source or combination of sources of air pollution presents an imminent and substantial endangerment to public health, public welfare, or the environment.⁴⁰

Violations of the statute, regulations, permit conditions, or an order issued pursuant to the regulations are enforceable by means of agency compliance orders which may include permit suspension or revocation, injunctions or other injunctive relief, or civil penalties of up to \$15,000 per violation per day.⁴¹ Many violations are also subject to criminal conviction, ranging from classifications of petty misdemeanor to second-degree felony for which a first offense may result in fines up to \$100,000 and imprisonment up to 9 years per violation per day.⁴²

IV. SOLID WASTE AND HAZARDOUS WASTE

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

A. New Mexico 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.

New Mexico's Environment Department (NMED) administers a comprehensive waste management program to reduce pollution and reduce the volume of solid and hazardous wastes generated in the state. Any land or structures on such land, any facilities, systems, or methods that are used for processing, transforming, recycling, or disposing of solid waste are subject to the

³⁹ N.M. ADMIN. CODE § 20.2.61 NMAC.

⁴⁰ N.M. STAT. ANN. § 74-2-10.

⁴¹ N.M. STAT. ANN. §§ 74-2-12 to -12.1.

⁴² N.M. STAT. ANN. § 74-2-14.

state's Solid Waste Management Rules.⁴³ When the waste qualifies as hazardous waste, it is subject to further regulation by the Hazardous Waste Management Regulations.⁴⁴

1. New Mexico Solid Waste Management Rules

New Mexico's Solid Waste Management Rules apply to anyone transporting, storing, transferring, processing, transforming, recycling, or disposing of solid waste. Disposal includes, among other things, the abandonment, discharge, deposit, placement, injection, dumping, spilling, or leaking of solid waste into or on land or water. The disposal of solid waste by an agricultural enterprise on its own property is generally exempt from regulations and prohibitions on disposal, provided the waste was generated on that property and the disposal does not harm the environment or endanger the public health, welfare, or safety;⁴⁵ some regulatory prohibitions, however, may still apply.⁴⁶

"Solid waste" includes:

- Any garbage, refuse, or sludge from a waste treatment plant, water supply plant, or air pollution control facility and other discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and community activities; it does not, however, include:
 - Crop residues, manures, or agricultural waste returned to the soil as fertilizer or soil conditioner;
 - Sand and gravel;
 - Solid or dissolved materials in irrigation return flows; or
 - Solid or dissolved materials in industrial discharges which are point sources subject to federal permit requirements.⁴⁷

⁴³ N.M. ADMIN. CODE § 20.9.1 NMAC.

⁴⁴ N.M. ADMIN. CODE § 20.4.1 NMAC.

⁴⁵ N.M. STAT. ANN. § 74-9-31; N.M. ADMIN. CODE § 20.9.1.108 NMAC.

⁴⁶ N.M. ADMIN. CODE § 20.9.1.108 NMAC.

⁴⁷ N.M. STAT. ANN. § 74-9-3(N); N.M. ADMIN. CODE 20.9.1.7(BV) NMAC.

The law provides that anyone constructing, operating, or closing a solid waste facility must obtain a permit from the NMED; modification of a solid waste facility requires permission.⁴⁸ Permitted facilities must conform to siting and design standards, approved treatment methods, operational and closure requirements, recordkeeping, monitoring, reporting, and financial responsibility requirements.⁴⁹ It is generally unlawful to dispose of solid waste except in a solid waste facility conforming to the regulations.⁵⁰

Permits may be modified, suspended, or revoked upon a showing of good cause.⁵¹ Any violation of the statute, rules, or terms of a permit may also result in an administrative compliance order or civil remedies including monetary penalties and injunctions.⁵² Failure to comply with an administrative order may result in further civil penalties up to \$10,000 per day. A court may additionally impose civil penalties up to \$5,000 per violation per day and criminal penalties up to \$5,000 and imprisonment up to 3 years per violation per day.⁵³ In the event of a release or threatened release of contaminants from a solid waste facility, responsible parties are strictly liable (i.e., regardless of fault) for the government's costs of remediation; failure to undertake satisfactory cleanup may result in the further imposition of punitive damages.⁵⁴

2. New Mexico Tire Recycling Act

New Mexico's Tire Recycling Act⁵⁵ generally prohibits operating a tire recycling facility without a permit and storing or disposing of scrap tires in any place other than a permitted tire recycling facility. Sites where tires are stored and used for agricultural purposes, however, are exempted from the definition of "tire recycling facility" and from the general prohibition on storage and disposal.

⁴⁸ N.M. STAT. ANN. §§ 74-9-20, 74-9-31; N.M. ADMIN. CODE § 209.1.107 NMAC.

⁴⁹ N.M. STAT. ANN. §§ 74-9-33, 74-9-35; N.M. ADMIN. CODE §§ 20.9.1.109 et seq. NMAC.

⁵⁰ N.M. STAT. ANN. § 74-9-31; N.M. ADMIN. CODE § 20.9.1.107 NMAC.

⁵¹ N.M. STAT. ANN. §§ 74-9-24, 74-9-36.

⁵² N.M. STAT. ANN. § 74-9-36.

⁵³ N.M. STAT. ANN. §§ 74-9-37 to -38, 31-18-15.

⁵⁴ N.M. STAT. ANN. § 74-9-34.

⁵⁵ N.M. STAT. ANN. §§ 74-9-41 et seq.

3. New Mexico Hazardous Waste and Underground Storage Tanks

Under New Mexico's Hazardous Waste Act (HWA)⁵⁶ and its accompanying regulations,⁵⁷ the term hazardous waste is defined as in the federal RCRA law. The proper disposal of pesticide containers by farmers is exempt from regulation under the HWA. Authority for regulation and implementation of New Mexico's hazardous waste management program is vested in the Environmental Improvement Board (EIB) and the NMED, except that enforcement of the EIB's regulations with respect to hazardous agricultural waste falls within the authority of the Department of Agriculture (DOA).⁵⁸ "Hazardous agricultural waste" is defined as hazardous waste generated as part of the licensed activity by any person licensed pursuant to the Pesticide Control (PCA) or any hazardous waste designated as hazardous agricultural waste by the EIB except animal excrement in connection with farm, ranch, or feedlot operations⁵⁹

The EIB's hazardous waste management regulations set forth provide standards for:

- Identification and listing of hazardous waste;
- Generators and transporters of hazardous waste;
- Owners and operators of hazardous waste treatment, storage, and disposal facilities;
- Restriction of land disposal of hazardous waste; and
- Issuing, suspending, revoking, or modifying permits.

For the most part, the state regulations simply incorporate by reference the standards promulgated by the federal EPA with respect to these activities; state regulations do not impose additional substantive restrictions.⁶⁰ The state permitting procedures, however, are established by the state.

The EIB's underground storage tank (UST) regulations⁶¹ establish state standards and set forth criteria for the design, installation, operation, maintenance, and monitoring of underground tanks used for storing regulated substances including tanks used to store fuel for farm equipment.

⁵⁶ N.M. STAT. ANN. §§ 74-4-1 et seq.

⁵⁷ N.M. ADMIN. CODE tit. 20 § 4.1.

⁵⁸ N.M. STAT. ANN. §§ 74-4-4 to -4.1.

⁵⁹ N.M. STAT. ANN. § 74-4-3.

⁶⁰ N.M. ADMIN. CODE tit. 20 § 4.1.

⁶¹ N.M. ADMIN. CODE tit. 20 §§ 5.1 et seq.

Owners and operators of USTs must register their tanks with the NMED and pay an annual fee. Noncommercial farm, ranch, or residential motor fuel tanks that are less than 1100 gallons are exempted from registration and fees.⁶² Owners and operators of regulated USTs are subject to notification, financial responsibility requirements, structural standards, design standards, and minimum operating standards.⁶³ Owners and operators must also maintain a monitoring system for release detection plus report and respond to known and suspected releases of regulated substances according to specified procedures.⁶⁴ New Mexico established an UST fund to assist owners or operators of USTs as well as the state with the cost of environmental cleanup and compensation of third parties injured by accidental release of petroleum from a UST.⁶⁵ Finally, certification from the NMED is generally required for the installation and repair of USTs.⁶⁶

Any release or threatened release from a hazardous waste facility or an UST generally subjects owners and operators to civil liability, regardless of fault, for the costs of abatement and the state's necessary costs of investigation, removal, and remediation. New Mexico has created two programs to provide incentives for prompt assessment and remediation of contaminated sites. First, the Ground Water Protection Act (GWPA)⁶⁷ created a Corrective Action Fund (CAF) which provides resources both for state participation in corrective action and for owner/operator reimbursement in situations where the cost is over \$10,000 and owner/operator eligibility criteria are met. Owners and operators of USTs may be eligible for corrective action reimbursement and may avoid liability to the state for state expenditures from the CAF, if they are in compliance with the UST regulations, all required fees have been paid, a minimum site assessment was conducted, all necessary preventive action has been taken, and there is good faith cooperation with the NMED. Second, pursuant to the Voluntary Remediation Act (VRA),⁶⁸ owner/operator liability to the state for existing contamination from any facility may be avoided by entering into a voluntary remediation agreement with the NMED and an approved remediation plan is pursued subject to NMED evaluation and oversight.

With respect to both hazardous waste management and USTs, the NMED has the authority to enter and inspect any premises and related waste records, conduct sampling, and monitor compliance with the HWA, permit conditions, and regulations. The statute is enforceable by means of permit modifications, suspensions, or revocations as well as compliance

⁶² N.M. STAT. ANN. § 74-4-4.4; N.M. ADMIN. CODE tit. 20 §§ 5.2, 5.3.

⁶³ N.M. ADMIN. CODE tit. 20 §§ 5.4, 5.5, 5.8, 5.9.

⁶⁴ N.M. ADMIN. CODE tit. 20 §§ 5.2, 5.6, 5.7, 5.12, 5.13.

⁶⁵ N.M. STAT. ANN. § 74-4-4.8.

⁶⁶ N.M. ADMIN. CODE tit. 20 §§ 5.14, 5.16.

⁶⁷ N.M. STAT. ANN. §§ 74-6B-1 et seq.; N.M. ADMIN. CODE tit. 20 § 5.15.

⁶⁸ N.M. STAT. ANN. §§ 74-4G-1 et seq.; N.M. ADMIN. CODE tit. 20 § 6.3.

orders, injunctions, and a variety of substantial administrative, civil, and criminal penalties.⁶⁹ Maximum civil penalties generally range from \$10,000 to \$25,000 per violation per day. Criminal penalties for violations involving hazardous waste may include fines up to \$250,000 and imprisonment up to 9 years; the maximum criminal penalty for a violation of UST regulations is a fine up to \$5,000 and imprisonment up to 1 year.

V. PESTICIDES AND FERTILIZER

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

A. New Mexico Pesticide and Fertilizer Laws and Regulations

Producer Note: New Mexico, 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. New Mexico Pesticide Control Act

New Mexico's Pesticide Control Act (PCA)⁷⁰ and its accompanying regulations⁷¹ contain provisions that both implement and supplement the requirements of FIFRA with respect to labeling, distribution, sale, storage, transportation, use, application, and disposal of pesticides. The PCA is administered by the Department of Agriculture (DOA), with the advice of its Pesticide Advisory Board (PAB). In the statute and regulations, the word "pesticide" is defined to include both pest control products and plant regulators, defoliant, and desiccants. The laws provide that:

- All pesticides distributed, transported, or delivered for transportation within the state must be registered annually by the manufacturer unless they are being manufactured or shipped for an approved experimental use;⁷²

⁶⁹ N.M. STAT. ANN. §§ 74-4-10 to -12.

⁷⁰ N.M. STAT. ANN. §§ 76-4-1 et seq.

⁷¹ N.M. ADMIN. CODE tit. 21 §§ 17.50 et seq.

⁷² N.M. STAT. ANN. §§ 76-4-6, 76-4-7.

- Restricted use pesticides may lawfully only be sold to, purchased by, and applied by certified applicators or their agents;⁷³
- Use of unregistered pesticides or any experimental ("not previously approved") uses of registered pesticide products require a state experimental use permit;⁷⁴
- Anyone using restricted use pesticides must obtain certification or a license from the DOA;
- A certification or license may be limited to the purchase or use of specific types of pesticides;
- Private applicators must be certified every 5 years;
- Annual licenses are required for commercial applicators and their employees (operators), noncommercial applicators, public and private pest management consultants, and pesticide dealers; among other things, licensing or certification may require testing, continuing education, liability insurance coverage, and comprehensive record-keeping and reporting;⁷⁵
- All pesticides must conform to the PCA's labeling, packaging, safety requirements, and any additional imposed requirements for registration or permitting as well as FIFRA ;⁷⁶
- Improper transportation, display, disposal, and storage of pesticides and pesticide containers are violations of the PCA;⁷⁷
- Pesticide applicators must comply with all terms and conditions in their license, their experimental use permit, or their certification and all standards for application outlined by the DOA's regulations;

⁷³ N.M. STAT. ANN. §§ 76-4-5, N.M. ADMIN. CODE tit. 21 §§ 17.50.13, 17.50.17, 17.56.10.

⁷⁴ N.M. STAT. ANN. § 76-4-7.

⁷⁵ N.M. STAT. ANN. §§ 76-4-13 to -24; N.M. ADMIN. CODE tit. 21 §§ 17.50, 17.53, 17.57.

⁷⁶ N.M. STAT. ANN. § 76-4-4.

⁷⁷ N.M. STAT. ANN. § 76-4-30; N.M. ADMIN. CODE tit. 21 §§ 17.50.15, 17.50.23.

- Pesticide applicators must provide employees with appropriate safety equipment and advice on its use and are prohibited from making false representations with respect to regulated matters;⁷⁸
- Pesticide applicators must maintain records for pesticide applications including information about the product applied; when and where; the pest controlled; and weather conditions. Records are required to be maintained for two years.

It is unlawful to use, distribute, sell, offer for sale, transport, or deliver for transportation:

- Any unregistered pesticide or any registered pesticide with respect to which the registration application contained misstatements regarding claims, directions for use, or composition;
- Any pesticide not conforming to the statute's container, labeling, or coloration requirements; or
- Any pesticide which is adulterated or misbranded; and⁷⁹

It is unlawful to:

- Detach, alter, deface, or destroy any pesticide labeling or to tamper with the contents;
- Use any restricted use pesticide in a manner inconsistent with its label or regulations;
- Handle, transport, store, display, distribute, or use pesticides in such a manner as to endanger man, his environment, food, feed or any other products that may be transported, stored, displayed, or distributed with such pesticides; and
- Dispose, discard, or store any pesticides or pesticide containers in a manner that may cause injury to humans, vegetation, crops, livestock, wildlife, and pollinating insects or to pollute any water supply or waterway.⁸⁰

⁷⁸ N.M. STAT. ANN. § 76-4-23; N.M. ADMIN. CODE tit. 21 § 17.50.12.

⁷⁹ N.M. STAT. ANN. § 76-4-5.

⁸⁰ N.M. STAT. ANN. § 76-4-5.

Violations of the PCA, its regulations, and any terms or conditions of a license, permit, certification, or pesticide registration may result in its amendment, suspension, or revocation.⁸¹ The DOA may conduct inspections, order the production of samples or records, and issue orders to stop sale, use, or removal.⁸² Violations of the PCA, its regulations, or orders issued by the DOA may result in injunctions, conviction of a petty misdemeanor, or civil penalties up to \$1,000 per violation.⁸³

2. New Mexico Fertilizer Act

The New Mexico Fertilizer Act⁸⁴ and its accompanying regulations⁸⁵ provide standards for the distribution and supply of commercial fertilizers and soil conditioner products within the state. The following materials are exempted from regulation: unmanipulated animal and vegetable manures, marl limes, limestone, wood ashes, gypsum, peat moss, bark, perlite, and vermiculite; provided no claims are made as outlined by statute. Administered by the New Mexico DOA, the statute imposes registration and labeling requirements; imposes fees; and subjects covered premises, records, and substances to inspection, sampling, and analysis. Adulterated and misbranded products and materials otherwise out of compliance with the statute or rules are subject to seizure. Violation of any provision of the statute, regulations, or any order issued thereunder is subject to penalty assessment, cancellation of registration, injunction, or criminal conviction of a misdemeanor.

VI. PROTECTION OF WILDLIFE

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

A. New Mexico Wildlife Protection Laws and Regulations

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

⁸¹ N.M. STAT. ANN. §§ 76-4-8, 76-4-23.

⁸² N.M. STAT. ANN. §§ 76-4-10, 76-4-11, 76-4-26, 76-4-31.

⁸³ N.M. STAT. ANN. § 76-4-23.

⁸⁴ N.M. STAT. ANN. §§ 76-11-1 et seq.

⁸⁵ N.M. ADMIN. CODE tit. 21 § 18.2.

1. New Mexico Wildlife Conservation Act

New Mexico's Department of Game and Fish (DGF) administers a program to protect species listed by state authorities as endangered or threatened within the state. Under the state's Wildlife Conservation Act (WCA)⁸⁶ and its accompanying regulations,⁸⁷ it is a criminal offense to take, possess, transport, export, process, sell, offer for sale, or ship any state or federally listed species, except as authorized by permit. To "take" means to harass, hunt, capture, kill, or to attempt to do so.⁸⁸ Violations of the law or regulations may include up to a \$1,000 fine and imprisonment up to 1 year.⁸⁹

Special permits are available for the taking or the possession of endangered species under limited circumstances. Endangered or threatened species permits may be granted for scientific or educational purposes, for propagation in captivity, to protect private property or human health, or where necessary to alleviate or prevent damage to property or human health.⁹⁰ Failure to obtain a permit for one of these special purposes or failing to abide by such a permit's conditions, results in conviction of a misdemeanor punishable by a fine up to \$300 and imprisonment up to 90 days.⁹¹ In an emergency situation involving an immediate threat to human life or private property, state listed (but not federally listed) species may be removed, captured, or destroyed without a permit; however, the taking must be reported to the DGF within 30 days.⁹²

2. New Mexico Endangered Plants Act

Under New Mexico's Endangered Plants Act (EPA),⁹³ the Department of Natural Resources (DNR) is directed by statute to establish a list of endangered plant species within the state. The DNR has the authority to prohibit the taking, possession, transportation, exportation, processing, and sale of listed plants, except as authorized by permit. Permits may be available for scientific or propagation purposes. Authorized penalties include criminal fines up to \$1000 and imprisonment up to 120 days.

⁸⁶ N.M. STAT. ANN. §§ 17-2-37 et seq.

⁸⁷ N.M. ADMIN. CODE tit. 19 §§ 33.1.2 et seq.

⁸⁸ N.M. STAT. ANN. § 17-2-38.

⁸⁹ N.M. STAT. ANN. § 17-2-45.

⁹⁰ N.M. STAT. ANN. § 17-2-42; N.M. ADMIN. CODE tit. 19 § 33.1.2.

⁹¹ N.M. STAT. ANN. § 17-2-45.

⁹² N.M. STAT. ANN. § 17-2-42; N.M. ADMIN. CODE tit. 19 § 33.2.8.

⁹³ N.M. STAT. ANN. §§ 75-6-1 et seq.

Finally, it is unlawful to place in any waters lime, creosote, coculus indicus, or other drug or poison destructive to fish.⁹⁴ A violation is punishable by a fine up to \$1,000 in addition to any applicable license suspension proceedings.⁹⁵

⁹⁴ VT. STAT. ANN. tit. 10 § 4606.

⁹⁵ VT. STAT. ANN. tit. 10 § 4515.

Appendix A - Agencies

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

State Agencies:

Cooperative Extension Service

New Mexico State University
Box 3AE
Las Cruces, NM 88003
(505) 646-3015
(505) 646-5975 fax
<http://www.cahe.nmsu.edu/ces/>

Department of Agriculture

MSC 3189, Box 30005
Corner of Gregg and Espina
Las Cruces, NM 88003-88005
(505) 646-3007
(505) 646-8120 fax
<http://nmdaweb.nmsu.edu>

(Divisions in Department of Agriculture)

Agriculture and Environmental Services:
(505) 646-3208
(505) 646-5977 fax

Entomology & Nursery Industries,
Feed, Seed, and Fertilizer, and
Pesticide Management
(505) 646-2133
(800) 432-5310 toll free in-state
(505) 646-5977 fax

Agriculture Programs and Resources:

(505) 646-2642

(505) 646-1540 fax

Agriculture Programs
Animal Damage Control
Farm & Range Improvement Fund
Soil and Water Conservation

Marketing and Development:

(505) 646-4929

(505) 646-3303 fax

Agriculture Statistics

Standards and Consumer Services:

(505) 646-1616

(505) no fax

Petroleum Standards

Veterinary Diagnostics Services:

(505) 841-2576

(505) 841-2518 fax

Department of Game and Fish

408 Galisteo or
P.O. Box 25112
Santa Fe, NM 87504
(505) 827-7911
(800) 862-9310 toll free
(505) 827-7915 fax
<http://www.gmfsh.state.nm.us/>

Energy, Minerals, and Natural Resources Department

2040 South Pacheco
Santa Fe, NM 87505
(505) 827-5950
(505) 827-1150 fax
<http://www.emnrd.state.nm.us/>

(Divisions in Energy, Minerals, and Natural
Resources Department)

Energy Conservation and Management:

(505) 872-7820

(505) 827-5870 fax

Forestry:

(505) 827-8081

(505) 827-3903 fax

Mining and Minerals:

(505) 827-5970

(505) 827-7195 fax

Oil Conservation:

(505) 827-7131

(505) 827-8177 fax

Environment Department

Harold S. Runnels Building
1190 St. Francis Drive
Santa Fe, NM 87505-4182

(505) 827-2855
(800) 219-6157 toll free
(505) 827-2836 fax
<http://www.nmenv.state.nm.us>

(Divisions in Environment Department)

Environmental Protection:

(505) 827-0397

(505) 827-0310 fax

Air Quality

(505) 827-0031

(505) 827-1523 fax

Occupational Health and Safety

(505) 827-4230

(505) 827-4422 fax

Solid Waste

(505) 827-2775

(505) 827-2902 fax

Underground Storage Tanks

(505) 827-0188

(505) 827-0310 fax

Field Operations:

(505) 827-1080

(505) 827-0045 fax

Drinking Water

(505) 827-7536 or

(800) 654-8720 toll free

(505) 827-7545 fax

Water and Waste Management:

(505) 827-1758

(505) 827-0310 fax

Ground Water Quality

(505) 827-2918

(505) 827-2965 fax

Hazardous Waste

(505) 827-1557

(505) 827-1544 fax

Surface Water Quality

(505) 827-0187

(505) 827-0160 fax

**State Forester's Office
(Energy, Minerals and Natural Resources
Department, Forestry Division)**

P.O. Box 1948 or

408 Galisteo Street

Santa Fe, NM 87504-1948

<http://www.emnrd.state.nm.us/forestry>