

STATE ENVIRONMENTAL LAWS AFFECTING NORTH DAKOTA AGRICULTURE

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

A Project of the

**National Association of State Departments
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The Project Participants

National Association of State Departments of Agriculture Research Foundation

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

National Center for Agricultural Law Research and Information

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

Natural Resources Conservation Service

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

U.S. Environmental Protection Agency

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

Disclaimer

This guide is designed for use by 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 (NCALRI), the University of Arkansas, the United States Department of Agriculture, the National Association of State Departments of Agriculture Research Foundation, the Natural Resources Conservation Service, and the United States Environmental Protection Agency for any liability, claims, damages, or expenses that may be incurred by any person or organization as a result of reference to, or reliance on, the information contained in this book.

The background research and final documents were completed in April 2001. Updates of the information contained in the guide will occur on an as needed basis and be available on the internet.

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

Quick Reference Guide

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

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 1-4</i>	Livestock and aquaculture operations, depending on size	NPDES and state general permit or land disposal permit	Environmental Protection Agency (EPA) Regional Office and North Dakota Department of Health (DOH)
	Concentrated Animal Feeding Operations (CAFOs)	Permits required for certain operations. Regulations must be followed	North Dakota (DOH)
	Non point source pollution	Possible regulation of soil conservation practice	Local soil conservation districts
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Clean Water Act (CWA) Section 404 permit	U.S. Army Corps of Engineers with EPA and North Dakota Water Commission (WC)

Regulatory Area	Type of Activity	Permit Required	Agency
Groundwater <i>pp. 4-7</i>	Groundwater protection	No permit, but BMPs and other regulations must be followed	North Dakota DOH
	Providing Drinking Water	Must seek approval for certain water systems	North Dakota DOH
Air Quality <i>pp. 7-10</i>	Water well construction and use	No permit, but construction standards must be followed	North Dakota DOH
	Water usage	Permit required for certain usage	North Dakota WC
	Grain terminals and grain elevators	Permit required	EPA Regional Office
	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance suits	EPA Regional Office or North Dakota DOH
	Burning	No permit, but burning of woods, prairie, or stubble land is generally prohibited, with some exceptions	
Solid Waste and Hazardous Waste <i>pp. 10-13</i>	Storage, treatment, or disposal of hazardous or solid waste	Permit required for disposal, treatment, or storage activities	North Dakota DOH
	Dead animal disposal	No permit, but carcasses must be disposed of according to state law	North Dakota DOH
	Production and storage of hazardous waste	Permits required, but most agricultural waste excluded	North Dakota DOH
	Construction or removal of underground storage tanks	Permit required for farm tanks larger than 1100 gallons	North Dakota DOH
Pesticides and Chemigation <i>pp. 13-16</i>	Application and use of pesticides	No permit, but a license is required	EPA and North Dakota Department of Agriculture (DOA)
	Use of pesticides around farmworkers	No permit, but training and notification is required	North Dakota DOH and DOA

Regulatory Area	Type of Activity	Permit Required	Agency
	Record keeping	No permit, but all requirements must be met	North Dakota DOA
	Disposal of Pesticide Containers	No permit, but regulations must be followed	North Dakota DOA
	Using chemicals in irrigation system	No permit, but regulations must be followed	North Dakota DOA
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 North Dakota DOA

STATE ENVIRONMENTAL LAWS AFFECTING NORTH DAKOTA AGRICULTURE

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

I. WATER QUALITY

A. North Dakota Water Quality Laws and Regulations

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

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

North Dakota enacted its clean water statute setting forth the goal to protect, maintain, and improve the water quality of the waters in the state for:

- a. Continued use as safe drinking water supplies;
- b. Propagation of wildlife; and
- c. Domestic, agricultural, industrial, recreational, and other beneficial uses.²

The clean water statute is administered by the North Dakota Department of Health (DOH).

¹ 33 U.S.C. § 1251 *et seq.* (1994).

² N.D. CENT. CODE § 61-28-01(1997).

1. North Dakota NPDES Permit Programs

The statute sets forth that no person may discharge a pollutant from a point source into the waters of the state without a permit.³ Point source means any discernible, confined, and discrete conveyance from which wastes may be discharged. The statute expressly includes agricultural wastes. A person must file an NPDES application with the North Dakota DOH at least 180 days prior to operating a waste disposal operation.⁴ The DOH has the power to set terms and conditions of the permit. Maximum penalties for each violation of the statute, including permit violations, range from \$10,000 to \$25,000 and may include imprisonment up to one year.

2. North Dakota Concentrated Animal Feeding Operations

State law prohibits operators from handling livestock waste in any manner that would allow the waste to enter waters of the state or to be washed into these waters by runoff from rain or snowmelt. The North Dakota NPDES regulations require that certain concentrated animal feeding operations (CAFOs) obtain permits from the DOH to lawfully operate.⁵ The following CAFOs require a permit:

- Operations that feed 200 or more animal units (AUs), for example, 200 mature beef or dairy cattle; 300 feeder cattle; 800 hogs; or 16,000 chickens;
- Operations on a flood plain that feed 100 AUs;
- Operations where the distance to any surface water of the state is less than two feet per AU; and
- Operations, regardless of size or location, which cause or are likely to cause pollution.

To obtain a NPDES permit, the owner or operator of such CAFOs should submit an application to the Water Quality Division of the DOH on the departmental form. The application should include a map or sketch of the operation and other information indicating the likelihood of a pollution problem.. Should the owner or operator change the conditions of the operation, the DOH must immediately be informed in writing of the details of the change.

³ N.D. CENT. CODE § 61-28-06 (1997).

⁴ N.D. ADMIN. CODE § 33-16-01-01 *et seq.* (1997).

⁵ *Id.* § 33-16-03 (1997). Please see the booklet written and distributed by the State Department of Health: GARY HABERSTROH, NORTH DAKOTA STATE DEPARTMENT OF HEALTH, MANAGING LIVESTOCK WASTE FOR ENVIRONMENTAL AND ECONOMIC BENEFIT (1995).

When runoff from a livestock yard is likely, the state requires the operator to install some type of pollution control system such as a lagoon or pit. The size of the holding facility will depend upon the type of livestock operation and the typical amount of rain for the county. Annual runoff information is available from the local National Resources Conservation Service (NCRS) office of the United States Department of Agriculture. The holding facility must have a capacity of at least 180 days of storage. Note, however, that the state recommends that the facility be large enough to contain waste for 270 days or a year. The state also recommends that when applying livestock waste to land, the operator should stay at least 200 feet from surface waters, wells, and sink holes. This distance may increase depending on the slope of the ground and the porosity of the soil.

Producer Note: To protect water quality, North Dakota prohibits the feeding of any livestock on ice cover over streams or lakes.⁶

3. North Dakota Nonpoint Source Pollution

North Dakota has charged Soil Conservation Districts with the task of controlling and preventing soil erosion.⁷ These districts operate at a county level and have the power to implement mandatory regulations affecting such things as the methods of cultivation and changes in land use. However, the districts have exercised this power infrequently. When funds are available, these districts also have the power to enter into cost-share agreements with landowners for conservation projects. The districts also serve as a resource for farmers with questions about soil conservation practices.

4. North Dakota Wetlands

In addition to any federal permits, state law requires a permit for draining wetlands. This requirement applies to anyone who plans to drain a pond, slough, lake, or sheetwater that has a watershed area of eighty acres or more.⁸ The landowner must submit a permit application to the State Engineer of the Water Commission (WC).

Factors affecting the granting or denial of a draining permit include:

- a. The volume of water proposed to be drained;
- b. Adverse effects that may occur to lower lands;

⁶ N.D. ADMIN. CODE § 33-16-03-08 (1997).

⁷ N.D. CENT. CODE § 4-22-01 *et seq.* (1997).

⁸ *Id.* § 61-32-03 (1997); NORTH DAKOTA ADMIN. CODE § 89-02-01-01 *et seq.* (1997)

- c. The design of the drain;
- d. The project's impact on flooding problems; and
- e. The project's impacts on wildlife and agricultural land around the area.

If a permit is not obtained before draining activities begin, the landowner could be liable for damages caused by the draining. The state also has the power to close any noncompliant drains.

5. *North Dakota Waterbank Program*

The Commissioner of Agriculture may enter into agreements designed to conserve wetlands.⁹ The agreements run for five or ten years with a possibility of renewal. In return for the landowner's promise not to destroy the wetland character of the area, the Department of Agriculture (DOA) makes an annual payment to the owner.

Eligible land includes the wetland itself and land adjacent to the wetland. The landowner should apply to the state assessment team at the North Dakota DOA which reviews and submits the application to the Commissioner of Agriculture.

Whether participation in the waterbank program is available in a particular area depends on funding. As of October 1997, the only active area of the waterbank program was the Devil's Lake Outlet area.

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

⁹ N.D. CENT. CODE § 61-31-01 (1997).

II. GROUNDWATER

A. North Dakota Groundwater Laws and Regulations

Producer Note: Besides the regulations and permits discussed below, a person using water may also need to obtain a permit from the North Dakota Water Commission (WC) simply to use the water.¹⁰ Whether the Commission will grant the permit depends on the water source, the intended use of the water, and the time the person applies for the permit.

1. North Dakota Groundwater Protection Act

Under the North Dakota Groundwater Protection Act (GPA), the North Dakota Department of Health (DOH) may conduct groundwater quality monitoring activities in cooperation with other state agencies.¹¹ Based on the monitoring results, the DOH shall implement or require appropriate mitigation activities in order to prevent future contamination of groundwater.

The GPA contains special provisions for pollution caused by agricultural pesticides. The DOH may investigate contamination caused by pesticides, herbicides, insecticides, and other agricultural chemicals. If the landowner refuses to allow the DOH access, it can obtain a court order authorizing access. Based on the monitoring results, the Commissioner of Agriculture may require mitigation activities set out in the Pesticide Act (PA).¹² Under the PA, the Commissioner may order a person to cease and desist from the unlawful activity or suspend or revoke an individual's certification to apply pesticides. Further, anyone who violates the PA may be found guilty of a misdemeanor.

Producer Note: Liability may not be imposed upon an agricultural producer for costs of cleanup or for any damage associated with the detection of contaminated groundwater if a certified applicator complied with label instructions when applying the chemical.

¹⁰ N.D. CENT. CODE § 61-04-01 *et seq.* (1997).

¹¹ *ID.* § 23-33-01 *et seq.* (1997).

¹² *See ID.* § 4-35-01 *et seq.* (1997).

2. *North Dakota Safe Drinking Water Act*

The North Dakota DOH administers the North Dakota Safe Drinking Water Act (SDWA). The SDWA applies to anyone who provides a source of drinking water for human consumption with at least fifteen service connections or serving at least twenty-five people.¹³

Producer Note: The state Safe Drinking Water Act (SDWA) applies to agricultural producers who provide a source of drinking water with fifteen connections or serve twenty-five or more persons. Thus, producers who provide drinking water for field laborers may be included in this group. Producers that use pesticides should also be aware that North Dakota regulations also include compliance with a pesticide specific management plan (PSMP)

For those to whom the SDWA applies, the SDWA makes it unlawful to construct or modify a water system without the approval of the DOH. The DOH has the power to inspect the system and take samples of water. Although a variance may be requested, if the water system operator fails to comply with the SDWA, the operator may be either enjoined from further operation or fined.

Producer Note: The SDWA recognizes that pesticide use affects groundwaters and calls upon the states to impose specific safeguards for its pesticide users through pesticide specific management plans (PSMPs). North Dakota's generic pesticide management plan is approved by EPA and is available from the North Dakota Department of Agriculture (DOA). To ensure compliance with groundwater laws and regulations, agricultural producers that use pesticides should contact the North Dakota DOA to obtain a copy of the generic pesticide management plan as well as other pesticide specific information.

3. *North Dakota Water Well Construction*

The State Board of Water Well Contractors certifies those who are in the business of water well construction.¹⁴ Only those who are in the business of water well construction need to be certified; those who construct a well on their own land for their own use do not need to be certified.

Producer Note: The drilling of a sand point well by an agricultural producer does not require a permit if the well is intended for the use of that producer. Nevertheless, the regulations recommend testing before using any well that will produce water intended for human consumption.

¹³ N.D. CENT. CODE § 61-28.1-01 *et seq.* (1997); N.D. ADMIN. CODE § 33-17-01-01 *et seq.* (1997).

¹⁴ *Id.* § 43-35-18 (1997).

4. *North Dakota Artesian Wells*

The State Engineer of the WC implements the Artesian Well program. Every person owning land containing an artesian or flowing well shall install a valve on the well that will control the flow of the water.¹⁵ Failure to control the flow of an artesian well may result in conviction of a misdemeanor.

III. AIR QUALITY

Producer Note: While most agricultural operations are not air pollution sources under the Clean Air Act (CAA), complaints concerning odor and dust resulting from agricultural operations may arise. Complaints that heighten to the level of a legal complaint normally arise in the form of a nuisance lawsuit filed under state law against an agricultural producer.

A. *North Dakota Air Quality Laws and Regulations*

The state DOH implements North Dakota's Air Pollution Control Act (APCA).¹⁶ The DOH enforces air pollution programs under the federal Clean Air Act (CAA).¹⁷ The state APCA requires persons who operate an air contaminant source to file a report with the DOH and obtain a permit. All installations and new incinerators may not exceed an opacity greater than twenty percent nor exceed an opacity greater than forty percent for more than one six-minute period per operation hour. Air emissions may not exceed an opacity greater than forty percent except from incinerators in existence before 1982, and even those incinerators may not exceed an opacity greater than sixty percent for more than one six-minute period per operation hour.

The APCA defines air pollution as the presence of any air contaminant that injures human health, animal or plant life, or unreasonably interferes with the enjoyment of life or property. Air quality standards are set by the DOH and apply to a particular correspondent area.

1. *North Dakota Air Emissions from Farming Operations*

The APCA does not apply to fugitive air emissions caused by agricultural activities related to the normal operations of a farm.¹⁸

¹⁵ N.D. CENT. CODE § 61-20-01 *et seq.* (1997).

¹⁶ *Id.* § 23-25-01 *et seq.* (1997).

¹⁷ 42 U.S.C. § 7401 *et seq.* (1994).

¹⁸ N.D. ADMIN. CODE § 33-15-03-04 (2001).

Producer Note: The provisions of the North Dakota Air Pollution Control Act (APCA) do not apply to fugitive air emissions from normal operations of a farm. If there is any question whether an activity is regulated under the APCA, the agricultural producer should contact the Department of Health (DOH)

2. *North Dakota Burning*

State law generally prohibits open burning and setting fire to any woods, prairie, hay, weeds, or stubble land.¹⁹ Violators of this law are charged with a misdemeanor. The following types of burning, however, are allowed but are subject to conditions:

- The burning of trees, brush, grass, wood, and other vegetative matter for the purpose of clearing of land, right-of-way maintenance, and agricultural crop burning;
- The burning of refuse from a one family domestic household on that same site when no disposal service is directed by a municipality or other government entity;
- The burning of forest and rangeland for a specific management reason if it is conducted in accordance with recommended practices and approved in advance by DOH;
- Campfires for recreation and ceremonial purposes as well as for food preparation;
- Fires set to instruction and training of firefighting personnel;
- Fires for the removal of a dangerous or hazardous material where there is no other practicable or lawful method of disposal (Notice is required when there no imminent danger to human health or safety);
- Fires authorized by the appropriate government entity or local fire department to eliminate a fire hazard when no other abatement method exists; and
- The burning of hydrocarbons generated as waste in oil exploration operations and spilled hydrocarbons from pipeline breaks or accidents but only with advance approval and when recovery is not practicable and no other lawful disposal method exists.

¹⁹ N.D. CENT. CODE § 18-08-01 *et seq.* (1997).

The conditions for permitted burning are that:

- No public nuisance is created;
- Burning is not upwind or in close proximity of a building with occupants that would adversely be affected;
- Burned materials are dry with minimal dirt for clean burning;
- Burned materials do not include oils, rubber, and other materials that produce unreasonable amount of air contaminants are burned;
- Meteorological conditions promote smoke dispersion;
- No traffic hazard is created on public highways or roads;
- No hazard is created on any operational airport or landing strip;
- No proximity to a Class I area if the ambient air is adversely impacted;
- No adverse visibility impact to a Class I area;
- Burning is supervised at all times;
- Fire index is not categorized as extreme by the national weather service and prior notification is given if the fire index is categorized as very high; and
- Fire conditions are deemed safe by state or local fire officials.²⁰

For the purposes of making a fire break, a person may burn an area of prairie not more than one hundred feet wide if it is protected on each side by a strip of plowed or burned land not less than five feet wide and if at least four adults are present and prepared with water and suitable tools to keep the fire under control.²¹

3. *North Dakota Odors*

North Dakota air pollution control laws address odors. These odor laws do not exempt agricultural activities. Agricultural producers should note that excessive odors are prohibited and may become odor violations if odors become equal to or greater than seven (7) odor

²⁰ N.D. ADMIN. CODE § 33-15-04-02.2 (2001).

²¹ N.D. CENT. CODE § 18-07-06 (1997).

concentration units as measured by a scentometer, an odor panel, or a certified odor inspector.²² Measurements are taken at different distances from the offending source and at other facilities or properties depending on proximity to public or populated areas. There are two limited exceptions:

- During the application or spreading of animal manures and recycled agricultural materials; and
- During the spring melt of lagoons or waste storage ponds.

Willful violators of the odor laws are subject to a fine up to \$10,000 per day per violation or imprisonment up to one year or both. Penalties for subsequent violations escalate to \$20,000 per day per violation or two year's imprisonment or both.²³ For specific details and further information about compliance with odor laws, agricultural producers should contact the DOH.²⁴

IV. SOLID WASTE AND HAZARDOUS WASTE

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

A. North Dakota Solid Waste and Hazardous Waste Laws and Regulations

Producer Note: While most agricultural producers are not generators, transporters, or disposers of hazardous 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 waste or hazardous waste statutes.

²² N.D. CENT. CODE § 23-25-11 (1991 & Supp. 1999); and N.D. ADMIN. CODE 33-15-16 (2001).

²³ *Id.* § 23-25-10 (1991 & Supp. 1999).

²⁴ *Id.* § 23-25-02 (1991 & Supp. 1999).

1. North Dakota Solid Waste Management Act

The state DOH implements North Dakota's Solid Waste Management Act (SWMA).²⁵ The SWMA regulates the storage, collection, transportation, resource recovery, and disposal of solid wastes. Solid waste is defined as any garbage or refuse. Note that any political subdivision of the state may enact a solid waste management ordinance if the ordinance is at least as stringent as the state regulations.

Generally, solid wastes may not be abandoned on any public place or private premises.²⁶ These wastes must be stored and transported in a manner that provides for public safety and prevents uncontrolled introduction into the environment. Therefore, except for the special types of wastes discussed below, all solid wastes must be disposed at a solid waste facility.

The state scheme exempts agricultural wastes generated by farming operations unless the handling of such wastes threatens the public health or injures the environment.²⁷ Agricultural wastes include wastes derived from the production and processing of crops and livestock such as manure, spoiled grain, grain screenings, fertilizer, and fertilizer containers.

Special provisions exist to regulate the handling of livestock waste. (See the earlier water quality section dealing with concentrated animal feeding operations.) Special provisions also exist for the disposal of pesticide containers. (See the later pesticide section dealing with the regulation of pesticides.)

Producer Note: State law generally prohibits open burning of refuse.²⁸ A domestic household, however, may burn its own refuse on its own land if a local governmental entity does not require use of a collection or disposal service.

Household wastes generated by residents on unplatted land in an unincorporated area are exempt from the solid waste statute unless the handling of the waste threatens public health or injures the environment. Used oil, lead-acid batteries, major appliances, and scrap metal may only be disposed at facilities having the capability for the intermediate storage and recycling of such materials.

²⁵ N.D. CENT. CODE § 23-29-01 *et seq.* (1997).

²⁶ N.D. ADMIN. CODE § 33-20-01.1-04 (1997).

²⁷ *Id.* § 33-20-01.1-02 (1997).

²⁸ *Id.* § 33-15-04-01 *et seq.* (2001).

2. *North Dakota Hazardous Waste and Underground Storage Tanks*

a. *Hazardous Wastes*

The DOH implements the North Dakota Hazardous Waste Management Act (HWMA).²⁹ Hazardous waste is waste that poses a substantial, present or potential hazard to human health or the environment when improperly treated. Generally, waste produced by agricultural operations is not considered hazardous waste.³⁰ Nevertheless, if an agricultural producer has a question about whether or not certain refuse is covered by the HWMA, the producer should contact the DOH.

Producer Note: Anhydrous ammonia tanks (mounted on an axle with wheels), commonly referred to as nurse tanks and intended for use in farm fertilizer applications, are exempt from the container specifications of the hazardous waste regulations if the tank meets certain requirements. For example, the tank must not be loaded above fifty-six percent of its filling density, and appropriate signs warning of flammable materials and a slow moving vehicle must be attached to the tank.³¹ Further, these tanks may not be towed in excess of twenty-five miles per hour.

b. *Underground Storage Tanks*

The DOH regulates underground storage tanks (UST).³² USTs are defined as tanks and their associated piping that store regulated substances and are at least 10% underground. USTs must be registered with the DOH. The following tanks, however, are exempt from UST regulation:

- Farm and residential tanks with a capacity of eleven hundred (1100) gallons or less when used for storing motor fuel for noncommercial purposes, i.e., noncommercial purposes with respect to motor fuel means not for resale,³³
- Tanks used for storing heating oil for consumptive use on the premises where stored and septic tanks are excluded in the definition of an UST;

²⁹ N.D. CENT. CODE § 23-20.3-01 *et seq.* (1997)

³⁰ N.D. ADMIN. CODE § 33-24-02-04(2)(b) (1997).

³¹ *Id.* § 38-03-02-01 (1997).

³² N.D. CENT. CODE § 23-20.3-04.1 (1997).

³³ N.D. ADMIN. CODE § 38-24-08-03 (1997).

- Surface impoundments such as pits, ponds, or lagoons; and
- Storm water or waste water collection systems.

All regulated UST's are required to meet standards related to construction, monitoring, and operating. Owners of USTs are required to meet standards of state and federal agency reporting, owner record keeping, and financial responsibility.³⁴

Notification to the North Dakota DOH must be given before removing an UST. A notification of existence must be given within 30 days of installing an UST. The owner of an UST must also notify the DOH within 30 days of a change in its reported use, contents, or ownership within 30 days. A permit must be obtained before constructing or removing a UST.

Leaking underground storage tanks (LUST) may be investigated using federal funds. Federal funds may also be used to remediate sites where the owner/operator is unable or unwilling to pay for these activities, however, any funds used as such are recoverable from the violator. In response to a violation of a UST regulation, the state may seek an injunction, order compliance, and impose fines up to \$25,000 per day for each violation.

Producer Note: Agricultural producers having any underground storage tank with a capacity greater than eleven hundred (1100) gallons should contact the DOH for registration requirements and information on other regulations concerning the operation of the tank. USTs of eleven hundred (1100) gallons and smaller are exempt by definition from the registry requirement.

V. PESTICIDES AND CHEMIGATION

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

A. North Dakota Pesticide and Chemigation Laws and Regulations

Producer Note: North Dakota, 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 regulated substances within the state.

³⁴ N.D. ADMIN. CODE § 33-24-08-01 *et seq.* (1997).

Producer Note: Pesticide use affects groundwater. To ensure compliance with groundwater laws and regulations, agricultural producers that use pesticides should contact the North Dakota DOA to obtain information regarding North Dakota’s generic pesticide management plan as well as other pesticide specific information.

1. North Dakota Pesticides

The Commissioner of Agriculture enforces the North Dakota Pesticide Act (PA).³⁵ The PA applies to any sale, distribution, or use of pesticides within the state.³⁶ The PA defines the term pesticides broadly and includes both pesticides and herbicides. The North Dakota Pesticide Control Board (PCB) classifies certain pesticides as restricted-use pesticides.

a. Private Applicators

Using or supervising the use of restricted-use pesticides on one’s own land requires certification as a private applicator by the PCB. The certification requirements allow an otherwise competent person without certification to apply restricted-use pesticides under the direct supervision of a certified private applicator unless the pesticide label requires otherwise.

Producer Note: The only time a private applicator may apply a pesticide on the land of another is when the pesticide is applied without any compensation other than trading of personal services between producers of agricultural commodities.

b. Commercial Applicators

Anyone who uses restricted-use pesticides on the land of another must be certified as a commercial applicator.

The Commissioner of Agriculture may deny, suspend, or revoke the certification of either a private or commercial applicator if the applicator:

- Uses the pesticide in any way inconsistent with label directions or state regulations; or
- Operates unsafe equipment.

Both private and commercial of applicators must keep records that include a description of the land on which the pesticide was applied, when it was applied, the type of pesticide used,

³⁵ N.D. CENT. CODE § 4-35-01 *et seq.* (1997).

³⁶ N.D. ADMIN. CODE § 60-03-01-01 *et seq.* (1997).

and the amount of pesticide applied. Commercial applicators have the added requirement of keeping records of wind speed, wind direction, and type of equipment used at the time of each application. All applicators have a duty to report accidents.

A violation of the PA could result in civil liability, an order from the Commissioner to cease and desist the use of pesticides, a civil penalty up to \$5,000, or conviction of a misdemeanor.

c. Disposal of Pesticide Containers

Pesticide containers must be drained and emptied according to label directions and power-rinsed or triple-rinsed before disposal.³⁷ Producers may burn pesticide containers on their own land if municipal collection or disposal service is unavailable but only if the container is a certain type of plastic and its burning will not expose humans or animals to dangerous smoke. Burning may not be conducted by commercial applicators to dispose of large stockpiles of empty containers. The authority to conduct such open burning does not exempt or excuse a person from the consequences, damages, or injuries which may result from the burning.

2. North Dakota Chemigation

The State Water Commission and its appointed State Engineer cooperate with the Commissioner of Agriculture to administer North Dakota's Chemigation Act (CA).³⁸ Chemigation means any process by which chemicals, including pesticides and fertilizers, are applied to land or crops through an irrigation system.³⁹

<p>Producer Note: All chemigation systems must include antisiphon devices meeting state requirements.</p>
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Under the CA, operators of a chemigation system must:

- Keep the system in good operating condition; and
- Post warning signs at the time the chemical is applied as specified by the pesticide label.

The State Engineer and the Commissioner may enter onto public or private lands to inspect equipment, take soil samples, or observe the chemigation system in operation. Upon

³⁷ N.D. ADMIN. CODE § 33-15-10-02 (1997).

³⁸ N.D. CENT. CODE § 4-35.1-01 *et seq.* (1997).

³⁹ N.D. ADMIN. CODE § 7-10-01-01 *et seq.* (1997).

finding a violation, the Commissioner may order operators to cease and desist from certain activities. Penalties for a violation of the chemigation rules include conviction of a misdemeanor and fines up to \$5,000 for each violation.

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. North Dakota 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. North Dakota has laws protecting wildlife.

The director of the North Dakota Game and Fish Department (GFD) has the power to establish programs and rules to preserve North Dakota's endangered or threatened species.⁴⁰ Such rules and programs must be in compliance with the federal Endangered Species Act. Violators of rules relating to endangered species are subject to a Class B misdemeanor. Also, the state may institute and maintain an action for damages against any person who unlawfully causes death, destruction, or injury to wildlife.

1. North Dakota Endangered Species-Pesticide Management Program

To help producers comply with the federal Endangered Species Act, North Dakota has implemented the North Dakota Endangered Species-Pesticide Management Program. The program is voluntary and is designed to raise the awareness of endangered and threatened species and to set forth proper spraying techniques for pesticide applications so that pesticides do not harm these species. Each county has been mapped out to indicate the presence of any endangered species. A person may access these maps through pesticide dealers, county extension offices, or the world wide web.⁴¹ Pesticide applicators that may have concerns that spraying may harm an endangered species may set up a meeting with a county extension agent and a U.S. Fish and Wildlife Service agent to discuss pesticide applications that comply with the Endangered Species Act.

⁴⁰ N.D. CENT. CODE § 20.1-02-05 (16) (1997).

⁴¹ The world wide web address where the maps may be found is <http://www.state.nd.us/agr/pesticide.html>.

Producer Note: Only the owner or renter of land may post signs relating to hunting on land under their control.⁴² The name of the person posting the land must appear on such signs. The signs must be readable from outside the land and must be placed conspicuously not more than 880 yards apart. If the land is entirely enclosed by a fence, posting of signs on all gates constitutes a posting of all the land. No person may lawfully deface, take down, or destroy posting signs. Only persons with permission from the owner of the land or a person claiming or recovering game shot or killed on land where he had a lawful right to hunt may enter posted lands.

Producer Note: No person may intentionally interfere with the lawful taking of wildlife.⁴³ This prohibition, however, does not apply to any incidental interference arising from lawful activity on a landowner's own land.

2. *North Dakota Regulations Governing Private Fish Hatcheries*

Private fish hatcheries are excluded from the constraints of fishing seasons, limits, or size restrictions⁴⁴ The state does not require a person who catches fish at a private hatchery to obtain a license. The director of the North Dakota Game and Fish Department (GFD) issues annual licenses to the operators of private fish hatcheries.

VIII. OTHER NORTH DAKOTA STATUTES AFFECTING AGRICULTURE

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

A. **North Dakota Farmland Preservation**

1. *North Dakota Planning and Zoning*

Producer Note: Agricultural operations frequently are controlled by local planning or zoning board activities. Since it is not possible to outline the requirements for each local area, a producer must check with local boards to determine local planning and zoning regulations which may affect an operation.

⁴² N.D. CENT. CODE § 20.1-01-17 (1997).

⁴³ *Id.* § 20.1-01-31 (1997).

⁴⁴ *Id.* § 20.1-06-12 (1997).

Currently, North Dakota law does not empower counties to use zoning as a farmland preservation tool. It also does not provide for the creation of agricultural districts. North Dakota law, however, does permit the creation of nonprofit organizations or trusts to own or lease farmland or rangeland.⁴⁵ In addition, any nonprofit organization that owned farmland or rangeland for the preservation of unique historical, archeological, or environmental land before January 1, 1983 may continue ownership of that land without interruption.⁴⁶ North Dakota law gives counties broad powers to regulate property for the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare. The power includes the right of a county's board of commissioners to divide a county into districts and to regulate activities within those districts. However, no regulations or restrictions within these districts may be enacted that prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.⁴⁷ Townships are also statutorily prevented from restricting farming activities and normal incidents of farming.⁴⁸

2. *North Dakota Conservation Easements*

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

North Dakota law provides for the creation of conservation easements. To be enforceable, however, the area of land covered in the easement must be properly described.⁴⁹ In addition, restrictions on use of the property must be specifically described and the duration of the easement must not exceed 99 years.⁵⁰ Conservation easements acquired by the federal government after July 1, 1985 for waterfowl production may not exceed 50 years. Conservation easements obtained by the federal government after July 1, 1991 under the Wetlands Reserve Program may not exceed 30 years.⁵¹

⁴⁵ N.D. CENT. CODE § 10.06.1-09(1) (1995).

⁴⁶ *Id.* § 10-06.109(3) (1995).

⁴⁷ *Id.* §§ 11-33.01 & 11-33-02 (1995 & Supp. 1977).

⁴⁸ *Id.*

⁴⁹ *Id.* § 47-05-02.1 (1) (1997).

⁵⁰ *Id.* § 47-05-02.1 (2) (1997).

⁵¹ N.D. CENT. CODE § 47-05-02.1 (3) (1997).

B. North Dakota Nuisance and Right-to-Farm

Producer Note: Agricultural producers may be confronted with complaints from local residents. These complaints may originate from dust or odor generated by the operation and result from a lack of knowledge of agricultural operations. While state or federal authorities usually don't become involved in complaints against agricultural operations, court actions can be brought against nuisances. In some cases, however, a right-to-farm defense may apply.

Legal claims of nuisance are categorized as private nuisance or public nuisance. Nuisance is defined in North Dakota as unlawfully doing or omitting to perform an act or a duty which:

- Annoys, injures, or endangers the comfort, repose, health, or safety of others;
- Offends decency;
- Unlawfully obstructs or tends to obstruct, renders dangerous, or interferes with a passage, lake, navigable river, bay, stream, canal, basin, public park, square, street, or highway; or
- In any way renders insecurity to a person's life or use of property.⁵²

A legal claim of private nuisance specifically addresses the enjoyment of some private right not common to the public.⁵³ A civil action for damages or an abatement action are the remedies available for a private nuisance lawsuit.⁵⁴

A legal claim of public nuisance addresses the effects on an entire community or neighborhood or any considerable number of persons although the extent of any annoyance or damage inflicted upon individuals may be unequal.⁵⁵

The remedies available for a plaintiff in a public nuisance lawsuit are (1) indictment; (2) filing an information; (3) bringing a civil action before a county judge who has authority to bind the defendant to a district court; (4) a civil action; or (5) abatement.⁵⁶ Persons convicted of a

⁵² *Id.* § 42-01-01 *et seq.* (1995).

⁵³ *Id.* § 42-01-02 (1995 & Supp. 1997).

⁵⁴ *Id.*

⁵⁵ N.D. CENT. CODE § 42-01-06 (1995 & Supp. 1997).

⁵⁶ *Id.* § 42-01-07 (1995 & Supp. 1997).

public nuisance are subject to class A misdemeanor punishment unless otherwise prescribed by statute.⁵⁷

A person may bring an action for public nuisance only if the nuisance is injurious to himself or his property.⁵⁸ As a general rule, a public nuisance is addressed by a public body or officer such as the attorney general or the state health officer.⁵⁹

Although a public nuisance cannot become legalized by the lapse of time,⁶⁰ North Dakota law does recognize the doctrine of “coming to the nuisance.” Any individual, corporation or partnership that “comes” or moves to an alleged nuisance has a heavy burden to establish liability of the alleged nuisance actor or owner.⁶¹ The doctrine of “coming to the nuisance” is a factor to be considered along with all other evidence as to reasonableness of use of property in determining whether a nuisance exists.⁶²

It should be noted that under North Dakota law a nuisance may be created without negligence. The determination of whether a nuisance exists or not is primarily based upon the condition created and not upon the defendant’s exercise of care or skill.⁶³

North Dakota’s right-to-farm statute provides that an agricultural operation shall not be deemed a private nuisance or a public nuisance as a result of changed conditions in or about the operation as long as:

- The operation has been operation for more than 1 year and
- The operation was not a nuisance at the time the operation began.⁶⁴

An “agricultural operation” means the science and art of production of plants and animals useful to man and the preparation and disposal of such products for man’s use by marketing or otherwise. Such operations include horticulture, floriculture, viticulture, forestry, dairies,

⁵⁷ *Id.* § 42-01-15 (1995 & Supp. 1997).

⁵⁸ *Id.* § 42-01-08 (1995 & Supp. 1997).

⁵⁹ *Id.* §§ 42-01-09 & 42-02-01 (1995 & Supp. 1997).

⁶⁰ *Id.* § 42-01-14 (1995 & Supp. 1997).

⁶¹ *Jerry Harmon Motors v. Farmers Union Grain Term. Ass’n*, 337 N.W.2d 427 (N.D. 1983).

⁶² *Rassier v. Houim*, 488 N.W.2d 635 (N.D. 1992).

⁶³ *Knoff v. American Crystal Sugar Co.*, 380 N.W.2d 313 (N.D. 1986).

⁶⁴ *Id.* § 42-04-02 (1995).

livestock and poultry production, bee keeping, and any and all forms of farm products and farm production.⁶⁵

Besides protecting agricultural operations from nuisance lawsuits, North Dakota's right-to-farm statute voids any ordinance or resolution of any unit of local government that would cause the operation to be deemed a nuisance or provide for the abatement of the activity deemed a nuisance under the circumstances set forth in the statute.⁶⁶ The statute, however, does not protect any operation that is a nuisance as a result of negligence or improper operation.⁶⁷ The statute also does not affect or defeat any claim for damages when the claim is based on pollution of the waters of any stream or from any overflow from the operation.⁶⁸

C. North Dakota Livestock Waste Management

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

North Dakota has a specific statute that addresses the control of pollution from certain livestock enterprises.⁶⁹ The statute applies to certain concentrated feeding areas or feedlots, and it defines such facilities as being "...any livestock feeding, handling, or holding operation or feed yard where animals are concentrated in an area (1) ... not normally used for pasture or for growing crops..., or (b) where the space per animal unit is less than six hundred square feet"⁷⁰

An animal unit (AU) means:

- 1 mature beef animal or dairy cow;
- 1 horse;
- 1.5 feeder cattle;

⁶⁵ *Id.* § 42-04-01 (1995).

⁶⁶ *Id.* § 42-04-04 (1995).

⁶⁷ *Id.* § 42-04-02 & 42-04-03 (1995).

⁶⁸ *Id.* § 42-04-03 (1995).

⁶⁹ *Id.* § 33-16-03-04 (1995 & Supp. 1997).

⁷⁰ *Id.* § 33-16-03-04(3) (1995 & Supp. 1997).

- 4 swine;
- 8 sheep;
- 30 geese, ducks, or turkeys; or
- 80 chickens.⁷¹

The statute applies to livestock raised for food or pleasure and includes, but is not limited to, beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.⁷²

Concentrated feeding areas or feedlot operations subject to the statute are those:

- Exceeding two hundred AUs;
- Located in a floodplain;
- Where the distance to the nearest point of state waters is less than two feet (60.96 centimeters) per AU fed, handled, or held in the operation at any one time; or
- Operations, regardless of location or size, which the North Dakota DOH has determined are causing or [are] likely to cause water pollution.⁷³

The operator of any existing or proposed concentrated feeding operation or feedlot subject to the statute must apply to the DOH for approval for waste handling activities or discharges of waste.⁷⁴ The DOH makes the determination as to whether an operation is causing or likely to cause pollution.⁷⁵ If the DOH finds that pollution to state waters is not occurring nor likely to occur from the operation, an approval will be issued. The approval is valid as long as the operation is not materially changed or an environmental violation does not occur. The approval, however, is subject to annual review.⁷⁶

⁷¹ N.D. CENT. CODE § 33-16-03-04(1) (1995 & Supp. 1997).

⁷² *Id.* § 33-16-03-04(3) (1995 & Supp. 1997).

⁷³ *Id.* § 33-16-03-05(1)-(3) (1995 & Supp. 1997).

⁷⁴ *Id.* § 33-16-03-06(1) (1995 & Supp. 1997).

⁷⁵ N.D. CENT. CODE § 33-16-03-04(2) (1995 & Supp. 1997).

⁷⁶ *Id.* § 33-16-03-06(3) (1995 & Supp. 1997).

If, however, the DOH finds that pollution to state waters is occurring or is likely to occur, the operation is notified that steps to abate the pollution must be taken.⁷⁷ Any operation receiving such notification must, within 120 days following the receipt of the notification, submit an abatement plan to the DOH.⁷⁸ If the DOH approves the plan, the operator receives a temporary approval for the discharge of waste that is subject to successful completion of the plan in accordance with any conditions or requirements placed on the plan by the DOH.⁷⁹

Producer Note: Recommendations for land application of waste are addressed by NRCS technical guidance materials. These recommendations should be followed in order to preserve an agricultural producer's potential defense in nuisance actions or to aid the producer when defending against alleged permit violations. While these recommendations do not have the force of law that agency regulations have, compliance with them will generally aid the agricultural producer.

D. North Dakota Noxious Weeds

Every owner or possessor of land is obligated to eradicate or control the spread of noxious weeds on their land.⁸⁰ After consultation with the North Dakota State University Extension Service, the Commissioner of Agriculture determines which weeds are noxious for the purposes of a state list of noxious weeds.⁸¹

Authority to control noxious weeds is vested in the county weed boards. Any control agent, including a county weed control officer, has authority to enter upon all land within their jurisdiction for the purpose of performing such duties including the taking of weed specimens, pests, or other materials. Entry is permitted regardless of landowner consent or permission, and the officer is not subject to any action for trespass or damages including any destruction of growing crops if the officer exercises reasonable care.⁸²

If the land is infested with noxious weeds or pests, the weed control officer may serve the landowner written notice requiring the landowner to control or eradicate the noxious weeds or pests within a time period prescribed by the officer. If the landowner fails to respond as prescribed in the written notice, the county weed control officer may cause the noxious weeds or

⁷⁷ *Id.* § 33-16-03-06(4) (1995 & Supp. 1997).

⁷⁸ *Id.* § 33-16-03-04(5) (1995 & Supp. 1997).

⁷⁹ *Id.* § 33-16-03-06(6) (1995 & Supp. 1997).

⁸⁰ *Id.* § 63-01.1-01 (1995 & Supp. 1997).

⁸¹ *Id.* § 63-01.1-03 (1995 & Supp. 1997).

⁸² N.D. CENT. CODE § 63-01.1-08(1) (1995 & Supp. 1997).

pests to be controlled or eradicated by another but at the landowner's expense. The expenses become part of the taxes levied against the land and are collectible in the same manner as real estate taxes.⁸³

To prevent the spread of noxious weeds, all operators of tillage, seeding, and harvesting equipment are required to clean their equipment prior to moving such equipment on public highways, airways, waterways, or by any other means of conveyance. In addition, trucks and trailers transporting grain screenings shall be covered so as to prevent weed seed dissemination.⁸⁴ A custom or commercial operator of tillage, seeding, and harvesting equipment who fails to clean equipment as required is subject to class B misdemeanor punishment. Violators of the noxious weed control statute are also subject to a fine up to \$50 per day and a maximum of \$2,500 per year.⁸⁵

The commissioner and county weed control board have the authority to quarantine any area infested with noxious weeds when materials or farm products from that area are likely to spread noxious weeds and cause injury in other areas. They also have the authority to declare a quarantine against the importation of materials or farm products from other states when such importation is likely to introduce noxious weeds into the state.⁸⁶

E. North Dakota Soil and Water Conservation Districts

North Dakota law provides for the creation of soil conservation districts.⁸⁷ Any twenty-five qualified electors living within the limits of the territory proposed to be organized into a district may file a petition with the state Soil Conservation Committee (SCC).⁸⁸ The SCC consists of five elected members (1 each from 5 statutorily designated areas of the state) and two appointed members (appointed by the governor) for a total of seven voting members.⁸⁹

The petition must set forth the proposed name of the district, the need for the district, a description of the territory proposed to be organized into a district, a request that the committee

⁸³ *Id.* § 63-01.1-08(2) (1995 & Supp. 1997).

⁸⁴ *Id.* § 63-01.1-012(2) (1995 & Supp. 1997).

⁸⁵ *Id.* § 63-01.1-15(1) & (2) (1995 & Supp. 1997).

⁸⁶ *Id.* § 63-01.1-12(1) (1995 & Supp. 1997).

⁸⁷ *Id.* § 4-22-01 *et seq.* (1995 & Supp. 1997).

⁸⁸ *Id.* § 4-22-08 (1995 & Supp. 1997).

⁸⁹ N.D. CENT. CODE § 4-22-03(1) & (2) (1995 & Supp. 1997).

define the boundaries of the district, and a request that a referendum be held on the issue within the boundaries of the proposed district.⁹⁰

Within 30 days of the filing of a petition, the SCC must give notice of a public hearing on the issue to be held within the proposed district. Based on the facts and other relevant information presented at the hearing, the committee makes a determination as to whether there is a need for a district and whether the creation of a new district is in the public interest. If the SCC denies the petition, a petition covering the same or substantially same territory cannot be filed again for six months. If the SCC finds in favor of the petitioners, the SCC defines the district's boundaries and holds a referendum on the issue.⁹¹

If a majority of votes cast in the referendum favor of the creation of a district, the SCC then determines whether the operation of a district within the specified boundaries is administratively practicable and feasible.⁹² If the committee finds in favor of creating the district, it files a certified statement describing such a district along with a description of new territorial boundaries with the secretary of state and the district is created.⁹³

Soil conservation districts are governed by boards consisting of 3 elected supervisors. To be eligible for election, candidates must be land occupiers who physically live in the district.⁹⁴ A soil conservation district may exercise the public powers ordinarily exercised by a governmental subdivision of the state. Supervisors have the authority to:

- Conduct surveys, investigations, and research relating to the character of soil erosion as well as preventive and control measures;
- Conduct demonstration projects on land within the district;
- Carry out preventive and control measures within the district including engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land.⁹⁵

⁹⁰ *Id.* § 4-22-08 (1995 & Supp. 1997).

⁹¹ *Id.* § 4-22-09 (1995 & Supp. 1997).

⁹² *Id.* § 4-22-11 (1995 & Supp. 1997).

⁹³ *Id.* § 4-22-11 & 12 (1995 & Supp. 1997).

⁹⁴ *Id.* § 4-22-22 (1995 & Supp. 1997).

⁹⁵ N.D. CENT. CODE § 4-22-26 (1995 & Supp. 1997).

Supervisors may adopt extensive land use regulations for the district. The regulations may include provisions:

- Requiring necessary engineering operations including the construction of dikes, dams, ponds, ditches, terraces, and other necessary structures;
- Requiring particular methods of cultivation;
- Specifying cropping programs and tillage practices;
- Requiring cultivation retirement of highly erosive areas; and
- Such other means, measures, operations, and programs necessary to conserve soil and water resources.⁹⁶

Supervisors may file an action in district court against any land occupant in the district who fails to observe district land use regulations. If, after notice and hearing, the court finds in favor of the supervisors, the court has authority to order the violator to observe the regulations and to perform any particular work necessary to prevent erosion. If the occupant of the land fails to act, the supervisors may enter the land, perform any necessary work, and assess the costs and expenses to the occupant.⁹⁷

F. North Dakota Dead Animal Disposal

In most cases, the carcass of a dead animal must be buried, composted, or given to a licensed rendering plant within 36 hours unless another method is approved by the state veterinarian. If the carcass is buried, it must be buried at least four feet below the ground in a burial site not along, near, or adjoining a stream, lake, river, or public highway.⁹⁸ Special rules regulate the disposition of animals that died from contagious diseases,⁹⁹ and even more specific rules apply to the disposition of animals that died from anthrax or hog cholera. Agricultural producers should note that an animal found dead is presumed to have died from a contagious or infectious disease until the contrary is shown unless another cause of death is apparent.¹⁰⁰

If an animal dies of anthrax, the carcass must be completely burned at the place where it died if possible. If the carcass must be moved, it cannot be dragged over the ground. It must be

⁹⁶ *Id.* § 4-22-30 (1995 & Supp. 1997).

⁹⁷ *Id.* § 4-22-34 (1995 & Supp. 1997).

⁹⁸ *Id.* § 36-14-19(3) (1995 & Supp. 1997).

⁹⁹ *Id.* § 36-14-19 (1997).

¹⁰⁰ N.D. CENT. CODE § 36-14-19 (1995 & Supp. 1997).

moved only by suitable conveyances and all body openings in the carcass must be plugged with cotton saturated with a strong antiseptic solution.¹⁰¹

If a hog dies from hog cholera or swine erysipelas, the carcass with hide intact must be burned within 36 hours or given to a licensed rendering plant within such time.¹⁰²

G. North Dakota Environmental Audits

Producer Note: Some states (fewer than half) have passed environmental audit protection laws which give businesses immunity from the use of environmental audit findings against the business in administrative, civil, or criminal actions. In other words, businesses cannot be prosecuted civilly or criminally for environmental problems found and corrected in a self-audit process. North Dakota is one of the states that has not granted this type protection.

Caution: Some federal courts have concluded that state environmental audit protection laws which give businesses immunity do not apply to protection from federal government actions, particularly in criminal actions. Agricultural producers should confer with an attorney, consultant, or advisor before engaging in an environmental audit.

¹⁰¹ *Id.*

¹⁰² *Id.* § 36-14-19(2) (1995 & Supp. 1997).

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 state agencies which should be able to answer questions or provide materials for an agricultural producer.

North Dakota Agencies:

Air Pollution Control Advisory Council

State Capitol, 2nd Floor - Judicial Wing
600 East Boulevard
Bismarck, ND 58505
(701) 328-2372
(701) 328-4727 fax
<http://www.governor.state.nd.us/boards/>

Agricultural Products Utilization Commission

1833 East Bismarck Expressway
Bismarck, ND 58504
(701) 328-5350
(701) 328-5320 fax
<http://www.growingnd.com>

Board of Animal Health

State Capital, 6th Floor
600 East Boulevard
Bismarck, ND 58505-0390
(701) 328-2655
(701) 328-3000 fax
<http://www.state.nd.us/agr>

Department of Agriculture

State Capitol, 6th Floor
600 East Boulevard Avenue, Department 602
Bismarck, ND 58505-0020
(701) 328-4754
(701) 328-4567 fax
<http://www.agdepartment.com/>

Department of Health

State Capitol, 2nd Floor - Judicial Wing
600 East Boulevard Avenue
Bismarck, ND 58505-0200
(701) 328-2372
(701) 328-4727 fax
<http://www.health.state.nd.us/ndhd>

4 Divisions within Environmental Health
Section of DOH
1200 Missouri Avenue or

P.O. Box 5520
Bismarck, ND 58506-5520:
1. Air Quality
(701) 328-5188
(701) 328-5200 fax
2. Municipal Facilities
(701) 328-5211
(701) 328-5200 fax
3. Waste Management
(701) 328-5166
(701) 328-5200 fax
4. Water Quality
(701) 328-5210
(701) 328-5200 fax

Forest Service

307 First Street East
Bottineau, ND 58318-1100
(701) 228-5422
(701) 228-5448 fax
<http://www.ndsu.nodak.edu/ndsu/lbakken/forest/>

Game and Fish Department

100 North Bismarck Expressway
Bismarck, ND 58501-5095
(701) 328-6300
(701) 328-6352
<http://www.state.nd.us/gnf>

Industrial Commission and Oil and Gas Division

600 East Boulevard Avenue, Department 405
Bismarck, ND 58505-0840
(701) 328-8020
(701) 328-8022 fax
<http://explorer.ndic.state.nd.us>

Office of Attorney General

State Capitol, 1st Floor
600 East Boulevard Avenue, Department 125
Bismarck, ND 58505-0040
(701) 328-2210
(701) 328-2226 fax
<http://www.ag.state.nd.us/ndag/>

Soil Conservation Committee

4023 North State Street, Suite 30

Bismarck, ND 58501-0620

(701) 328-5128

(701) 328-5123 fax

<http://www.governor.state.nd.us/boards/>

Water Commission and State Engineer

900 East Boulevard Avenue

Bismarck, ND 58505-0850

(701) 328-2750

(701) 328-3696 fax

<http://www.swc.state.nd.us/>

Wheat Commission

4023 State Street

Bismarck, ND 58501-0690

(701) 328-5111

(701) 328-5115 fax

<http://www.nd.wheat.com>