

**STATE
ENVIRONMENTAL LAWS AFFECTING
OKLAHOMA 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 use 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 September 2003.

Anyone with comments concerning the guide should contact the NASDA Research Foundation at 1156 15th Street, NW, Suite 1020, Washington, D.C. 20005.

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. 1-8</i>	Livestock and poultry facilities, depending on size Aquaculture facilities	State CAFO license, CAFO general permit, poultry registration, and poultry applicators permit State general permit or land disposal permit	Oklahoma Department of Agriculture, Food and Forestry (ODAFF), EPA Region VI, Oklahoma Department of Environmental Quality (ODEQ) and EPA Region VI
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit	US Army Corps of Engineers, EPA Region VI, ODEQ, Oklahoma Water Resources Board (OWRB), and Oklahoma Conservation Commission
	Water usage	Permit may be required.	Oklahoma Water Resources Board (OWRB)
	Water well construction and use	Permit may be required, and construction standards must be followed	ODEQ
Groundwater <i>pp. 8-9</i>	Groundwater protection	No permit, but BMPs must be followed	ODAFF and ODEQ
Air Quality <i>pp. 9-10</i>	Grain terminals and grain elevators	Permit required	EPA Region VI, ODEQ, and ODAFF

Regulatory Area	Type of Activity	Permit Required	Agency
	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance suits. Large Swine operations need an Odor Abatement Plan.	ODAFF, EPA Region VI, and ODEQ
	Burning	Permit required in certain circumstances	ODEQ and ODAFF
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	EPA Region VI and ODEQ
	Public notice of hazardous waste	No permit	Local Emergency Planning Committee and ODEQ
Pesticides and Chemigation <i>pp. 13-16</i>	Application and use of pesticides	No permit, but a license may be required	EPA Region VI and ODAFF
	Use of pesticides around farm workers	No permit, but training and notification is required	ODEQ and ODAFF
	Record keeping	No permit, but all requirements must be met	ODAFF
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 Oklahoma Wildlife Department

STATE ENVIRONMENTAL LAWS AFFECTING OKLAHOMA 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. Oklahoma Water Quality Laws and Regulations

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

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.

Producer Note: Often the specifics of environmental laws are found in agency regulations. Regulations are likely to be amended frequently. Producers must keep in contact with offices administering specific programs to keep up with any changes that may occur. This is especially true in Oklahoma, where a great deal of agricultural water pollution regulation can only be found in the regulations of the Oklahoma Department of Agriculture, Food, and Forestry. (ODAFF)

1. Oklahoma Pollutant Discharge Elimination System Act

Oklahoma assumed administration of portions the NPDES program of the federal CWA and enacted the Oklahoma Pollutant Discharge Elimination System Act¹ (OPDES). Agricultural

¹ OKLA.STAT.ANN. tit. 27A, §§ 2-6-201 *et seq.* (West 1997).

water pollution is excluded from OPDES² with the primary regulatory responsibility at the Oklahoma Department of Agriculture, Food, and Forestry (ODAFF).³ The Oklahoma Department of Environmental Quality (ODEQ) administers OPDES only on certain “commercialized” agricultural activities.⁴ Those commercialized agricultural activities which do fall under ODEQ’s jurisdiction include:

- commercial manufacturers of fertilizers, grain and feed products, and chemicals;
- manufacturing of food and similar products, tobacco, paper, lumber, wood, textile mill and other agricultural products;
- slaughterhouses (except feedlots at such facilities);
- aquaculture and fish hatcheries; and
- facilities which store grain, feed, seed, fertilizer, and agricultural chemicals which are required to have a federal NPDES permit for storm water discharges. (ODEQ has jurisdiction over only the storm water discharges.)

Producer Note: Permit applications filed with the ODEQ are regulated under the Oklahoma Uniform Environmental Permitting Act.⁵ The Act aims to provide for uniform permitting provisions regarding notices and public participation opportunities. A three tier process for permitting is established under the Act. Producers whose operations require ODEQ permits should consult this act and its accompanying regulations before filing permit applications.

Under the OPDES, it is unlawful to discharge pollutants into state waters without a permit.⁶ Penalties for a violation of the OPDES include administrative fines of up to \$10,000 per day of violation, civil penalties of up to \$10,000 per day of violation, and criminal penalties which can reach as high as a \$1,000,000 fine and fifteen years imprisonment in the State Penitentiary.⁷

² § 2-6-201.

³ § 1-3-101 (West 1997).

⁴ § 1-3-101 (D) (2) (West Supp. 1999).

⁵ OKLA.STAT.ANN. tit. 27A, § 2-14-101 *et seq.* (West 1997).

⁶ § 2-6-205 (1997).

⁷ § 2-6-206.

Producer Note: It is more an exception than the rule for an agricultural facility to be required to obtain an OPDES permit and be subject to regulation by the ODEQ. An operation may be required to obtain several permits. In some cases, construction and operation permits may be required even when an OPDES permit is not required. For example, concentrated animal feeding operations are often required to obtain multiple permits.

ODAFF's jurisdiction over agricultural water pollution primarily covers the following:

- point source and nonpoint source discharges from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets, and animal waste;
- pesticide control;
- forestry and nurseries;
- fertilizer;
- facilities which store grain, feed, seed, fertilizer and agricultural chemicals; and
- dairy waste and wastewater associated with milk production facilities.

2. *Oklahoma Concentrated Animal Feeding Operations Act*

The Oklahoma Concentrated Animal Feeding Operations Act⁸ is aimed at regulating water pollution from agricultural feeding operations. The Act specifically deems concentrated animal feeding operations (CAFOs) to be point sources of water pollution. A facility meeting the definition of a CAFO is required to obtain a license under the Act.

A CAFO is basically an animal feeding operation in which cattle, swine, horses, sheep, chickens, turkeys, or other animals are kept in large numbers. The Act defines a CAFO as being either (1) a licensed managed feeding operation (LMFO) or (2) an animal feeding operation meeting certain criteria. A two-step test, therefore, is used to determine whether a particular operation must obtain a license to operate as a CAFO. First, a producer must determine whether his or her operation meets the definition of an animal feeding operation or a LMFO.

An animal feeding operation is a lot or facility where animals are or will be confined and fed or maintained for a total of 90 consecutive days or more during a 12 month period, and where crops, vegetation, forage growth or post-harvest residues are not sustained during the normal growing season over any portion of the

⁸ OKLA.STAT.ANN. tit. 2, § 9-201 *et seq.* (West Supp. 1999).

lot or facility. Animal feeding operations do not include horse racetracks or aquatic animal production facilities.

Licensed managed feeding operations are animal feeding operations which utilize a liquid waste management system and house animals in a roof-covered structure, and confine more than 2,500 swine each weighing over 25 kg, or approximately 55 lbs; 10,000 weaned swine each weighing under 25 kg; 100,000 laying hens or broilers, utilizing continuous overflow watering; 30,000 laying hens or broilers, utilizing a liquid manure system; or any combination of swine equaling 1,000 animal units.

If an operation meets the definition of an LMFO then it is a CAFO. If the operation meets only the definition of an animal feeding operation, it must proceed to the second step and compare the operation to the CAFO definition. An animal feeding operation is a CAFO if it discharges pollutants into the waters of the State and contains more than 1,000 slaughter or feeder cattle, 700 mature dairy cattle, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 100,000 hens or broilers where continuous overflow watering is utilized, 30,000 laying hens or broilers where liquid manure systems are utilized, or 5,000 ducks, or 1,000 animal units.

Animal feeding operations are also deemed CAFOs if they discharge pollutants either into waters of the State through an artificially constructed ditch or flushing system, or discharge pollutants directly into navigable waters originating outside, and passing over or through the facility, and contain more than 300 slaughter or feeder cattle, 200 mature dairy cattle, 750 swine over 25 kg, 3,000 weaned swine under 25 kg, 150 horses, 3,000 sheep or lambs, 16,500 turkeys, 30,000 hens or broilers where continuous overflow watering is utilized, 9,000 laying hens or broilers where liquid manure systems are utilized, or 1,500 ducks, or 300 animal units.

Producer Note: Animal feeding operations which discharge only in the event of a twenty-five-year, twenty-four-hour storm event are not concentrated animal feeding operations.

Newly constructed and expanded CAFOs must obtain a license to operate. Facilities are considered “expanding operations” only if they are an LMFO expanding by more than 5% of their original licensed capacity, or if a facility increases its animal unit capacity enough to cause the facility to meet the definition of an LMFO. Animal unit capacity is based on the maximum one time capacity of an existing or new facility.

To obtain a license, applicants must submit detailed information on the physical and financial characteristics of their facilities, and must provide notice to affected property owners. Applicants are required to develop Pollution Prevention Plans, including Best Management Practices, Animal Waste Management Plans, and carcass disposal plans, before submitting an

application.⁹ Potential applicants are well advised to consult the ODAFF for assistance in obtaining a license.

Producer Note: License application rules are more stringent for LMFOs than for other CAFOs. LMFOs, for example, must also submit odor abatement plans and pest management plans as part of the application materials. Producers should be careful to review the application requirements found in ODAFF's rules affecting Concentrated Animal Feeding Operations.

Producer Note: Responsibility for ensuring that all affected property owners are notified is upon the applicant. Affected property owners are generally surface landowners within one mile of the designated perimeter of an animal feeding operation with capacity for 2,000 or less animal units, or two miles from operations with capacities of over 2,000 animal units. Notification is required even to out of state landowners if they meet the distance criteria. If tribally owned land or former reservation land is within the applicable one or two mile radius, notice must be given to the appropriate tribal chairperson and to the United States Bureau of Indian Affairs.

Facilities utilizing waste lagoons, must either document the absence of a hydrological connection with the waters of the State, or install liners in the lagoons. If an irrigation system is used to dispose of waste, the system must be equipped with an anti-pollution system to prevent backflow of animal waste into groundwater. Finally, animal feeding operations must be set back from occupied residences. Setback distances vary based on the size and type of facility

3. Oklahoma Registered Poultry Feeding Operations Act and Oklahoma Poultry Waste Applicators Certification Act

Oklahoma defines a poultry feeding operation as a property or facility where poultry are confined or fed 45 days or more in any 12 month period; where crops and vegetation are not sustained in the normal growing season over any portion of the property or facility; and where over ten (10) tons of poultry waste is produced per year.¹⁰ Poultry feeding operations not licensed under the Oklahoma Concentrated Animal Feeding Operation Act must register with the State Board of Agriculture. Other poultry operations may elect to come under the provisions of the Registered Poultry Feeding Operations Act and corresponding rules of the Board by voluntary registration.

⁹ OKLA.STAT.ANN. tit. 2, § 9-205 (West Supp. 1999); OKLA.ADMIN.CODE tit. 35, § 17-3-1 (1999).

¹⁰ OKLA.STAT.ANN. tit. 2, 10-9.1 *et seq.* (West Supp. 1999).

Producer Note: Poultry feeding operations must register annually with the State Board of Agriculture. Multiple poultry operations under common ownership register as single operations if they adjoin each other or use a common waste facility. Any increase in excess of ten percent (10%) of the facilities' original registered capacity requires re-registration.

Registration as a poultry feeding operation requires an Animal Waste Management Plans (AWMP), Best Management Practices (BMP), and owner and operator information. AWMP and BMP requirements are found in the Act and rules on Registered Poultry Feeding Operations.¹¹

All operators are required to attend educational training on poultry waste handling and poultry waste management. Current and new operators must receive 9 hours of training in their first year and no less than 3 hours each year thereafter. The Oklahoma State University, through the Oklahoma Cooperative Extension Service, is required to provide educational training courses to operators of poultry feeding operations and land applicators of poultry waste.

Note for Contract Growers: Owners of poultry feeding operations are required to notify ODAFF upon changing integrators. Integrators are not permitted to contract with operators who are not in compliance with certain portions of the Act. ODAFF is required to notify integrators of violations assessed against their contract growers. And finally, integrators may request and receive information on all violations assessed against operators with whom the integrator contemplates entering into a contract.

Violations of the Act are subject to criminal prosecution; administrative penalties, including attorneys fees and costs; and injunctive relief. In addition, the State Board of Agriculture is authorized to designate poultry feeding operations, found in violation of the Act, as Concentrated Animal Feeding Operations.

The Oklahoma Poultry Waste Applicators Certification Act requires that all persons land applying poultry litter within the state must obtain a license from ODAFF. The Act contains provisions defining both private and commercial applicators of poultry waste, and provides for record keeping by the applicator.¹²

Oklahoma's Poultry Waste Transfer Act¹³ encourages the transfer of poultry waste out of designated nutrient-limited watersheds and nutrient-vulnerable groundwater.

¹¹ Rules are found at OKLA.ADMIN.CODE tit. 35, § 17-5-1 (1999).

¹²Title 2, 10-9.16 et seq.

¹³ § 10-9.13 et seq.

4. Oklahoma Scenic Rivers Act

The Oklahoma Scenic Rivers Act¹⁴ classifies certain watercourses in Oklahoma as “scenic rivers,” subject to various protections from degradation. Those watercourses receiving scenic river designation as of the date of this publication include portions of the following:

- 1) Flint Creek;
- 2) Illinois River;
- 3) Barren Fork Creek;
- 4) Upper Mountain Fork River;
- 5) Big Lee’s Creek; and
- 6) Little Lee’s Creek.

The Scenic Rivers Act aims to preserve the free-flowing nature and water quality on designated rivers and streams. Scenic River Commissions have been established for each designated river to promulgate rules and set watercourse standards. The Act, however, specifically exempts farming, ranching and other agricultural activities from regulation, and is not to be construed to unduly burden farming, ranching or agricultural activities.¹⁵

5. Other Oklahoma State Water Quality Laws

a. Application of sludge to agricultural lands

The application of sludge to agricultural lands requires either a permit or an approved sludge management plan authorized by ODEQ.¹⁶ Sludge includes nonhazardous solid, semi-solid, or liquid residue generated by the treatment of domestic sewage or wastewater by a treatment works, or water by a water supply system, or manure, or residue resulting from industrial, nonindustrial, commercial, or agribusiness activities or industrial or manufacturing processes. Sludge application is subject to the following limits:

- must not exceed nitrogen and phosphorous fertilization rates for the crop grown;
- may not be applied at rates which result in phytotoxicity;
- must be incorporated into the soil before the end of each working day;
- cannot be applied within two feet of the highest seasonal water table;

¹⁴ tit. 82, § 1451 *et seq.* (West 1997).

¹⁵ OKLA.STAT.ANN. tit. 82, § 1464 (West 1997).

¹⁶ OKLA.STAT.ANN. tit. 27A § 2-6-501.5.

- cannot be applied within 100 feet of a stream or body of water;
- cannot be applied within 250 feet of a public or private water supply.

b. Clean Lake Program

Pursuant to the Federal Clean Water Act, the Oklahoma Water Resources Board (OWRB) operates a Clean Lake Program.¹⁷ The Oklahoma Conservation Commission is directed to assist in the administration of the Clean Lake Program by developing conservation plans for clean lakes.

c. Wetlands

The Conservation Commission has the exclusive authority for preparing the Oklahoma Wetlands Management Strategy.¹⁸ This strategy aims to define, identify and inventory Oklahoma's wetlands. Mitigating loss of wetlands and protecting wetlands are also key elements of the strategy.

II. GROUNDWATER

A. Oklahoma Groundwater Laws and Regulations

1. Oklahoma Water Supply Systems Act

Under the Oklahoma Water Supply Systems Act, ODEQ is charged with administering the federal Safe Drinking Water Act (SDWA).¹⁹ A written permit from the DEQ is required before any person may supply water to the public, or perform any construction on a public water supply system. The ODEQ also administers a wellhead protection program to assist municipalities, rural water districts, nonprofit water corporations, and other public groundwater suppliers in the protection and conservation of groundwater supplies. A number of guidelines are set out which affect and govern the use of groundwater, thus ODEQ should generally be consulted when putting groundwater to use as a public drinking water source.

2. Water Wells and Well Drilling

Depending upon a water supply's intended use, permits may be required for well drilling. Water wells may be drilled only by licensed water well drillers. Permits are issued by OWRB.

¹⁷ OKLA.STAT.ANN. tit. 27A § 1-3-101 (West 1997).

¹⁸ § 3-2-108.

¹⁹ OKLA.STAT.ANN. tit. 27A § 2-6-301 *et seq.* (West 1997).

Permits are mandatory for the injection of hazardous or nonhazardous liquids into underground wells.²⁰ Such disposal wells must be constructed to prevent interference with all water wells, water test wells, and water test wells capable of being used for a domestic water supply.

III. AIR QUALITY

A. Oklahoma Air Quality Laws and Regulations

The Oklahoma Clean Air Act²¹ vests the ODEQ with powers and duties to regulate air pollution in Oklahoma. This Act directs the DEQ to establish a regulatory scheme and permitting program for implementing the federal Clean Air Act. Except as necessary to comply with the Federal Clean Air Act, the Oklahoma Clean Air Act does not limit, modify or affect the powers or functions of the State Board of Agriculture.

Producer Note: Licensed Managed Feeding Operations (LMFOs) are required to develop an Odor Abatement Plan. Plans must address methods for reducing odors related to animal maintenance, waste storage, land application and carcass disposal. ODAFF must approve the plan before a license to operate is issued.

A wide range of penalties may be imposed under the Act, including ODEQ orders, civil penalties and criminal penalties. The ODEQ may issue compliance orders including administrative penalties of up to \$10,000 per day for each violation. Additionally, an authorized field citation system includes the imposition of administrative penalties of up to \$1000 per day. The ODEQ can pursue civil penalties to recover up to \$10,000 per day for each violation. Finally, knowing and willful violations of the Act, upon conviction, constitute a felony, subject to a fine of \$250,000 and/or 10 years imprisonment.

IV. SOLID WASTE AND HAZARDOUS WASTE

A. Oklahoma Solid Waste and Hazardous Waste Laws and Regulations

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.

²⁰ OKLA.STAT.ANN. tit. 27A § 2-6-701 (West 1997).

²¹ OKLA.STAT.ANN. tit. 27A § 2-5-101 et seq. (West 1997).

1. *Treatment, Storage and Disposal of Solid and Hazardous Wastes*

Producer Note: Producers engaged in normal farming operations in Oklahoma will probably not be required to comply with the states hazardous waste laws. Nonetheless, producers should always contact the ODEQ if they have questions about whether their operation is covered by such laws.

Oklahoma defines solid waste as all putrescible and non-putrescible refuse in solid or semisolid form including, but not limited to garbage, rubbish, ashes, dead animals, solid or semisolid commercial wastes, biomedical wastes, chemical wastes, herbicide and pesticide wastes. It does not include scrap materials collected for processing as industrial raw materials, or used motor oil.

All persons intending to dispose of solid waste must comply with the Oklahoma Solid Waste Management Act.²²

No person may own or operate a solid waste disposal site, nor may any person dispose of wastes in such a site, unless a permit has been issued for the site. Permit applications require applicants to file disclosure statements. Permits are not granted for new landfill disposal sites having boundaries with one-half (½) mile of an occupied dwelling unless the dwelling owner consents. Permits issued are effective for the life of the site.

Producer Note: Farmers who generate solid waste from normal farming and domestic activities may dispose of it on their land as long as the disposal is not a nuisance or a hazard to the public health or environment, or does not violate a local government ordinance.

It is important to realize that “hazardous wastes” make up a separate class of waste and are regulated under separate legislation in Oklahoma. The Oklahoma Hazardous Waste Management Act supercedes the Oklahoma Solid Waste Management Act as to the handling of hazardous wastes, and places significant restrictions upon anyone who generates, stores, transports, or disposes of those wastes. Hazardous wastes are waste materials and byproducts, either solid, liquid or containerized gas, which have the following essential characteristics:

- they are discarded or recycled by the generator;
- they are toxic to humans, animals, aquatic or plant life; and

²² OKLA.STAT.ANN. tit. 27A, § 2-10-101 *et seq.* (West 1997).

- they are generated in such quantity that they cannot be safely disposed of in a properly operated, state-approved solid waste landfill or waste, sewage or wastewater treatment facility.

A permit is required if a person generates, transports, treats, stores, or disposes of wastes meeting the above criteria. Furthermore, if the waste is to be disposed or transported off-site, a manifest must accompany the waste wherever it goes. Finally, there are significant restrictions on where and how this waste may be disposed, such as prohibitions on deep-well injection and landfill disposal.

Penalties under the Oklahoma Hazardous Waste Management Act include: (1) administrative orders assessing a fine up to \$25,000 per day of noncompliance, (2) civil penalties not to exceed \$25,000 per day of violation, and (3) criminal sanctions allowing for the conviction of a misdemeanor carrying a fine up to \$25,000 and/or imprisonment of 6 months in the county jail. Each day of violation constitutes a separate offense for the purpose of determining criminal penalties.

2. *State Storage Tank Laws*

Significant Oklahoma legislation is aimed at regulating storage tanks.²³ Regulatory oversight of storage tanks lies with the Oklahoma Corporation Commission. Anyone wishing to operate a storage tank system, if the system will contain a regulated substance, or was built after January 1, 1974, must obtain a permit from the Corporation Commission. “Regulated substances” include petroleum and petroleum products, as well as hazardous substances as defined by CERCLA, but excludes substances covered under the Solid Waste Disposal Act or the Oklahoma Hazardous Waste Management Act.

Corporation Commission rules for operating underground storage tank systems include provisions regarding release detection systems on tanks, procedures to be followed in the event of a release, corrective actions, record keeping on actions taken, minimum schedules and standards for construction, installation, maintenance and operation. If a storage tank system spills or leaks oil, the system operator may be eligible to receive assistance from the Oklahoma Petroleum Storage Tank Release Indemnity Program to offset clean-up and corrective actions.

The Act contains a number of exemptions, including some affecting farming operations. Exemptions apply to any farming or ranching operations with (1) a storage tank with a capacity of less than 110 gallons, and (2) a storage tank system with a storage capacity of 1,100 gallons or less if used for noncommercial agricultural or residential purposes.

Whereas the Corporation Commission, as administrator of the Oklahoma Storage Tank Regulation Act, is authorized to establish a fee schedule for permits, it may not require a fee of

²³ OKLA.STAT.ANN. tit. 17 § 301 *et seq.* (West 1997 & Supp. 1999).

more than \$10.00 for underground tanks with a capacity over 1,100 gallons containing petroleum used for agricultural purposes.

Penalties for violations of the Oklahoma Storage Tank Regulation Act include administrative penalties up to \$10,000 per day. If charged with a criminal violation of the Act, the sanctions upon a misdemeanor conviction provide for a fine up to \$5,000 and/or 1 year imprisonment. Each day is considered a separate violation in determining criminal penalties.

3. *Other State Solid Waste Regulation*

The Oklahoma Waste Tire Recycling Act²⁴ makes it illegal for anyone to store or dispose of more than 50 waste tires without a permit. Exceptions include the use of waste tires for agricultural purposes and for erosion control. The Waste Tire Recycling Act allows a person to receive compensation for utilizing waste tires in erosion control or bank stabilization projects. A permit or other authorization must be obtained from the Army Corps of Engineers or a local Conservation District.

4. *State Emergency Planning Acts*

Two acts outline and provide a regulatory framework for environmental emergency response in Oklahoma. The Oklahoma Emergency Response Act,²⁵ is designed to provide a network for effective response to releases of hazardous or dangerous substances or other events which present risks to the health and safety of the public. In the case of an emergency or release of a harmful substance, the local law enforcement, fire departments or Oklahoma Highway Patrol should be contacted as soon as possible. These officials will determine the correct action to take after their arrival on the scene.

The Oklahoma Hazardous Materials Planning and Notification Act²⁶ requires the creation of local emergency planning committees and emergency response plans. These committees and response plans must be in accordance with federal Superfund Amendments and Reauthorization Act.

²⁴ OKLA.STAT.ANN. tit. 27A § 2-11-407.1 (West 1997 & Supp. 1999).

²⁵ § 4-1-101 *et seq.*

²⁶ OKLA.STAT.ANN. tit. 27A § 4-2-101 *et seq.*

V. PESTICIDES AND CHEMIGATION

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

A. Oklahoma Pesticide and Chemigation Laws and Regulations

Producer Note: Oklahoma, 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. For many farmers and ranchers, compliance with Oklahoma's applicator restrictions is a primary concern.

1. Pesticide Registration

Any pesticide intended for transport, distribution, or sale within the state of Oklahoma must be registered with the ODAFF.²⁷ It is important to note that the term "pesticide" is quite broad, and covers pesticides, insecticides, fungicides, rodenticides and herbicides. Pesticides are subject to seizure and confiscation if they have not been registered, are found to be adulterated, misbranded, or have not been properly colored as required by law. It is unlawful for anyone to sell, transport, or distribute any pesticide which:

- has not been registered with ODAFF;
- is not still in the registrant's or manufacturer's immediate, unbroken container bearing its proper label;
- contains substances which are highly toxic to humans unless it is properly labeled.

Furthermore, in Oklahoma, it is unlawful to:

- remove, alter, or destroy any pesticide label;
- sell or distribute a pesticide in a manner that is inconsistent with its label; or
- sell a pesticide which has been canceled or suspended.

²⁷ OKLA.STAT.ANN. tit. 2 § 3-61 *et seq.* (West 1997).

2. *Pesticide Applicator Permits*

Oklahoma maintains a classification scheme of pesticide applicators which restricts the application of pesticides to certain persons. The various applicator classifications include:

Commercial Applicator - anyone engaged in the commercial application of pesticides;

Private Applicator - anyone who uses or supervises the use of any restricted pesticide for producing an agricultural commodity on his own property including rental property, or property owned by his employer, or if applied on another's property if performed without compensation other than trading personal services between the producers of agricultural commodities;

Noncommercial Applicator - anyone other than a commercial or private applicator, who uses or supervises the use of a restricted pesticide under the supervision of a person who owns or manages the property and who has been certified in the same manner as required for a commercial applicator, except for the requirements relating to financial responsibility.

Service Technician - a person employed by a licensed commercial or noncommercial applicator who makes the actual application of pesticides, provided that such person is not the certified applicator.

Restricted use pesticides are those classified as restricted use by the United States Environmental Protection Agency or by the State Board of Agriculture pursuant to the provisions of the Oklahoma Agricultural Code. It is a misdemeanor for any person to do business or advertise as a commercial, noncommercial or private applicator unless such person has a valid applicator's license. These licenses may be restricted to certain categories of pesticide applications by the Board. Commercial and noncommercial applicators must keep detailed records of pesticide activities for two years.

To obtain an applicator's license an applicant must first satisfactorily complete the certification standards set by the Board. The Board will then issue an individual certificate so long as the applicant is employed by a company holding a valid license. The certificate is normally valid for five years. Recertification may be obtained by passing a written examination, or earning a specified number of Board approved Continuing Education Units (CEUs).²⁸ Where an applicant seeks to do business as a commercial applicator, evidence of financial responsibility and financial responsibility must be provided.

Those employed by a licensee may obtain a certified service technician identification, upon completion of certification standards, issued in the name of the licensee.

²⁸OAC 35:30_17-6

3. *Pesticide Damage Liability*

Any person seeking to bring a cause of action for damages to growing annual crops or plants caused by pesticides must file with the Board a written statement of damages within 90 days of the date of the damages or before 25% of the damaged crop has been harvested.

4. *Fertilizer and Soil Additives*

Three Acts focus on regulation of fertilizer and similar soil additives in Oklahoma. The “Fertilizer” Act,²⁹ the Soil Amendment Act of 1975,³⁰ and the Oklahoma Agricultural Liming Materials Act³¹ each have similar provisions relating to labeling, registration with ODAFF, and licensing of persons who apply or distribute such materials. Because fertilizers are subject to some specific regulation on storage it is important that these substances be distinguished from one another.

- Fertilizer - any substance containing one or more recognized plant nutrients and used for its plant nutrient content, and is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal manures, marl, lime, limestone, and wood ashes;
- Soil Amendment - any substance intended to improve the physical, chemical or other characteristics of the soil or improve crop production. The term does not include commercial fertilizers, agricultural liming materials, agricultural gypsum, unmanipulated animal manures, unmanipulated vegetable manures, or pesticides;
- Agricultural Liming Material - products whose calcium and magnesium compounds neutralize soil acidity.

Fertilizer storage facilities are required to be clearly marked to identify the owner of the facility. Facilities must be constructed to prevent injury to humans and contamination of surface water and groundwater. ODAFF establishes rules for the safe handling, storage, and transportation of fertilizers, and should be consulted in order to determine the extent of their application.

Producer Note: The ODEQ has environmental jurisdiction over commercial fertilizer manufacturers.

²⁹ OKLA.STAT.ANN. tit. 2 § 8-61 *et seq.* (West 1997).

³⁰ § 1701 *et seq.*

³¹ § 8-80.1 *et seq.*

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. Oklahoma 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. Oklahoma has laws protecting wildlife.

In Oklahoma, most activities involving the hunting, trapping, chasing or harassing endangered or threatened species are strictly prohibited. Any activity which affects an endangered or threatened species, requires written permission from the Director of the Oklahoma Wildlife Department. In the case of hawks, falcons, owls, and eagles, no activities are allowed which would harm, molest, or injure them, their nests, their young, or their eggs. Federal law is the controlling law in this area, and Oklahoma law specifically defers to federal law here.

A great deal of wildlife regulation in Oklahoma is aimed at game population control. Specifically, game populations are monitored and regulated in accordance to their compatibility with the agricultural use of the surrounding lands. Farmers and ranchers are allowed some degree of leeway to control predators on their property. However, if using poisons, such as cyanide, cyanide gas or other poisonous gases to control predators, a permit must be obtained from an Oklahoma Game Warden.³² These permits are good for six months and are subject to renewal. Furbearing animals may be killed whenever they are actually found destroying livestock or poultry.

VII. Enforcement of State Environmental Laws

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

³² tit. 29 § 5-301 *et seq.*

For information regarding enforcement of specific state environmental laws, refer to the appropriate section of this publication.

VIII. OTHER OKLAHOMA STATUTES AFFECTING AGRICULTURE

Producer Note: Many other state statutes have the potential for impacting agricultural operations and their relationship with the environment. Agricultural operations are frequently controlled by local planning or zoning board activities. Because it is not possible to outline each local area's requirements, a producer must check with local boards to determine local planning and zoning regulations which may affect an operation.

A. Prairie and Forest Fires

Oklahoma permits the prescribed or controlled burning of croplands, rangelands, or forestlands for eliminating unwanted or detrimental plants, shrubs or trees.³³ Fires set for such purposes must be closely monitored, and may not be allowed to spread beyond the control of the person who set the fire. Fires must be put out on the day the fire is set. Anyone whose fire damages the property of another is liable to that person in a civil action and may also be subject to criminal penalties.

B. Aquatic Culture License

Oklahoma requires that anyone engaging in commercial production of catfish, minnows, fingerlings, fish, frogs or other water species obtain a permit from the Director of the Wildlife Department.³⁴

C. Oklahoma Brownfields Voluntary Redevelopment Act

The Oklahoma Brownfields Voluntary Redevelopment Act³⁵ provides a means for those in possession of contaminated lands to redevelop the site, and thereby limit future liability related to the contamination. A "brownfield" is an abandoned, idled, or underused industrial or commercial facility or other real property where the uses for such property are limited because of contamination. A person may apply to the Department of Environmental Quality for an assessment of the property, and guidance on implementing corrective actions. ODEQ will either require that some amount of remedial action be taken or will simply allow development to take place without remedial action. If the landowner complies with the ODEQ's determinations, subsequent administrative and civil liability is limited, and in some cases precluded.

³³ OKLA.STAT.ANN. tit. 2 §§ 16-24.1, 16-25, 16-28, and 16-28.2 (West 2001).

³⁴ Okla. Stat. Ann tit 2 § 6-311.

³⁵ tit. 27A § 2-15-101 *et seq.*

D. Oklahoma Agriculture Biotechnology Act

The Oklahoma Agriculture Biotechnology Act³⁶ aims to prevent genetically engineered biological materials from entering the environment. Regulations under this Act cover any organism, altered, or produced through genetic engineering. Under the Act, it is unlawful for anyone to maintain, transport, move or release a regulated article without a permit from ODAFF, or fail to comply with a destruction or quarantine order.

E. Weed-Infested Material

Oklahoma regulates feeds, grains, seeds, fertilizers and other materials containing noxious weed seeds, stalks or reproductive parts.³⁷ It is unlawful for any person to sell, transport or offer for sale any weed-infested material in the State of Oklahoma. Exceptions are made for grain being transported to an elevator for cleaning.

³⁶ OKLA.STAT.ANN. tit. 2 § 11-35 *et seq.* (West 2002).

³⁷ § 8-91 *et seq.*

Appendix A - State Agencies

Producer Note: State 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.

Department of Agriculture, Food, and Forestry

2800 North Lincoln Blvd.
P.O. Box 528804
Oklahoma City, OK 73152-8804
(405) 521-3864
Fax: (405) 521-4912
<http://www.oda.state.ok.us>

Department of Environmental Quality

707 N. Robinson
Oklahoma City, OK 73101-1677
(405) 271-8056
Fax: (405) 702-7101
<http://www.deq.state.ok.us/>

Oklahoma Water Resources Board

3800 North Classen Blvd.
Oklahoma City, OK 73118
(405) 530-8800
Fax: (405) 530-8900
<http://www.owrb.state.ok.us>

Oklahoma Conservation Commission

2800 North Lincoln Blvd., Ste 160
Oklahoma City, OK 73105-4201
(405) 521-2384
Fax: (405) 521-6686
<http://www.okcc.state.ok.us/>

Department of Wildlife Conservation

1801 North Lincoln Blvd.
P.O. Box 53465
Oklahoma City, OK 73152
(405) 521-3852
Fax: (405) 521-6535
<http://www.wildlifedepartment.com>

Department of Civil Emergency Management

Will Rogers Building
2401 North Lincoln Blvd.
P.O. Box 53365
Oklahoma City, OK 73152-3365
(405) 521-2481

Fax: (405) 521-4053
<http://www.odcem.state.ok.us>

Oklahoma Corporation Commission

Jim Thorpe Office Bldg.
2101 North Lincoln Blvd.
P.O. Box 52000-2000
Oklahoma City, OK 73152-2000
(405) 521-2211
Fax: (405) 521-6045
<http://www.occ.state.ok.us/>

Department of Mines

4040 North Lincoln Blvd., Suite 107
Oklahoma City, OK 73105
(405) 521-3859
Fax: (405) 427-9646
<http://www.mines.state.ok.us>

Department of Public Safety

3600 Martin Luther King Ave.
P.O. Box 11415
Oklahoma City, OK 73136-0415
(405) 425-2424
Fax: (405) 425-2324
<http://www.dps.state.ok.us/>

Department of Labor

4001 North Lincoln Blvd.
Oklahoma City, OK 73105
(405) 528-1500
Fax: (405) 528-5751
<http://www.okdol.state.ok.us>