

**STATE
ENVIRONMENTAL LAWS AFFECTING
PENNSYLVANIA 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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through the

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



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The Project Participants

National Association of State Departments of Agriculture Research Foundation

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

National Center for Agricultural Law Research and Information

The National Center for Agricultural Law Research and Information (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. Agricultural producers should always confer with their own attorneys, consultants, or advisors as well as federal, state, and local authorities responsible for the applicable environmental laws.

This guide has been prepared in part with funding from the Natural Resources Conservation Service (NRCS) cooperative agreement number NRCS 68-75-5-174 and the United States Environmental Protection Agency (EPA) grant number CX-825088-01-0 and otherwise supported by the U.S. Department of Agriculture, under Agreement No. 59-8201-9-115. Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the U.S. Department of Agriculture, 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 April, 2002. Updates of the information contained in the guide will occur on an as needed basis and be available on the internet.

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

Quick Reference Guide

Producer Note: The following chart is intended as a quick reference guide to permits which may be necessary for a particular operation. If a permit is necessary, refer to the page numbers listed referencing this document for further information and contact the agencies listed in the final column 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. 1-7</i>	Livestock and aquaculture operations, depending on size	National Pollutant Discharge Elimination System (NPDES) and state general permit or land disposal permit	Environmental Protection Agency (EPA) Regional Office and Pennsylvania Department of Environmental Protection (DEP)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 Clean Water Act (CWA) permit	U.S. Army Corps of Engineers with EPA and Pennsylvania approval
	Water well construction and use	No permit, ¹ but construction standards must be followed	Pennsylvania DEP
Groundwater <i>pp. 8-9</i>	Groundwater protection	No permit, ¹ but Best Management Practices (BMPs) must be followed	Pennsylvania DEP
Air Quality <i>pp. 9-10</i>	General agricultural operations including odor, dust, or flies	No permit required, ¹ but may be subject to nuisance suits	EPA Regional Office or Pennsylvania DEP
	Burning	No permit required ¹	Pennsylvania DEP
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 Regional Office and Pennsylvania DEP
	Public notice of hazardous waste	No permit required ¹	Local Emergency Planning Committee

Regulatory Area	Type of Activity	Permit Required	Agency
Pesticides and Chemigation <i>pp. 13-16</i>	Application and use of pesticides	No permit required, ¹ but a license may be required	EPA and PDA
	Use of pesticides around farm workers	No permit required, ¹ but training and notification is required	Pennsylvania DEP and PDA
	Record keeping	No permit required, ¹ but all requirements must be met	PDA
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
Waste Lagoons <i>pp. 5-6</i>	Storage of animal waste	No permit, ¹ but Natural Resources Conservation Services (NRCS) requirements must be met	PDA and DEP

¹ However, agricultural producers should check with the local governmental unit, i.e, the township and county, to determine whether a permit requirement has been imposed by that governmental unit.

STATE ENVIRONMENTAL LAWS AFFECTING PENNSYLVANIA AGRICULTURE

Producer Note: The information on environmental regulation provided in this guidebook is presented for the purpose of educating agricultural producers on the breadth and scope of environmental laws which may impact their daily production activities. Environmental regulation is a complex area with both federal and state government involvement. Similarly, rapid changes in industrialization, computer-based technology, and market dynamics also affect agricultural producers in a number of ways and present many challenges. Staying informed is the producer's most useful tool for meeting these challenges.

I. WATER QUALITY

Producer Note: In order for agricultural producers to maintain compliance with water quality legislation, they must be aware of not only federal water quality standards, NPDES permit requirements, wetland permits, and oil spill liability issues but also state water quality standards, state permit requirements, state and local nonpoint source pollution programs, state environmental liability issues, and whether there are any waters requiring special protection in their area. The states take active roles in ensuring that producers comply with these requirements.

A. Pennsylvania Water Quality Laws and Regulations

Most states have enacted clean water legislation. While these state statutes usually contain provisions similar to those found in the parallel federal legislation, there may be significant differences. In fact, state statutes may impose requirements that are even more restrictive than federal law. In all cases regarding water quality issues, the federal Clean Water Act (CWA) requirements must be followed and enforced along with any state enacted statutes and regulations implemented by the state administrative agencies. With the authority provided by CWA, the Environmental Protection Agency (EPA) may delegate the National Pollutant Discharge Elimination System (NPDES) permit program to a state to implement. This includes Pennsylvania, and Pennsylvania administers the federal NPDES permit program at a state level.

In Pennsylvania, the NPDES permit program is implemented by the Pennsylvania Department of Environmental Protection (DEP). In turn, the DEP delegates some of the day-to-day management of the NPDES permit program to the local County Conservation District. The DEP and the County Conservation District jointly regulate activities that affect or potentially affect Pennsylvania water quality utilizing NPDES permits and state laws and regulations to implement the federal water quality requirements of the CWA.

Producer Note: Generally, agency regulations are likely to be amended more frequently than state statutes. Since the specifics of state environmental laws are often found in state agency regulations, an agriculture producer must stay in touch with the agencies that administer specific programs encompassing the producer's activities in order to keep up with changes which may occur.

Pennsylvania depends upon the rivers, streams, lakes, and subsurface waters for agricultural, industrial, and recreational uses as well as for public and private water supplies. As a method of restoring and maintaining water quality in streams, Pennsylvania enacted the Clean Streams Law (CSL)¹ which contains a discharge permit system similar to the NPDES permit program set forth in the federal CWA. The CSL is administered by the DEP.

Violators of the CSL may be assessed a fine up to \$10,000.00 for each day of violation and for each separate offense. If the violation is determined to be wilful, the fine can escalate to \$25,000.00 for each separate offense and include imprisonment up to one year.

1. Pennsylvania NPDES Permit Programs

Under the CSL, it is unlawful to discharge any pollutant into state waters unless one is specifically authorized to do so,² and no person may lawfully discharge any pollutant from a point source into state waters without first obtaining a NPDES permit.³ Pollution is defined as any contamination of state waters which makes the water harmful or injurious to any beneficial use of water or to public health, safety, or welfare.

Nonpoint source agricultural activities are excluded from the NPDES permit requirement as are irrigation return flows, but the NPDES permit exclusion does not eliminate other requirements that may be imposed on agricultural operations such as other state or local permits.⁴

Other agricultural activities that are excluded from the NPDES permit requirement include an exemption for:⁵

¹ 35 PA. CONS. STAT. ANN. § 691.1 *et seq.* (West 1993 & Supp.2001).

² 35 PA. CONS. STAT. ANN. § 691.401 (West 1993 & Supp.2001).

³ 3 PA. CONS. STAT. ANN. § 1701 *et seq.* (West 1995 & Supp.2001).

⁴ Irrigation return flow is defined as surface water containing pollutants that is discharged from a discernible, confined, and discrete conveyance which results from the controlled application of water by a person to land used primarily for crops, forage growth, or nursery operations; *see* 25 PA. CODE § 92.4 (2001).

⁵ Unless there is a significant effect upon safety or the protection of life, health, property, or the environment in which case, the DEP may require a permit.

- Dams in a stream not over three (3) feet in height and fifty (50) feet in width or dams subject to Mine and Safety and Health Administration requirements;⁶
- Water obstruction in a stream or flood way with a drainage area of one hundred (100) acres or less; a water obstruction located in a wetland or impoundment for the purpose of treating acid mine drainage and is constructed under a valid DEP permit; or a water obstruction or encroachment located in a storm water management facility;⁷
- Aerial crossing of nonnavigable stream or wetland by electric, telephone, or communication lines;⁸
- Plowing, cultivating, seeding, or harvesting for crop production; or maintenance of field drainage systems that are constructed and continue to be used for crop production that includes plowing, cultivating, seeding, harvesting, crop rotation, and government set aside programs;
- Construction and maintenance of ford crossings for individual and personal use that may involve grading of banks but no more than twelve (12) inches of gravel for stability;
- Navigational markers covered by a permit issued by the Fish Commission;
- Removal of abandoned dams, water obstruction, and encroachments with written DEP approval; or removal of an abandoned railroad bridge or culvert with prior ICC approval;
- Maintenance of an artificial pond or reservoir;⁹
- Construction or maintenance of an encroachment or water obstruction on an abandoned mining site;
- Restoration activities with DEP written approval; and
- If constructed prior to 1979:

⁶ Except wild trout streams.

⁷ Other than wetlands located in the flood way.

⁸ But not in a federal wilderness area.

⁹ But greatest depth is fifteen (15) feet, contributory drainage area is 100 acres or less, and impounding capacity is fifty (50) acre feet or less.

- Dams not exceeding five (5) feet in height for water supply purposes;¹⁰ dams that do not have a significant effect on coastal resources or an adverse impact on the environment and are classified by DEP as size C and Hazard Potential class three (3);
 - Fills that are not on navigable lakes and rivers;
 - Streambank retaining devices;
 - Stream crossings other than on submerged lands and pipeline crossings for petroleum and gas;
 - Culverts, bridges, or stream enclosures on a watercourse where the drainage area above them is five (5) square miles or less; and
- Construction, operation, or removal of DEP gauges, recording devices.¹¹

Certain agricultural activities which encroach on streams and bodies of water are authorized by the DEP under a concept called a general discharge permit.¹² These agricultural activities must be part of a conservation plan approved by the local County Conservation District and may include grassing or lining waterways, terraces, diversions, waste storage facilities, spring (water) development, and minor drainage that supports these activities.¹³ The DEP also authorizes the installation and use of agricultural crossings and ramps in waters regulated by the state to stabilize the stream bed or bank with stone or timber to protect it from livestock and agricultural equipment use. The crossing or ramp must comply with several permit conditions including the condition that it must be completed within thirty (30) days from the start of construction and the condition that disturbed areas must be stabilized within five (5) days. This general permit extends the area to include any wetlands that are immediately adjacent to or within a watercourse and that are an integral part of the construction of the agricultural ramp or crossing.¹⁴

¹⁰ In a nonnavigable stream.

¹¹ 25 PA. CODE § 105.12 (2001).

¹² For the most part, a general permit applies to common but specific activities where little damage to water quality occurs or where no alternative activity exists; *see* 32 PA. CONS. STAT. ANN. § 693.7(b) (West 1997).

¹³ 25 PA. CODE §§ 105.441-449 (2001); *see also* 32 PA. CONS. STAT. ANN §§ 693.7(b)-(d).

¹⁴ 1 PA. CODE § 3.1(a)(9) (2001).

2. *Pennsylvania Concentrated Animal Operations*

Producer Note: Pennsylvania has special laws relating to the discharge of animal manure. These laws reflect Pennsylvania's commitment to regulating the discharge of animal waste. Since agency regulations frequently change, before beginning any activities involving animal waste, agricultural producers should first contact the DEP, the Cooperative Extension Service office, or the Soil Conservation District to get more information about existing state laws and regulations on livestock wastes.

The State Conservation Commission (SCC, a commission within DEP) administers the Nutrient Management Act (NMA)¹⁵ which establishes criteria, planning requirements, and schedules for certain agricultural operations which generate animal manure. Minimum standards for the design, construction, location, and operation of new manure storage facilities are established by the SCC. The SCC also establishes maintenance procedures and guidelines for any subsequent removal of manure storage facilities from service. The NMA authorizes the SCC to establish procedures for handling manure in emergency situations such as an outbreak of a contagious disease.

The NMA also requires that written, site-specific nutrient management plans be developed by some agricultural operations. The nutrient management plan must be prepared by a nutrient management specialist that has been certified by the Pennsylvania Department of Agriculture (PDA) and approved by the County Conservation District or the SCC, and the plan must be implemented within three years of the plan approval date unless the time is extended for a demonstrated cause or an approved plan amendment.¹⁶ Management plans are required for operators of any concentrated animal operation (CAO) where the animal density exceeds two animal equivalent units (AEUs) per acre¹⁷ on an annualized basis regardless of the actual number of individual animals in the unit. An AEU is 1000 pounds of live weight of livestock or poultry on a 6-month cycle. Thus, the density threshold of two AEUs is 2000 pounds of live weight per acre per year. The NMA provides financial assistance for CAO plan development and implementation. Failure to comply with the NMA can result in a civil penalty of up to \$500.00 for the first day and \$100.00 for each additional day of continuing violation.

CAFOs (Concentrated Animal Feeding Operations) fall under the authority of the federal CWA and NPDES permit requirements. (A CAFO may or may not be a CAO and vice versa..) CAFOs exist as one of three types, those with more than 1,000 AEUs, those with 301 to 1,000 AEUs, and all others that discharge to surface waters.

¹⁵ 3 PA. CONS. STAT. ANN. § 1701 *et seq.* (West 1995 & Supp.2001).

¹⁶ The nutrient management plan is approved through the local conservation district.

¹⁷ Pennsylvania's method of computation of animal equivalent units (AEUs) varies slightly from the federal method.

Land application of animal manure for non-CAO's does not require a nutrient management plan or permit if the application follows DEP-recommended practices set forth in the Pennsylvania Manure Management Manual. A CAO operator must keep accurate records of the land application of nutrients including crop yields and soil tests as well as records of all manure transfers from the operation.

Generally, animal manure storage facilities do not require a permit if they are designed and operated in accordance with the standards set forth by the SCC and with manure management practices approved by the DEP.¹⁸ However, if manure is stored in an impoundment having either a storage capacity of 50 acre feet or a maximum storage elevation of 15 feet or more, a DEP permit is required.¹⁹ Facilities are required to meet engineering design standards.

3. *Pennsylvania Anaerobic Manure Digesters*

Pennsylvania enacted the Anaerobic Manure Digesters Act (AMDA) in 1994 which provides for the construction and financing of anaerobic manure digesters as demonstration projects. Although funding was withdrawn in 1995, amendments proposed in 1999 rename the AMDA as the Agricultural Waste Technology Act (AWTA) and provide for agricultural waste technology programs and other projects to the extent that monies are available.²⁰

A digester is a facility that captures methane gas as it is (naturally) released from manure when it decomposes anaerobically. The methane gas can often be used to run a generator which, in turn, supplies electrical power to the farm, and any surplus power may be sold to an electric utility.

4. *Pennsylvania Wetlands*

A permit from the DEP is required for any dam, water obstruction, or encroachment in, along, across, or projecting into a wetland. Prior converted croplands are not regulated as wetlands under Pennsylvania's Wetland Protection Program. Prior converted cropland is defined as:

- Wetlands that were drained, dredged, filled, leveled, or otherwise manipulated, including the removal of woody vegetation, before December 23, 1985;
- Land where an agricultural commodity was planted or produced at least once prior to December 23, 1985; and

¹⁸ 25 PA. CODE § 91.36 (2001).

¹⁹ The DEP has authority to issue general permits; *see* 32 PA. CONS. STAT. ANN. § 693.7(b) and 25 PA. CODE §§ 105.3, 105.441-.449.

²⁰ 3 PA. CONS. STAT. ANN. §§ 2001 *et seq.* (West 1995 & Supp.2001).

- Land that has not been abandoned for the purpose of making or the effect of making possible the production of an agricultural commodity.

5. *Pennsylvania Nonpoint Source Pollution*

a. *Conservation Districts*

Pennsylvania has enacted the Conservation District Law (CDL) which is administered by the DEP.²¹ The purpose of the CDL is to assist in control of floods, prevent impairment of dams and reservoirs, assist in maintaining navigability of rivers and harbors, preserve wildlife, preserve tax base, protect public lands, and protect and promote the health, safety, and welfare of the citizens of Pennsylvania.²² The CDL organizes various counties into conservation districts to regulate land use practices. Targeted land use practices include practices that control and prevent soil wastage and soil erosion and practices that conserve soil, water, and related natural resources. The directors of each Conservation District have broad powers to regulate soil and water conservation activities. The Conservation Districts are responsible for approving nutrient management plans and may provide fertilizer, seed, seedlings, and other materials or equipment to assist in effective utilization and conservation of soil resources. (Management plans are also discussed in section 2 above.)

b. *Chesapeake Bay Nonpoint Source Pollution Abatement Program*

The EPA and the DEP implement a comprehensive program called the Chesapeake Bay Nonpoint Source Pollution Abatement Program to abate excess levels of pollutants including sediment, nitrogen, and phosphorous in the Chesapeake Bay. The SCC determines which management techniques are beneficial to the goal of the program and coordinates program goals with other similar programs. The goal of the Chesapeake Bay program is to establish better land management techniques for agricultural producers and, thereby, prevent improper agricultural activities from causing excess soil erosion and runoff into state waters.²³

Under this program, agricultural producers may receive financial assistance to implement Best Management Practices (BMPs) to control erosion, establish vegetation, and manage animal waste, fertilizers, and other nonpoint sources of pollution. The program authorizes funding for planning, educational assistance, and technical assistance for districts, agencies, and cooperating organizations.

²¹ 3 PA. CONS. STAT. ANN. §§ 849 *et seq.* (West 1995).

²² 3 PA. CONS. STAT. ANN. § 850 (West 1995).

²³ 3 PA. CONS. STAT. ANN. §§ 852(1), (5)(c), and (6) (West 1995); 25 PA. CODE §§ 83.101 *et seq.*

II. GROUNDWATER

A. Pennsylvania Groundwater Laws and Regulations

1. *Pennsylvania Safe Drinking Water Act*

The DEP is also in charge of administering Pennsylvania's Safe Drinking Water Act (SDWA).²⁴ It is unlawful for any person to construct, operate, or substantially modify a community water system without first obtaining a permit from the DEP. A community water system is a public water system with at least 15 service connections which serves year-round residents or regularly serves at least 25 year-round residents. Agricultural producers should note that the community water system permit may apply to producers that provide a central water system to agricultural workers and their families.

Noncommunity water systems require a DEP permit also. It is also unlawful for any person to construct, modify, or operate a noncommunity water supply with first getting a permit from the DEP. A noncommunity water supply may only be operated if it is in compliance with all other requirements of the SDWA and it is;

- A system that the DEP determines does not need a permit; or
- Under a valid permit issued under other law such as the Seasonal Farm Labor Act.

Violators of the SDWA are charged with a misdemeanor and may also be subject to a civil penalty up to \$5,000.00 per day for each violation.

2. *Pennsylvania Water Wells*

Producer Note: Generally, agricultural producers in Pennsylvania who drill wells on property owned or leased for farming activities do not need a well driller's license; however, townships, municipalities, and counties may have regulations concerning the construction of wells.

The Pennsylvania Bureau of Topographic and Geologic Survey within the Department of Conservation and Natural Resources (DCNR) regulates the licensing of well drillers under the Well Water Driller's License Act.²⁵ Pennsylvania's policy regarding groundwater is that it is a renewable natural resource with potential for further development that should be conducted without waste and in an orderly manner. No water well may be drilled in Pennsylvania unless a

²⁴ 35 PA. CONS. STAT. ANN. §§ 721.1 *et seq.* (West 1993 & Supp.2001).

²⁵ 32 PA. CONS. STAT. ANN. §§ 645.1 *et seq.* (West 1997).

license from the DCNR is obtained prior to any drilling.²⁶ A water well driller means any water well contractor who has contracted for the drilling, digging, constructing, or repairing of any water well. The licensing requirement, however, does not apply to water wells being drilled on:

- Owned or leased land used for farming purposes; or
- Owned or leased land used for residential purposes.²⁷

Water well drillers are required to keep records of all wells drilled, and drillers must comply with all construction and drilling regulations developed by the DCNR.²⁸ An application form for a well driller's license is available and may be downloaded from the DCNR website, <http://www.dcnr.state.pa.us/>.

III. AIR QUALITY

A. Pennsylvania Air Quality Laws and Regulations

Pennsylvania has enacted the Air Pollution Control Act (APCA) to regulate air pollution in the state.²⁹ The APCA is administered by the DEP. Air pollution is broadly defined as any form of contaminant in the air:

- Which is or may become injurious to human, plant, animal life, or property;
- Which may be inimical to public health, safety, or welfare; or
- Which unreasonably interferes with the enjoyment of life or property.³⁰

A stationary air pollution source is any source of air pollution which is nonmoving. No person may lawfully construct or modify a stationary air pollution source without first receiving approval from the DEP. However, the requirements of the APCA do not apply to any source of air pollution arising from the production of agricultural commodities.³¹ The phrase production of agricultural commodities includes but is not limited to the commercial propagation, production,

²⁶ 32 PA. CONS. STAT. ANN. § 645.4(a) (West 1997).

²⁷ 32 PA. CONS. STAT. ANN. § 645.4(b) (West 1997).

²⁸ 32 PA. CONS. STAT. ANN. § 645.10 (West 1997).

²⁹ 35 PA. CONS. STAT. ANN. §§ 4001 *et seq.* (West 1993 & Supp.2001).

³⁰ 35 PA. CONS. STAT. ANN. § 4003 (West 1993 & Supp.2001).

³¹ 35 PA. CONS. STAT. ANN. § 4004.1 (West 1993 & Supp.2001).

harvesting, or drying on the premises or disposal of residue materials from the following activities:

- Field crops including corn, wheat, oats, rye, barley, hay, potatoes, and dry beans;
- Fruits including apples, peaches, grapes, cherries, and berries;
- Vegetables including tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, sweet corn, and green peas;
- Horticultural specialties including nursery stock, ornamental shrubs, ornamental trees, and flowers;
- Livestock and livestock products including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs, and furs;
- Timber, wood, and other wood products derived from trees;
- Aquatic plants, animals, and their by-products; and
- Commercial production, processing, or storage of compost which would be predominately used in the commercial production of agricultural commodities excluding compost originating at a municipal sewage treatment plant.

Under state law, fires in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of a farm operation are excluded from the air pollution prohibition as are odors produced as a result of the production or harvesting of agricultural commodities on farm premises.

Penalties for violating the APCA may range from \$100.00 up to \$1,000,000.00 per day per violation and include imprisonment up to 20 years for knowingly releasing hazardous air pollution which causes death of a person or places another person in imminent danger of death or serious bodily injury.³²

IV. SOLID WASTE AND HAZARDOUS WASTE

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

³² 35 PA. CONS. STAT. ANN. § 4009 (West 1993 & Supp.2001).

A. Pennsylvania Solid Waste and Hazardous Waste Laws and Regulations

1. Pennsylvania Treatment, Storage, and Disposal of Solid Waste and Hazardous Waste

Pennsylvania has enacted a Solid Waste Management Act (SWMA)³³ which is administered by the DEP. Solid wastes are any wastes in solid, liquid, or semisolid form. Hazardous wastes are wastes which can cause or significantly contribute to an increase in mortality or pose a substantial hazard to human health or the environment if improperly stored or disposed. No one may use land as a solid waste processing, storage, treatment, or disposal area without first obtaining a permit from the DEP.

A permit is not required, however, for the use of food processing wastes in the course of normal farming operations provided:

- The wastes are not classified as hazardous by the DEP;
- The activity involves the residue materials generated from producing, harvesting, and marketing of all agronomic horticultural, aquacultural and silvicultural crops or commodities grown on a farm, in a forest, or on other agricultural lands including the production and marketing of fish or fish hatcheries.³⁴

Important definitions for the agricultural waste exemption are as follows:

- Agricultural waste is defined as poultry and livestock manure or residual materials in liquid or solid form generated in the production and marketing of poultry, livestock, and fur bearing animals provided the agricultural waste is not hazardous; it also includes residual materials generated in producing, harvesting, and marketing of horticultural, aquacultural, and silvacultural products or commodities grown on farms, forests, or other agricultural lands; and
- The phrase normal farming operations means customary and generally accepted practices that are regularly used in producing and preparing agricultural products; it includes the storage and utilization of agricultural wastes as well as the disposal of manure and other agricultural waste on land when such disposal will help restore the land.

³³ 35 PA. CONS. STAT. ANN. §§ 6018.101 *et seq.* (West 1993 & Supp.2001).

³⁴ 35 PA. CONS. STAT. ANN. § 6018.103 (West 1993).

2. *Pennsylvania Storage Tank Laws*

Pennsylvania regulates storage tanks through the Storage Tank and Spill Prevention Act (STSPA).³⁵ The DEP administers the STSPA. All aboveground and underground storage tanks must be registered with the DEP, and no person may lawfully construct, modify, or remove a storage tank without a permit from the DEP. Aboveground storage tanks (AST) are defined as tanks with a capacity of 250 gallons or more³⁶ where the volume is at least 90% aboveground that contain regulated substances and that can be visually inspected from the exterior. A regulated substance is any substance which may present a hazard to human health including petroleum, oil, gasoline, and kerosene. However, AST does not include the following:³⁷

- A tank of 1,100 gallons or less used for storing motor fuel or motor oil for noncommercial purposes;
- A tank of 1,100 gallons or less located on a farm and used solely to store or contain substances that assist in growing crops or raising livestock or livestock products on such farm;
- Tanks that store brines, crude oil, drilling fluids, or similar materials;
- Storm water or wastewater collection systems;
- Tanks that are regulated by other legislation;
- Flow-through process tanks;
- Non-stationary tanks with liquid traps
- Propane storage tanks;
- A tank used for storing heating oil for consumptive use on the premises where the AST is located; or
- A surface impoundment, pit, pond, or lagoon.

An underground storage tank (UST) is a tank that has 10% or more of the tank's volume underground and contains regulated substances. However, an UST does not include:

³⁵ 35 PA. CONS. STAT. ANN. § 6021.101 *et seq.* (West 1993 & Supp.2001).

³⁶ Including the underground pipes and dispensing systems connected thereto within the emergency containment area; *see* 35 PA. CONS. STAT. ANN. § 6021.103 (West 1993 & Supp.2001).

³⁷ 35 PA. CONS. STAT. ANN. § 6021.103 (West 1993 & Supp.2001).

- Farm or residential tanks of 1,100 gallons or less used for storing motor fuel for noncommercial purposes;
- Tanks used for storing heating oil for consumptive purposes on the premises where the tank is located;
- Pipeline facilities;
- Storm water or wastewater collection systems;
- Liquid traps related to oil or gas production;
- Tanks that are regulated by other legislation;
- Septic or subsurface sewage treatment tanks:
- Surface impoundment, pits, ponds, or lagoons;
- Storage tanks located in an underground area such as a cellar or basement if the tank is situated above the surface of the floor; or
- Any UST system with a capacity less than 110 gallons.

V. PESTICIDES AND CHEMIGATION

Producer Note: Use of pesticides and other farm chemicals is regulated by federal and state statutes, and most states have some form of licensing or certification requirements controlling those who use pesticides. In addition, most states have laws that address safety concerns about pesticide use by agricultural employees or around agricultural employees.

A. Pennsylvania Pesticide and Chemigation Laws and Regulations

1. *Pennsylvania Registration*

In addition to the federal laws governing pesticides and their use, Pennsylvania has state laws regulating these substances. The Pennsylvania Pesticide Control Act (PCA) is administered by the PDA. The PDA regulates pesticide registration, application, and disposal as well as the licensing of pesticide applicators.³⁸ Every pesticide sold in the state must be registered with the PDA. The registration must include specific information such as the name of the person or dealer registering the pesticide as well as a complete copy of the pesticide label.

³⁸ 3 PA. CONS. STAT. ANN. § 111.21 *et seq.* (West 1995 & Supp.2001).

It is illegal to distribute, sell, transport, or deliver any unregistered pesticide or any pesticide which has been misbranded or adulterated. It is also illegal to detach or destroy any pesticide label other than on empty containers or handle any pesticide in such a manner as to endanger the environment.

2. *Pennsylvania Applicator Permits*

a. *Certified Applicators*

Pennsylvania categorizes pesticide applicators as certified applicators, private applicators, and commercial applicators. A certified applicator is an applicator who has been specially certified by the PDA to apply or supervise the application of pesticides.³⁹

b. *Private Applicators*

A private applicator is a certified applicator who uses or supervises the use of any restricted-use pesticide to produce a commodity on agricultural property he owns or leases, or if the applicator receives no monetary remuneration, the certified applicator may apply pesticides on the property of another person.⁴⁰ Private pesticide applicators may not use restricted-use pesticides without first complying with certification requirements to learn methods to prevent unreasonable adverse environmental effects.⁴¹ An agricultural producer qualifying as a certified private applicator is exempt from some of the specific provisions of the PCA relating to licenses and requirements.⁴²

c. *Commercial Applicators*

A commercial applicator is a certified applicator who applies any pesticide on the property of another person or who applies any restricted-use pesticide on property owned or rented by him or his employer, but not for purposes of producing an agricultural product.⁴³ A commercial/public applicator may not apply a restricted-use pesticide for an agricultural purpose without giving prior notice in two newspapers of general circulation in the area of application. As an alternative to publication, an applicator may give prior notice orally or by certified mail to every person residing in a dwelling on land contiguous to the restricted-use pesticide application

³⁹ 3 PA. CONS. STAT. ANN. § 111.24(6)(A) (West 1995).

⁴⁰ 3 PA. CONS. STAT. ANN. § 111.24(6)(B) (West 1995).

⁴¹ A restricted-use pesticide is any pesticide which has been classified as a restricted-use pesticide under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); see 3 PA. CONS. STAT. ANN. § 111.24 (West 1995); see also 7 U.S.C. § 136 (2000) and 40 C.F.R. § 152.175 (2000).

⁴² 3 PA. CONS. STAT. ANN. § 111.43 (West 1995).

⁴³ 3 PA. CONS. STAT. ANN. § 111.24(6)(C) (West 1995).

site or by posting placards around the application site at least eighteen (18) hours prior to the time of application. Prior notification is not required where the restricted-use pesticide or soil fumigant is applied directly below the soil surface except where a well or spring is located within twenty-five (25) feet of the application site.⁴⁴

d. Prohibited Pesticide Activities

The following activities are prohibited under the PCA:

- Engaging in the commercial application of pesticides on land of another without a current, valid license pursuant to the PCA;
- Applying a restricted-use pesticide within one hundred (100) feet of publicly owned areas or in designated prohibitory areas unless this proscription is waived by the Pennsylvania Secretary of Agriculture;
- Applying pesticides when weather conditions are such that it is foreseeable that the pesticide could drift or move from the proposed application site;
- Directly applying pesticides to the property of another without permission;
- Applying, using, storing, or disposing any pesticide in a manner which is inconsistent with its label or endangers the environment; and
- Using pesticides in a manner which results in unwanted residues on the property of another.⁴⁵

A violation of any part of the PCA is a criminal offense punishable by a fine up to \$300.00 and imprisonment up to ninety (90) days for first time offenses. Repeated offenses committed within three (3) years of conviction are punishable by fines up to \$5,000.00 and imprisonment up to two (2) years for non-private applicators. Private applicators who repeat their offense within three (3) years may be subject to a fine up to \$2,500.00 and imprisonment up to one year. In addition, injunctive relief and civil penalties up to \$10,000.00 per offense may be imposed.

⁴⁴ 7 PA. CODE § 128.85(d) (2001).

⁴⁵ 3 PA. CONS. STAT. ANN. § 111.28 (West 1995).

3. *Pennsylvania Fertilizers*

Pennsylvania has enacted the Pennsylvania Fertilizer, Soil Conditioner, and Plant Growth Substance Law.⁴⁶ This legislation regulates the sale and distribution of fertilizers and associated materials such as soil conditioners and plant growth substances. It provides for:

- Registration and labeling of these substances;
- Requires licensing of manufacturers; and
- Prescribes penalties for violators.

Under the fertilizer law, unmanufactured horse manure which is furnished, sold, or delivered in the state may not be adulterated by the intentional addition of water, other types of manure, or any other foreign substance whatsoever excluding straw bedding from the stable. The importation of any such adulterated manure is also prohibited. Violators of these provisions may be charged with a misdemeanor, fined up to \$1,000.00, and imprisoned up to six (6) months.

VI. PROTECTION OF WILDLIFE

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

A. *Pennsylvania Wildlife Protection Laws and Regulations*

Producer Note: Many states have laws and regulations that either enhance the protections under federal laws or address issues peculiar to wildlife found within the state. States also may address frequent problems caused by wildlife. Pennsylvania has laws protecting wildlife.

The hunting or taking of endangered or threatened species is regulated by the Pennsylvania Game and Wildlife Code (PGWC) which is administered by the Pennsylvania Game Commission (PGC).⁴⁷ Endangered species are species which have been declared endangered under federal law or which are threatened with extinction as determined by the PGC.

It is illegal to hunt, trap, transport, or sell any endangered species or wild animals unless specifically authorized by the PGC. Wild animals are non-domestic animals. Nothing in the

⁴⁶ 3 PA. CONS. STAT. ANN. §§ 68.1 *et seq.* (West 1995).

⁴⁷ 34 PA. CONS. STAT. ANN. §§ 101 *et seq.* (West 1997) and §§ 301 *et seq.* (West 1997 & Supp.2001).

code, however, prohibits any person from killing any other game or wildlife in specific situations as follows:⁴⁸

- Where the person actually witnesses destroying cultivated crops, fruit trees, vegetables, livestock, poultry, or beehives;
- Anywhere on the property under the person's control immediately following destruction of cultivated crops, fruit trees, vegetables, livestock, poultry, or beehives; or
- Where the presence of the game or wildlife on any cultivated lands or fruit orchards is cause for reasonable apprehension of additional imminent destruction.

Any person who kills an animal under the circumstances listed above must report the killing to the PGC within twenty-four (24) hours.⁴⁹ Any animal may be killed if it is clearly evident that a human is so endangered by the animal that it must be destroyed. These exceptions, however, do not apply to any endangered species. And, before any designated game or wildlife or bird or animal that is classified as threatened or endangered may be killed, every reasonable effort must be made to live trap and transfer such animal in cooperation with a representative of the PGC.⁵⁰

Any person who is at least 12 years old and regularly engages in raising general farm crops or operating a commercial orchard or nursery may kill furbearers on land they own or lease without obtaining a hunting or furtakers license from the PGC. Furbearers include badgers, fishers, mink, muskrats, opossum, otters, pine martens, striped or spotted skunks, beavers, raccoons, weasels, red or gray foxes, and bobcats. If deer or elk are injuring or destroying farm crops, agricultural producers can apply to the PGC for financial assistance to build a fence to keep the deer or elk out.

Various fines and penalties are imposed for violations of the PGWC. Violators may be subject to fines up to \$5,000.00 plus six (6) months imprisonment. A violation involving the assault of a PGC officer in the performance of PGC duties is considered a very serious violation and subjects the violator to the maximum penalty.

⁴⁸ 34 PA. CONS. STAT. ANN. § 2121 (West 1997).

⁴⁹ 34 PA. CONS. STAT. ANN. §2122 (West 1997).

⁵⁰ 34 PA. CONS. STAT. ANN. § 2121(b) (West 1997).

VII. OTHER PENNSYLVANIA 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 some of these state laws in Pennsylvania.

A. Pennsylvania Farmland Preservation

1. *Pennsylvania Planning and Zoning*

The Pennsylvania legislature has enabled county and municipal governments with the authority to adopt ordinances which protect and preserve agricultural land and agricultural activities.⁵¹ The purpose of the law is to conserve these lands as valued open spaces and ecological resources. An example of this legislation includes the Agricultural Area Security Law (AASL) which conserves, protects, and encourages the development of agricultural lands for the production of food and other agricultural products.⁵²

An agricultural security area is a unit of 250 or more acres of viable land used for the agricultural production of crops, livestock, or livestock products under the ownership of one or more persons.⁵³ An owner of such agricultural land may submit a proposal to the governing body for the creation of an agricultural security area within a single local government unit.⁵⁴ The requisite area may also consist of two or more noncontiguous parcels of at least ten (10) acres each or the land has a yearly gross income of \$2,000.00 or more from agricultural production of crops, livestock, or livestock products. Proposals for an agricultural security area where the land is located in two (2) different local governmental units must be submitted for consideration to both governing bodies. All proposals must be submitted in writing by certified mail, return receipt requested.

The governing body gives public notice of the proposal and holds public hearings on the proposal. After an approval, the designated agricultural security areas are reviewed every seven (7) years through public hearings.⁵⁵ An area designation may be readopted, modified, or terminated upon review. If ten percent (10%) or more of the land within the agricultural security area is diverted to nonagricultural uses during the seven (7) year review cycle, the governing body has the discretion to conduct the review on a shortened review cycle.

⁵¹ 53 PA. CONS. STAT. ANN. § 10601(West 1997).

⁵² 3 PA. CONS. STAT. ANN. § 901-915 (West 1995 & supp.2001).

⁵³ 3 PA. CONS. STAT. ANN. § 903 (West 1993 & Supp.2001).

⁵⁴ 3 PA. CONS. STAT. ANN. § 905(a) (West 1993 & Supp.2001).

⁵⁵ 3 PA. CONS. STAT. ANN. §§ 905(b), 906 (West 1993 & Supp.2001).

Agricultural land within an agricultural security area which is actively being used for production agriculture may not be condemned by eminent domain unless prior approval has been obtained from the Agricultural Lands Condemnation Approval Board (ALCAB).⁵⁶ The ALCAB must approve any condemnation of productive agricultural land by the Commonwealth of Pennsylvania or its agencies for purposes including the construction of highways or new alignment. The ALCAB reviews proposals and presentations made by the Department of Transportation and determines whether there is a feasible and prudent alternative to the condemnation of farmland for transportation use.⁵⁷ Uses involving public utilities and emergency operations are exceptions to the eminent domain prohibition.

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

1. Pennsylvania Agricultural Conservation Easements

The Pennsylvania Agricultural Land Preservation Board (PALP) within PDA administers a program for the purchase of agricultural conservation easements by the state.⁵⁸ Created in 1989, the PALPB is responsible for the oversight of the state Farmland Preservation Program. It allows the state and counties to purchase development rights, referred to as easements, to guarantee that farms remain as agricultural land. These conservation easements prevent future development of the farmland for any purpose other than agricultural production. Farm owners may apply to their county board for such an easement. The state board will then consider the application based on specific guidelines which include emphasis on the soil quality of the land at issue.

The conservation easements are perpetual. The granting of the conservation easement does not prevent the granting of rights of way for public utilities, construction and use of structures on the land needed for agricultural production, construction of housing for farm workers, or construction of the landowner's principal residence provided that only one (1) such principal residence structure may be built on no more than two (2) acres of such land during the term of the conservation easement. The subject land may not, however, be subdivided in any manner which would harm the economic viability of the land for agricultural production.

⁵⁶ 3 PA. CONS. STAT. ANN. § 913 (West 1993 & Supp.2001).

⁵⁷ 71 PA. CONS. STAT. ANN. § 106 (West 1990 & Supp.2001); mandates that studies be performed and determinations be made before agricultural lands can be condemned for transportation purposes.

⁵⁸ 3 PA. CONS. STAT. ANN. § 914.1 (West 1995 & Supp.2001).

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.

B. Pennsylvania Nuisance Claims and the Right-to-Farm Defense

Pennsylvania law limits the circumstances under which agricultural operations may be sued as nuisances.⁵⁹ Local ordinances may not include agricultural operations as public nuisances when agricultural operations are conducted in accordance with normal agricultural operations and as long as agricultural operations do not have a direct adverse effect on public health and safety. These agricultural operations also have protection from zoning prohibitions that restrict direct commercial sales of agricultural commodities when the sales are conducted upon property owned and operated by a landowner who produces at least 50% of the commodities sold.

Public nuisance suits may also not be brought against an agricultural operation which has either:

- Been in operation for one year or more prior to the date of the nuisance complaint and the conditions or circumstances being complained about have existed in a manner substantially unchanged:
 - Since the establishment date of operation and the operations or activities are normal agricultural operations; or
 - Since the physical facilities of such agricultural operations were substantially expanded or substantially altered and the expanded or substantial altered facility has been in operation for one year or more prior to the date of such complaint.
- A nutrient management plan was approved prior to the commencement of any expansion or altered operations.

This exemption does not prevent a person from recovering damages for any injuries or damages sustained by the person, damages from any flooding of claimant's lands, or damages due to pollution or a change in condition of the waters of any stream caused by an agricultural operation conducted in violation of any laws.

⁵⁹ 3 PA. CONS. STAT. ANN. §§ 951 *et seq.* (West 1995 & Supp.2001); *see* the Right To Farm Act as amended available @ http://farm.fic.niu.edu/fic/laws/state/pa3_951.html.

Producer Note: Agricultural producers may be confronted with complaints of local residents. These complaints may originate from dust or odor generated by the operation. While this is not specifically an area where the state or federal authorities usually like to become involved, court actions can be brought against the operation. These lawsuits are usually based on a nuisance theory. In some instances, a right-to-farm defense may apply to the situation and protect the agricultural operation.

C. Pennsylvania Waste Management

1. *Pennsylvania Land Recycling and Environmental Remediation Standards Act*

Past Pennsylvania environmental policies have been disincentives for the private cleanup of old industrial sites. Federal and state cleanup laws can impose full responsibility for site cleanup on a new buyer. Too often, developers have chosen farmland properties as an alternative to old industrial sites with contamination problems. In 1995, Pennsylvania enacted the Land Recycling and Environmental Remediation Standards Act (LRERSA).⁶⁰ LRERSA releases the owner or developer of an old industrial site from liability if the site has been remediated according to the standards and procedures of LRERSA. LRERSA encourages the recycling of existing industrial and commercial sites and establishes three cleanup funds.⁶¹

The PDA is currently developing regulations providing for the reuse of soil and groundwater contaminated with agricultural chemicals resulting from the cleanup of agricultural chemical manufacturing sites. The regulations allow contaminated soil to be placed on farmland instead of incinerated.

2. *Pennsylvania Agricultural Utilization of Residual Wastes (SWMA)*

In addition to general requirements for the application of residual wastes to land, there are specific requirements for agricultural utilization of such wastes. Provided it is not hazardous, residual waste is defined as any sludge from a water supply treatment facility or any solid, liquid, semisolid, or contained gaseous material resulting from agricultural operations.⁶² Additional requirements for agricultural utilization of residual wastes include the following:

⁶⁰ 35 PA. CONS. STAT. §§ 6026.101 *et seq.* (West 1993 & Supp.2001).

⁶¹ The three cleanup funds are the Voluntary Cleanup Loan Fund, the Industrial Land Recycling Fund, and the Industrial Sites Cleanup Fund.

⁶² 35 PA. CONS. STAT. ANN. § 6018.103 (West 1993).

- A projected three-year (3) crop rotation plan including the type of farming operation, type of crop, planting sequence, crop management, and use of the crops;
- An operations map showing the location of groundwater monitoring devices that exist or are proposed for the facility;
- A nutrient management plan (not to be confused with a nutrient management plan for NMA) for the site including:
 - The number and type animals on the farm or property as well as the total nutrient value of manure produced by those animals and the location where the manure is placed;
 - An explanation and analysis of the effect on the soil from the additional residual waste as well as other nutrients such as fertilizers and soil conditions that would be placed on the site; and
 - The benefit to the soil or farming operation that the waste would provide.⁶³

If the seasonal high water table depth is less than twenty (20) inches, the application must include professional data showing that the proposed operation will not degrade air, soil, water, vegetation, or other natural resources and that the proposed activities can be accomplished under normal circumstances using BMPs.

Sewage sludge may not be applied to agricultural land if it is likely to adversely affect a threatened or endangered species or its designated critical habitat. Sludge also may not be applied to land if it is flooded, frozen, or snow-covered except as expressly provided in a permit. Sewage sludge may not be applied to land for the purpose of agricultural utilization on slopes that exceed 25% unless specifically approved by the DEP. If the nitrogen available from the manure produced by animals at the farm satisfies the nutrient needs of the farm for realistic expected crop yields, the sewage sludge may not be applied at that farm unless a management plan is implemented that allows for use of the manure produced by the farm animals other than land application on that farm. Sewage sludge also may not be applied to agricultural land that is:

- Within one hundred (100) feet, or thirty and a half (30.5) meters, or less of a perennial stream or within thirty-three (33) feet, or ten (10) meters, of an intermittent stream;
- Within one hundred (100) feet, or thirty and a half (30.5) meters, of the edge of a sink hole;

⁶³ 25 PA. CODE § 291.301 (2001); 35 PA. CONS. STAT. ANN. §§ 6018.101 to .1003 (West 1993 & Supp.2001).

- Within three hundred (300) feet, or ninety-one (91) meters, from an occupied dwelling unless the current owner there has provided a written waiver consenting to such activities closer than three hundred (300) feet, or ninety-one (91) meters;
- In an area without an implemented erosion and sedimentation control plan or a farm conservation plan;
- Within three hundred (300) feet, or ninety-one (91) meters, of a water source unless the current owner has provided a written waiver consenting to such activities closer than the required distance;
- Within one hundred (100) feet, or thirty and a half (30.5) meters, of an exceptional value wetland; and
- Within eleven (11) inches, or twenty-eight (28) centimeters of the seasonal high water table depth or within three and a third (3.3) feet, or one (1) meter, of the regional groundwater table depth.⁶⁴

Producer Note: A common by-product of livestock operations is animal waste which must be stored and disposed 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 BMPs.

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

D. Pennsylvania Noxious Weeds

Under the Noxious Weed Control Law, the state of Pennsylvania has a Noxious Weed Control Committee consisting of the Secretary of Agriculture, the Secretary of Environmental Resources, the Executive Director of the Pennsylvania Game Commission, and both chairmen of the Agriculture and Rural Affairs Committee of the Senate and House of Representatives.⁶⁵ This

⁶⁴ 25 PA. CODE § 271.915 (2001).

⁶⁵ 3 PA. CONS. STAT. ANN. §§ 255.1 *et seq.* (West 1995).

committee has the authority to compile a noxious weed control list for the state of Pennsylvania.⁶⁶

The noxious weed control list includes but is not limited to the following:

- Cannabis sativa commonly known as marijuana;
- Cirsium arvense commonly known as Canadian thistle;
- Rosa multiflora commonly known as multiflora rose;
- Sorghum halepense commonly known as Johnson grass;
- Polygonum perfoliatum commonly known as Mile-a-minute;
- Pueraria lobata commonly known as Kudzu-vine;
- Cirsium vulgare commonly known as Bull or Spear Thistle;
- Carduus nutans commonly known as Musk or Nodding Thistle;
- Sorghum bicolor commonly known as Shattercane;
- Datura stramonium commonly known as Jimsonweed;
- Lythrum salicaria commonly known as Purple Loosestrife, including all cultivars;
- Heracleum mantegazzianum commonly known as Giant Hogweed; and
- Galega officinalis commonly known as Goatsrue.⁶⁷

The Secretary of Agriculture may issue an order requiring a landowner to implement control measures for noxious weeds without a public hearing. This order is considered final unless the landowner notifies the Secretary in writing within seven (7) days of its issuance that the order is contested.⁶⁸

The Secretary may upon a self-imposed initiative, or upon the request of other interested persons, hold public hearings to consider the designation of a weed control area. If an area is

⁶⁶ 3 PA. CONS. STAT. ANN. § 255.3 (West 1995).

⁶⁷ 3 PA. CONS. STAT. ANN. § 255.8 (West 1995).

⁶⁸ 3 PA. CONS. STAT. ANN. § 255.6(a) (West 1995).

designated by the Secretary for weed control, all affected landowners must comply within sixty (60) days following the control measures as ordered by the Secretary. Such order may not impose, however, an unreasonable deadline for compliance or an unreasonable financial burden on any landowner.⁶⁹

E. Pennsylvania Soil and Water Conservation Districts

The SCC within the DEP is responsible for the conservation of the soil, water, and related resources in Pennsylvania. The commission members include four agricultural producers appointed by the Governor to serve four (4) year terms.

Under the Conservation District Law, the county governing body creates conservation districts when determined necessary by petitions, hearings, referenda, or other appropriate measures instituted by rural landowners of the county.⁷⁰ The directors of each conservation district have wide-ranging powers to carry out preventive and control measures needed within the district for conservation. Conservation districts may be discontinued any time after five (5) years from their creation and after determining that a substantial proportion of the land occupiers of the district so desire it and subsequent approval by the commission follows such proposal.⁷¹

F. Pennsylvania Dead Animal Disposal

The disposal of bodies of dead domestic animals shall be handled in the following manner:

- Persons owning or possessing domestic animals known to have died of a dangerous transmissible disease must report such deaths to the PDA and dispose the animals under the supervision and instruction of the PDA;
- Persons caring for or owning domestic animals which have died must dispose the carcass within forty-eight (48) hours after death in accordance with approved methods and must prevent exposure of the carcasses to domestic animals, other living animals, and the public;
- Dead domestic animals, parts of domestic animals, offal, and animal waste may not be transported on public highways for any purpose unless such materials are transported in a manner that precludes contamination of the environment or danger to animal or public health; and

⁶⁹ 3 PA. CONS. STAT. ANN. § 255.5 (West 1995).

⁷⁰ 3 PA. CONS. STAT. ANN. § 849 to § 864 (West 1995).

⁷¹ 3 PA. CONS. STAT. ANN. §§ 849 *et seq.* (West 1995).

- Dead domestic animals, parts, offal, and animal waste shall be disposed through one of the following methods or a method approved by the PDA:
 - Burial in accordance with water quality regulations;
 - Incineration in accordance with air quality regulations; or
 - Processing by rendering, fermenting, composting or other method approved by PDA.⁷²

No uncooked dead animal or animal parts including offal of any kind may be fed to domestic animals unless processed in accordance with regulations adopted by the PDA.

No dead domestic animal, offal or parts of dead domestic animals may be transported into Pennsylvania unless transported directly to a diagnostic laboratory or consigned and delivered to a dead domestic animal disposal plant licensed by the PDA.⁷³

G. Pennsylvania Best Management Practices

Best Management Practices (BMPs) means a practice or combination of practices as determined by the SCC to manage nutrients to protect surface and groundwater that takes into account applicable nutrient requirements for crop utilization. These practices include but are not limited to:

- Conservation tillage;
- Crop rotation;
- Soil testing;
- Manure testing;
- Diversions;
- Manure storage facilities;
- Storm water management practices; and
- Nutrient application.⁷⁴

⁷² 3 PA. CONS. STAT. ANN. § 2351 (West Supp.2001).

⁷³ 3 PA. CONS. STAT. ANN. § 2352 (West Supp.2001).

⁷⁴ 3 PA. CONS. STAT. ANN. § 1723 (West 1995 & Supp.2001).

Appendix A - Agencies

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

State Agencies:

Association of Conservation Districts
225 Pine Street
Harrisburg, PA 71701
(717) 236-1006
(717) 236-6410 fax
<http://www.pacd.org>

Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110-9408
(717) 782-4737
(717) 772-2780 fax
<http://www.pda.state.pa.us/>

8 Bureaus within PDA:

Animal Health & Diagnostic Services
(717) 783-6677

Dairy Promotion
(717) 787-6903

Farmland Protection
(717) 783-3167

Farm Show
(717) 787-5373

Food Safety
(717) 787-4315

Market Development
(717) 787-4210

Milk Marketing
(717) 787-4743

Plant Industry
(717) 787-4843

Boards, Commissions, & Services within PDA:

**Agricultural Lands Condemnation
Approval Board**

(717) 787-1079

Agricultural Statistics Service
(Same address as PDA above)

(717) 787-3904
(717) 782-4011 fax

<http://www.nass.usda.gov/pa/>

State Agricultural Land Preservation Board
(717) 787-5085

State Conservation Commission
2301 North Cameron Street
Room 407, Agriculture Building
Harrisburg, PA 17110-9408
(717) 787-8821
(717) 705-3778 fax

http://sites.pa.us/PA_Exec/Agriculture/conservation

Department of Conservation and Natural Resources
Rachel Carson State Office Building
P.O. Box 8767
Harrisburg, PA 17105-8767
(717) 787-2869
(717) 772-9106 fax
<http://www.dcnr.state.pa.us/>

Work Groups within DCNR:

Biodiversity

Conservation Areas

Environmental Education

Growing Greener

Land & Water Conservation Fund

Public Involvement

State Forest Certification

State Forest Resource Management Plan

State Park Rules and Regulation

Strategic Plan

Swatara State Park

Trail Issues

Urban Issues

Advisory Council for DCNR

Rachel Carson State Office Building
P. O. Box 8773

Harrisburg, PA 17105-8773

(717) 705-0031

(717) 787-8817 fax

<http://www.dcnr.state.pa.us/cnrac/geninfo.htm>

Department of Environmental Protection

P.O. Box 2063
Harrisburg, PA 17105-2063
(717) 783-2300
(717) 783-8926 fax
<http://www.dep.state.pa.us>

Division within DEP:

Pollution Prevention and Compliance Assistance

(717) 783-0540
(717) 783-8926 fax

Permits within DEP

Air Quality

Mining

Oil & Gas

Waste Management

Water Management

Pennsylvania Department of Health

Health and Welfare Building
P.O. Box 90
Harrisburg, PA 17108-0090
(717) 787-5900
(717) 783-5498 fax
<http://www.health.state.pa.us>

Pennsylvania Fish and Boat Commission

P.O. Box 67000
Harrisburg, Pa 17106-7000
(717) 657-4518

Pennsylvania Game Commission

2001 Elmerton Avenue
Harrisburg, PA 17110-9797
(717) 787-4250
(717) 772-2411 fax
(877) PA-HEALTH toll free
<http://www.pgc.state.pa.us>

Division within PGC

License Division

(717) 787-2084
(717) 705-1628 fax