

**STATE
ENVIRONMENTAL LAWS AFFECTING
TENNESSEE 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.

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

The contents and 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 July 2003.

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

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. 1-5</i>	Livestock and aquaculture operations, depending on size, Forestry	NPDES and state general permit or land disposal permit	EPA Regional Office, Tn. Dept. of Environmental Conservation (TDEC) , and Tn. Dept. of Agriculture (TDA)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit	US Army Corps of Engineers with EPA and TDEC
	Water usage	Registration required for withdrawal of more than 50,000 gallons per day	TDEC
	Water well construction and use	No permit, but construction standards must be followed	TDEC - Division of Water Management
Groundwater <i>pp. 5-6</i>	Groundwater protection	No permit, but BMPs must be followed	TDEC - Division of Water Supply
Air Quality <i>pp. 7-8</i>	General agricultural operations including odor, dust, or flies	No permit, but may be subject to nuisance suits	EPA Regional Office or Tn. Dept. of Health & Environment (TDHE)
	Burning	Permit required in certain circumstances	TDHE and TDA

Regulatory Area	Type of Activity	Permit Required	Agency
Solid Waste and Hazardous Waste <i>pp. 8-13</i>	Storage, treatment, or disposal of hazardous or solid waste	Permit required for disposal, treatment, or storage activities	EPA Regional Office and TDEC
	Public notice of hazardous waste	No permit	Local Emergency Planning Committee and TDEC
Pesticides and Chemigation <i>pp. 13-15</i>	Application and use of pesticides	Permits and licenses may be required	EPA and TDA-
	Use of pesticides around farmworkers	No permit, but training and notification is required	TDEC and TDA
	Record keeping	No permit, but all requirements must be met	TDA
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, Tennessee Wildlife Resources Agency, and TDEC

STATE ENVIRONMENTAL LAWS AFFECTING TENNESSEE 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. Tennessee 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. In addition, regulations are likely to be amended frequently. As a result, a producer must keep in contact with offices administering specific programs in order to keep up with all changes which may occur.

1. Tennessee Water Quality Control Act

The Water Quality Control Act of 1977¹ established the Tennessee Water Quality Control Board (TWQCB). TWQCB is empowered to develop and adopt standards of quality for all waters of the state. Included in the Board's powers is the classification or reclassification of waters of the state for applicable water quality standards.

¹ TENN.CODE ANN. § 69-3-101 *et seq.* (Michie 1995 & Supp. 1998).

Waters in areas of swamped-out bottomland hardwoods or swamped-out cropland are classified as protective of wildlife and humans that may come into contact with them. Standards applicable to all downstream waters apply to these areas, except that they are not classified for the protection of fish and aquatic life. “Swamped-out bottomland hardwood” includes areas subject to inundation or ponding of surface water resulting in timber mortality or stress. “Swamped-out cropland” includes areas previously in row crop cultivation or pasture which can no longer be used for such purpose due to inundation or ponding of surface water. “Swamped-out cropland” does not include wetland areas which have not been cultivated or in pasture since 1970 because of inundation or ponding of surface water.²

2. *Tennessee NPDES Program*

Producer Note: EPA has delegated the NPDES program in Tennessee to the Tennessee Department of Environmental Conservation (TDEC). Consequently, TDEC, rather than EPA, has primary responsibility for issuing permits for point source discharges and for enforcing related sections of the CWA. However, TDEC is required to administer the program in accordance with all federal statutes, regulations and standards.

The TWQCB is designated as the government body for adopting and enforcing permits issued by the US EPA pursuant to § 402 of the Federal Water Pollution Control Act, P.L. 92-500.³ Permits are required for any person planning to alter the properties of any waters of the state; construct or use any new outlet for the discharge of wastes into the waters of the state; or construct, install or operate a concentrated animal feeding operation.

Ditch construction for restoring swamped-out bottomland hardwoods to bottomland hardwoods, or for restoring swamped-out cropland to cropland or to bottomland hardwoods is permitted in any waters of the state under a general permit so long as it is done according to strict terms and conditions.⁴

Permits are not required for activities including: removal of downed trees by dragging or winching so long as stream channels are not graded or reshaped, placing downed trees on stream banks for erosion protection, and the planting of vegetation on stream banks.

² TENN.CODE ANN. § 69-3-105(k).

³ TENN.CODE ANN. § 69-3-105(h)(2).

⁴ TENN.CODE ANN. § 69-3-130.

3. *Concentrated Animal Feeding Operations*

Producer Note: An operation may be required to obtain permits in addition to the NPDES permit. In some cases, construction and operation permits may be required even when an NPDES permit is not required. For example, concentrated animal feeding operations are often required to obtain multiple permits.

Tennessee has been given federal approval to begin issuing water quality permits for large and mid-sized concentrated livestock operations. A two-tiered permit system has been implemented based on the size of the operation and the type of waste management system in place.

Class I permits are required for the state's largest livestock operations, CAFOs having more than 1,000 animal units as defined by the US EPA.

Class II permits are designed for medium-sized livestock operations and are issued according to animal units and existing agricultural impact on streams in the farm's area. Class II permits are also required for poultry farms using a dry-manure waste system. Prior to the issuance of a Class II permit, operators must file a Notice of Intent (NOI) with the Tennessee Department of Agriculture (TDA). Existing operations are required to submit their NOI by August 1, 1999. New operations must submit NOIs at least 30 days prior to beginning a feeding operation.

Covered under Class II permit are existing facilities located in watersheds of streams identified as being impacted due to livestock operations, and new facilities meeting size criteria regardless of their location.

Animal feeding operations with fewer than the designated number of animals for classification as a Class II CAFO may require permits upon a determination that they are contributors of pollution to the waters of the State.

All new and existing CAFOs must obtain approval from TDA for their nutrient management plans. Nutrient Management Plans must address buffer strips to protect water quality, application methods and schedules, and dead animal disposal.

Producer Note: For information and forms, refer to the State of Tennessee home page at <http://www.state.tn.us>. Following links through the TDEC and other agencies will provide the needed information.

4. *Enforcement of the Water Quality Control Act*

Discharging wastes into surface waters, unless authorized by an NPDES or other permit, is a violation of the Act. Persons who violate the Act are subject to both civil and criminal penalties. Civil penalties include fines of up to \$10,000 per day per violation, and each day of a continuing violation is a separate offense.

Serious violations of the Act may be a felony, with less serious violations being misdemeanors. Convictions can result in jail sentences and fines. Injunctions may also be granted.

The TDEC may also issue “stop work orders” when certain silvicultural activities have polluted waters of the state as a result of an operator's failure or refusal to use forestry best management practices,. The stop work order requires that the operator must cease part or all of the silvicultural activities on site that are contributing to such pollution and remains in effect until the operator installs best management practices that eliminate and prevent further pollution. No stop work order may be issued or suspended without consultation with the Commissioner of TDA.

<p>Producer Note: Appeals may be taken from any final order or other final determination of the Board. Alleged violators may institute an appeal by filing a petition for review in the chancery court of Davidson County, or in the chancery court of the county in which the violation occurred.</p>

5. *Tennessee Nonpoint Source Pollution Control*

The Tennessee Water Quality Control Act does not give State water quality control agencies the authority to regulate nonpoint pollution originating from normal agricultural activities. However, agricultural activities that may result in a significant point source pollution, such as failing animal waste system discharges, are regulated and subject to NPDES requirements.

6. *Best Management Practices*

Tennessee incorporates best management practices (BMPs) into aspects of its water quality program. Forestry BMPs are defined in rules promulgated by the Department of Agriculture in association with implementation of “stop work orders.” BMPs are also required for certain livestock operations that are classified as CAFOs.

The Agricultural Resources Conservation Fund⁵ provides cost-share money to agricultural operations for the purposes of installing best management practices to abate point as well as non-point sources of water pollution. The Fund is administered by TDA and receives its revenue from a share of the real estate transfer tax.

II. GROUNDWATER

A. Tennessee Groundwater Laws and Regulations

Most citizens of western Tennessee rely on ground water for their drinking water. Therefore, ground water supplies play an important role in the quality of life of Tennesseans. The Tennessee Water Quality Control Act⁶ recognizes that all waters of the state, including ground water, are valuable resources. Recognizing that the people of Tennessee have a right to unpolluted waters, the Act's purpose is to eliminate current pollution and to prevent future pollution.

The Act declares it unlawful to engage in certain activities without a permit. Among those unlawful activities is the discharge of sewage, industrial wastes or other wastes into a well or a location that is likely that the discharged substance will move into a well.⁷

Ground water protection is the responsibility of the Ground Water Management Section in the TDEC's Division of Water Supply (DWS). This agency protects and manages ground water, regulates underground injection wells, provides technical assistance, and investigates and controls ground water pollution sources.

A number of regulatory programs work in cooperation to protect and improve ground water resources. TDA is also involved in cooperative efforts to control the effects of agriculture on ground water quality.

Producer Note: TDEC has adopted a watershed-based approach to controlling water pollution and improving water quality. As each watershed has its own unique needs, regulations affecting each may differ.

1. Water Well Standards

Water wells may be drilled only by licensed water well drillers. The Division of Water Management (DWM) has the authority to inspect and approve or disapprove the drilling of any

⁵ TENN. CODE ANN. § 67-4, Part 4

⁶ TENN.CODE ANN. § 69-3-101 *et seq.*

⁷ TENN.CODE ANN. § 69-3-108-(b)(8).

water well, or the installation and repair of any water well pumps or other equipment.⁸

New water wells may not be drilled within 100 feet of either animal pens or feed lots.⁹

2. *Underground Injection*

Anyone who discharges industrial or commercial wastes into a subsurface system other than city sewers, or who discharges stormwater to an improved sinkhole must apply to the D for a permit. Tennessee permits Class I (deep well industrial) and Class V (shallow, non-hazardous) wells. Information must be provided with applications regarding ownership, injection well, injection zone, the injected fluid, and geographic and geologic features in the area.

<p>Producer Note: Applications and other information on injection wells may be obtained from DWS's Ground Water Management Section, Underground Injection Control Program.</p>

There are no fees for Class V injection wells, Class I applications, however, must be accompanied by a \$2,500 fee. Operational fees also apply to Class I injection wells.

Injection well permit violations subject the violator to permit revocation or suspension, and civil penalties of up to \$10,000 per day.

3. *Water Management*

TDEC's Water Resources Division is responsible for implementing the basic water resource policy by enacting and defining the rights of respective competing users of the water resources of the state. Any person withdrawing 50,000 or more gallons per day of water from any source must register with the Division. Withdrawals from public water systems do not require registration. Failure to register when required may result in a Class C misdemeanor conviction.¹⁰

⁸ TENN.CODE ANN. § 69-11-101 *et seq.* (1998).

⁹ TENN.COMP.R. & REGS. § 1200-4-9-.10 (1998).

¹⁰ TENN.CODE ANN. § 69-8-101 *et seq.* (1998).

III. AIR QUALITY

A. Tennessee Air Quality Laws and Regulations

1. Tennessee Air Quality Act

The Tennessee Air Quality Act¹¹ was implemented to maintain purity of the air resources of the state to protect the normal health, welfare and property of the people. The Air Pollution Control Board aims to prevent and control air pollution by all practical and feasible methods. Municipalities and counties are authorized to enact air pollution control regulations so long as they are not less stringent than the state standards.

Producer Note: If an operation has an incinerator or a grain elevator, an operator should contact the Tennessee Department of Health and Environment (TDHE), Division of Air Pollution Control (DAPC), to determine if air quality requirements will affect the operation.

2. Burning

Generally any person wishing to engage in open burning may not do so without a permit from DAPC.¹² Exceptions apply if a public nuisance will not be created *and* the open burning is for one of the following purposes:

- Domestic burning of rubbish where no collection service is available;
- cooking food or for ceremonial or recreational purposes;
- fire service training exclusive of routine demolition via supervised open burning;
- clearing land consisting solely of vegetation grown on that land;
- disposal of untreated wood waste;
- burning bodies of diseased animals;
- flares for combustion of waste gases; and
- destruction of controlled substances or legend drugs seized as contraband.

¹¹ TENN.CODE ANN. § 68-201-101 *et seq.*

¹² TENN. COMP. R. & REGS. tit. 1200-3-4-.01 (1997).

Producer Note: A completed Application For Open Burning Permit must be submitted at least 10 days prior to the starting date of the open burning, and requires the type and quantity of material to be burned; the date, duration and frequency of burning; reasons for open burning rather than other disposal methods; and a map showing the open burning site. Approval is based on compliance with burn site criteria, time-of-day requirements and meteorological considerations.

Exceptions to permitted burning do not relieve the person responsible for the burning from any consequences or damages, injuries, or claims the burning may cause.

Open burning is not allowed in any area where the open burning would interfere with the attainment or maintenance of the air quality standards. The open burning of tires, vinyl shingles and/or asphalt shingles is expressly prohibited.

Producer Note: If burning is to occur in Davidson, Hamilton, Knox or Shelby counties, applicants must obtain a permit from the applicable county air permit office. For all other counties, applications and assistance can be obtained by contacting the appropriate DAPC field office.

Any person who negligently or willfully sets a fire will be civilly liable for expenses incurred in extinguishing the fire.¹³ A Class A misdemeanor is committed by any person who recklessly starts a fire on the land, structure, or personal property of another or recklessly allows the fire to burn such property.¹⁴

Pursuant to 39-14-306, it is a Class C misdemeanor for any person to start an open-air fire between October 15 and May 15 within five hundred feet (500') of any forest, grasslands or woodlands without first securing a permit from TDA's Division of Forestry. Depending upon the potential for hazardous burning conditions, the state forester may also prescribe a period other than October 15 to May 15 within which a permit must be obtained prior to starting an open-air fire.

IV. SOLID WASTE AND HAZARDOUS WASTE

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

¹³ TENN. CODE ANN. § 11-4-410 (1997).

¹⁴ TENN. CODE ANN. § 39-14-304 (1997).

A. Tennessee Solid Waste and Hazardous Waste Laws and Regulations

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

1. Tennessee Solid Waste Disposal Act

A permit to operate a solid waste facility must be obtained from the DEC under the Tennessee Solid Waste Disposal Act.¹⁵ Solid waste is any garbage, sludge from a waste treatment plant, and any other discarded materials resulting from commercial, agricultural or community activities. A solid waste disposal permit, however, is not required for the disposal of:

- a natural person's own household waste upon land owned by that person, provided that the disposal does not create a public nuisance or a hazard to the public health;
- farming wastes on the site of generation if the fill area is less than one acre;
- farming wastes which are returned to the soil as fertilizers;
- irrigation return flows;
- landscaping and land clearing wastes on site and the fill area is less than one acre;
- construction/demolition wastes on site and the fill area is less than one acre; and
- natural rock, dirt, stumps, pavement, concrete or brick used as fill material.¹⁶

Producer Note: Farming wastes are generated from the customary and generally accepted activities that farmers use or engage in during the production and preparation for market of poultry, livestock, and associated farm products; and in the production and harvesting of agricultural crops. However, the term does not include dead animals, waste oils, lubricants, unused fertilizers, pesticide containers, or pesticide residues.

It is unlawful for any person to:

¹⁵ TENN. CODE ANN. § 68-211-101 et. seq. (1997); *See also*, TENN. COMP. R. & REGS. tit. 1200-1-7-.01 et. seq. (1997).

¹⁶ TENN. COMP. R. & REGS. tit. 1200-1-7-.02(b)(2) (1997).

- receive a landfill permit, if the landfill is to be located within 2 miles rivers designated as scenic by the DEC;¹⁷
- dispose of lead-acid batteries in any landfill;¹⁸
- deposit any solid waste into any waters except in a manner approved by the TDEC or the TWQCB;
- burn solid wastes except in a manner approved by the TDEC or DAPC;
- construct, alter, or operate a solid waste facility in a manner that violates the Tennessee Solid Waste Disposal Act;
- construct, alter, or operate a solid waste facility in a manner that creates a public nuisance; or transport or dispose of solid waste in violate of the Tennessee Solid Waste Disposal Act.¹⁹

Any person who willfully violates any provision of this Act is deemed guilty of a Class B misdemeanor per day per violation. Violators will be fine of up to \$5000 per day for each day of violation and remains liable any damages caused to the State of Tennessee as result of such violation.

Producer Note: The DEC may delegate its authority, under the Tennessee Solid Waste Disposal Act, to local health officers.

2. *Other Solid Waste Laws*

The governing body of a county may determine that any owner of real property has permitted the overgrowth of vegetation, the accumulation of debris or garbage, the infestation of rats or harmful animals, or a vacant dilapidated structure to endanger the health and safety of other citizens.²⁰ Upon such determination, the owner may be notified to remedy the condition immediately. If the condition is not remedied within 10 days after receiving the notice, the county may remedy the condition and assess the cost to the owner of the property. An exemption prevents the counties from regulating buildings used primarily for agricultural purposes; the intent of this exemption is to prevent the counties from inhibiting normal agricultural activities.

¹⁷ TENN. CODE ANN. § 11-13-111 (1997).

¹⁸ TENN. CODE ANN. § 68-211-608 (1997).

¹⁹ TENN. CODE ANN. § 68-211-104 (1997).

²⁰ TENN. CODE ANN. § 5-1-115 et. seq. (1997).

Producer Note: Solid waste for regulatory purposes is not necessarily solid in form. Producers must consider whether they may be violating either federal or state statutes when they dispose of wastes on their farms or ranches. Of particular concern are petroleum products, unused pesticides, herbicides and fertilizers and their containers, and other wastes that may contaminate ground or surface water or pose a threat to humans, livestock, or wildlife. The practice of burying items in a farm dump may no longer be permissible under RCRA or the Tennessee Solid Waste Disposal Act.

A person commits criminal littering who knowingly places litter on any public or private property without permission and does not immediately remove it; negligently places glass or other dangerous substances on or adjacent to water to which the public has access, or on or within 50 feet of a public highway; or negligently discharges sewage, minerals, oil products or litter into any public waters or lakes within this state.²¹ Any person who violates this provision is deemed guilty of a class B misdemeanor and may be required to pay for the cost of cleaning the litter.

3. *Hazardous Waste*

A permit must be obtained from the TDEC, under the Tennessee Hazardous Waste Management Act, before any person may operate a facility for the treatment, storage, or disposal of or transportation of hazardous waste.²² Hazardous material is any combination of wastes, which significantly contributes to an increase in mortality or irreversible threat to the health of humans or the environment.

A hazardous waste does not include:

- wastes from the growing and harvesting of agricultural crops, the raising of animals, or animal manures which are returned to the soil as fertilizers; or
- waste pesticides, provided the farmer uses a capable solvent to triple-rinses each emptied pesticide container and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.²³

Any person who violates a permit condition shall be deemed guilty of a class A misdemeanor and shall be fined up to \$50,000 per day per violation. However, any person who knowingly disposes of hazardous waste in violation of the Act shall be guilty of a class C felony per day per violation.

²¹ TENN. CODE ANN. § 39-14-502 (1997).

²² TENN. CODE ANN. § 68-212-101 et. seq. (1997).

²³ *Id*; See also, TENN. COMP. R. & REGS. tit. 1200-1-11-.02 (1997).

Producer Note: Any person with knowledge of an accident or incident involving a hazardous material shall report such to the Tennessee emergency management agency.²⁴

4. Underground Storage Tanks

The TDEC regulates underground storage tanks (UST).²⁵ Persons who have stored petroleum in a UST after January 1, 1974, or who bring a new underground storage tank system into use must notify the TDEC's Division of Underground Storage Tanks. Notification is also required for:

- placing petroleum into the underground storage tank system;
- making changes (i.e., changing contents, replacing or upgrading tanks, owner change);
- obtaining an approval for closure and or removal of an underground storage tank; and
- installing a new underground storage tank.

Tanks removed from the ground are not subject to notification requirements. Other exemptions apply to:

- farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- tanks used for storing heating oil for consumption on the premises where stored; and
- septic tanks.

Owners and operators utilizing underground storage tanks must submit completed notification forms within 15 days of placing petroleum or any other hazardous substance into the system. Annual tank fees of \$125 per tank are required.

Violators are subject to a penalty of up to \$10,000 per day for each day of violation. Any person who endangers the public health or willfully releases petroleum is deemed guilty of a Class A misdemeanor and may have his/her permit suspended.. Each day of continued violation constitutes a separate punishable offense.

²⁴ TENN. CODE ANN. § 58-2-301 (1997).

²⁵ TENN. CODE ANN. § 68-215-101 (1997).

5. *Dead Animal Disposal*

A permit must be obtained from TDEC to operate a solid waste disposal facility that receives dead animals for disposal²⁶ A Class I disposal area must comply with various requirements, including:

- the presence of a certified operator at all times;
- covering of dead animals with a minimum of 2 feet of cover upon receipt and placing in an area which will receive additional waste and cover within 48 hours; or covering with three feet of compacted cover soil if placed in an area which will not receive additional waste and cover within 48 hours;
- disposal of dead animals at least 5 feet deep; and
- distributing dead animals in such a manner as to minimize the occurrences of future sinks in the final landfill cover caused by carcass decay.

On-farm disposal of dead animals may occur without regulation unless otherwise subject to certain provisions that may be contained in CAFO permits, extraordinary health conditions imposed by the State Veterinarian or local health officials. Current CAFO regulations require that dead animals be rendered, incinerated, composted, or disposed of a manner specified in a waste management plan as approved by the TDA.

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. Tennessee Pesticide and Chemigation Laws and Regulations

Producer Note: Tennessee, 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.

²⁶ TENN COMP. R. & REGS. tit. 1200-1-7-.04 (1997).

1. *Tennessee Insecticide, Fungicide, and Rodenticide Act*

The Tennessee Insecticide, Fungicide, and Rodenticide Act²⁷ deems any person guilty of a misdemeanor who operates as a commercial applicator without a license; uses a pesticide in a manner that is inconsistent with the label; or violates any regulations issued by TDA.²⁸

Government aerial operations, legitimate agricultural experiments recognized by the commissioner, and landowners who apply pesticides on their own land with the landowner's personally owned aircraft are exempt from the Act.

A commercial applicator must receive a certificate from the Department in one or more of the following categories:

- *certified applicator*- requires a permit to use, buy, sell or supervise the use of any designated, restricted pesticides;
- *commercial applicator*- requires a permit to use, buy, sell, or supervise the use of any designated, restricted pesticides for any purpose on any property, other than as defined under commercial pest control operator or private applicator;
- *commercial pest control operator*- requires a permit to use, buy, sell, or supervise the use of any designated, restricted pesticides for the purpose of engaging in custom application for a fee; or
- *private applicator*- requires a permit to use, buy, sell or supervise the use of any designated, restricted pesticide to produce an agricultural commodity on either (1) the property owned or rented by the private applicator's employer or (2) on the property of another person and the application is merely a trade of personal services between producers of agricultural commodities, rather than for compensation.²⁹

Farmers may receive a pesticide applicator's license for controlling wood destroying organisms; general pest and rodents; aquatic weeds; pest birds; agricultural pests by means other than fumigation, such as ground equipment; pests and diseases of shrubs, trees and lawns of non-agricultural and residential areas; control of pests and diseases of plants grown indoors; and fumigating pests found in the soil by application of a gaseous material.

Any person who violates these provisions is deemed guilty of a misdemeanor and ordered to pay up to \$500 per violation.³⁰

²⁷ TENN. CODE ANN. § 43-8-101 et. seq. (1997).

²⁸ TENN. CODE ANN. § 62-21-101 et. seq. (1997); *See also*, TENN. CODE ANN. § 43-8-306 (1997).

²⁹ TENN. COMP. R. & REGS. tit. 0080-6-16-.02 (1977).

³⁰ TENN. CODE ANN. § 43-3-204 (1997); TENN. CODE ANN. § 43-8-306 (1997); TENN. CODE ANN. § 62-21-120 (1997).

2. *Aerial Application of Pesticides*

Aerial application of pesticides is regulated by TDA³¹. Commercial applicators must be licensed and are subject to certain credentialing, testing, and monitoring procedures. Government aerial operations, legitimate agricultural experiments recognized by the commissioner, and landowners who apply pesticides on their own land with the landowner's personally owned aircraft are exempt from the Act.

Producer Note: City and local governments may zone the storage of pesticides, designate sites for disposal of pesticides, or enter into an agreement with the Department of Agriculture to implement more stringent enforcement provisions.³²

3. *Agricultural Pesticide Waste Collection Program*

In order to protect the ground water, TDA has initiated the Tennessee Agricultural Pesticide Waste Collection Program. The program provides an opportunity to the farming community to properly dispose of waste restricted use pesticides in an environmentally sound manner. The service is intended for the agri-business industry and not for household and garden pesticides.

Many farmers have pesticides stored on the farm, remaining unused because cropping practices change, new products are introduced, some chemicals are banned and others deteriorate or lose their label. The Collection Program was initiated as part of Tennessee's State Management Plan for Protection of Groundwater From Pesticides to remove the threat such chemicals pose to human health, livestock, and the environment.

Producer Note: Farmers bringing pesticide wastes to designated collection sites for disposal will remain anonymous and will not have to pay a fee for collection or disposal. All Tennessee farmers are eligible to participate.

All agricultural pesticides brought to designated collection sites by that county's farmers will be accepted up to 1000 pounds per farmer/vehicle. Greater amounts will be accepted if prior notice is given to and approved by the Department of Agriculture site manager or county extension agent.

Farmers remain responsible for safely transporting pesticide wastes to the collection sites, and for any spillage, damage, subsequent cleanup, and restoration that might result from spillage.

³¹ TENN. CODE ANN. § 43-8, Part 3

³² TENN. CODE ANN. §§ 43-8-114- 43-8-115 (1997).

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. Tennessee 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. Tennessee has laws protecting wildlife.

1. *State Rare Plant Protection Act*

The Rare Plant Protection and Conservation Act of 1985 gives the TDEC the power to determine and list endangered species of plants.³³ It is unlawful for any person to knowingly sell, uproot, damage, destroy, possess, or otherwise disturb for any purpose, any endangered species of plant without permission from the DEC.

2. *State Endangered Species Act*

The State of Tennessee prohibits the taking, possession, transportation, exportation, processing, sale or offer for sale any species of wildlife listed on the United States' List of Endangered Native Fish and Wildlife, List of Endangered Foreign Fish and Wildlife, or those listed by the Wildlife Resources Commission as a specie whose prospect of survival is in jeopardy.³⁴

Exceptions apply for scientific, zoological, or educational programs; state established programs that assist in preserving the endangered species; alleviating property damage or protecting human health, upon a showing of good cause after a permit is obtained from the commission; or emergency situations involving an immediate threat to human life.

The State also prohibits any pollution, petroleum product, or poisonous substance from running or washing into any waters, private or public, in a manner injurious to the habitat or life of any fish or aquatic organisms.³⁵

Violations may result in Class A or Class B misdemeanor convictions.

³³ TENN. CODE ANN. § 70-3-301 et. seq. (1997).

³⁴ TENN. CODE ANN. § 70-8-101 et. seq. (1997).

³⁵ TENN. CODE ANN. § 70-4-206 (1997).

3. Exotic Animals³⁶

The Tennessee Wildlife Resources Agency and the Department of Agriculture regulate certain species of animals relative to ownership, sale, and propagation. Permits are required for native wildlife species, whereas, conventional livestock are not regulated.

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.

VIII. OTHER TENNESSEE STATUTES AFFECTING AGRICULTURE

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

A. Farmland Preservation

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, a producer must check with local boards to determine local planning and zoning regulations which may affect an operation.

The Agricultural District and Farmland Preservation Act of 1995³⁷ is intended to encourage the conservation, protection, and responsible utilization of lands that are managed for purposes of agricultural production. Recognizing that agricultural lands are finite, fragile and valuable resources, it is the policy of Tennessee to provide a process for the recognition of lands dedicated to agricultural production and to assure an accurate understanding of the impacts of public policy decisions that might otherwise alter the capability of those lands to remain in agricultural production.

³⁶ TENN. CODE ANN. § 70-4, Part 4

³⁷ TENN.CODE ANN. § 43-34-101 *et seq.* (Supp. 1998).

To qualify for designation as an agricultural district, a district must contain at least two hundred fifty (250) contiguous acres and may include any number of individual property ownerships; however, no single ownership may contain less than fifteen (15) acres.

B. Tennessee Soil Conservation Districts Law

Soil Conservation Districts are empowered to conduct surveys, investigations and research related to the character of soil erosion and needed control measures. Districts also carry out preventive and control measures including engineering operations, methods of cultivation, growing of vegetation and changes in use of land.

Districts are authorized to provide landowners with agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings to assist in preventing and controlling soil erosion.

Landowners may recover damages from other landowners whose violations of land use regulations cause such damage.³⁸

C. Agricultural, Forest and Open Space Land Act of 1976³⁹

Land that has been classified by the tax assessor as agricultural or forest under the provisions of the Agricultural, Forest and Open Space Land Act is assessed at current use value for property tax purposes. To be eligible as agricultural land, property must consist either of a single tract of at least fifteen (15) acres, including woodlands and wastelands, or two (2) noncontiguous tracts, including woodlands and wastelands, one (1) of which is at least fifteen (15) acres and the other being at least ten (10) acres and together constituting a farm unit. Qualifying forest land consists of a forest unit engaged in the growing of trees under a sound program of sustained yield management or any tract of fifteen (15) or more acres having tree growth in such quantity and quality and so managed as to constitute a forest.

D. Tennessee's Right to Farm Law

Producer Note: Many producers are confronted with concerns of local residents. These problems may originate from dust or odor generated by the operation or may result from a lack of knowledge of what is involved in an agricultural operation. While not specifically an area where the state or federal authorities may become involved, court actions can be brought against the operation. These actions are usually based on a nuisance theory, and in some cases, a right-to-farm defense may apply.

³⁸ TENN. CODE ANN. § 43-14-201 *et seq.*

³⁹ TENN. CODE ANN. § 67-5-10001 *et. seq.*

Under the Tennessee Right to Farm Act,⁴⁰ a farming operation is presumed not to be a nuisance unless::

- based on expert testimony the operation does not conform to accepted agricultural practices.
- the farm alleged to cause the nuisance does not comply with applicable statutes and regulations administered by TDEC or TDA.

“New operations” are those operations that existed one year or more prior to the filing of a nuisance. It is a rebuttable presumption that such operations are not nuisances unless a preponderance of evidence demonstrates that the operations do not conform to accepted agricultural practices or in non-compliance with regulations of TDEC or the TDA.

Producers Note: The Tennessee Right to Farm Act mandates that farmers still comply with title 44, chapter 18, which governs feedlots, dairy farms, and egg production houses.

E. Tennessee Plant Pest Act⁴¹

TDA administers rules and regulations to prevent the introduction of insect pests, pest plants, or plant diseases into the state, and to eradicate and/or suppress and control such insect pests, pest plants, or plant diseases. The Department is authorized to engage in investigations, inspection, treatment, eradication, and quarantine of plant materials, facilities, and equipment as may be necessary

⁴⁰ TENN. CODE ANN. § 43-26-101 *et. seq.* (1997).

⁴¹ TENN. CODE ANN. § 43-6-101 *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

Hogan Road
P.O. Box 40627
Nashville, TN 37204
(615) 837-5117
<http://www.state.tn.us/agriculture/>

Commerce and Insurance Department

Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243-0565
(615) 741-2241
<http://www.state.tn.us/commerce/>

Department of Environmental Conservation

Life and Casualty Tower, 21st Floor
401 Church Street
Nashville, TN 3724-0435
(615) 532-0109
<http://www.state.tn.us/environment/>

Department of Labor

710 James Robertson Parkway
Nashville, TN 37243-0655
(615) 741-2582
<http://www.state.tn.us/labor-wfd/>

Department of Transportation

700 James K. Polk Blvd.
Nashville, TN 37243-0349
(615) 741-3011
<http://www.tdot.state.tn.us>

Wildlife Resources Agency

P.O. Box 40747
Nashville, TN 37204
(615) 781-6500
<http://www.state.tn.us/twra/>

