

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

National Center for Agricultural Law Research and Information

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

Natural Resources Conservation Service

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

U.S. Environmental Protection Agency

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

Disclaimer

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

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The contents and views expressed in this guide are those of the authors and do not necessarily reflect the policies or positions of the United States Department of Agriculture (USDA) NRCS or EPA.

Although every effort has been made to ensure the accuracy of the information contained in this book, environmental statutes, regulations, and ordinances are constantly changing. In addition, the overwhelming complexity and extent of environmental law make it impossible for a single book to describe in complete detail and depth all of the environmental laws and regulations impacting agricultural operations. The following material is simply a basic primer on environmental law for agricultural producers. For these reasons, the utilization of these materials by any person constitutes an agreement to hold harmless the authors, the National Center for Agricultural Law Research and Information, the University of Arkansas, the United States Department of Agriculture, the National Association of State Departments of Agriculture Research Foundation, the Natural Resources Conservation Service, and the United States Environmental Protection Agency for any liability, claims, damages, or expenses that may be incurred by any person or organization as a result of reference to, or reliance on, the information contained in this book.

The background research and final documents were completed in October 2000. Updates of the information contained in the guide will occur on an annual basis and be made available on the internet.

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

Quick Reference Guide

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

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 1-5</i>	Livestock and aquaculture operations, depending on size	VPDES or VPA	VA Department of Environmental Quality (DEQ) and Environmental Protection Agency (EPA)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit & VWP permit, VMRC permit	DEQ; VA Marine Resources Commission; U.S. Army Corps of Engineers, local wetlands board
	Nonpoint source pollution	No permit but may require agricultural stewardship measures	VA Department of Agriculture and Consumer Services (VDACS)
Groundwater <i>pp. 6</i>	Groundwater protection	Groundwater withdrawal permit in certain areas	DEQ
Air Quality <i>pp. 7-8</i>	Grain terminals and grain elevators, other stationary sources	Permit required	DEQ or local air control agency
	General agricultural operations including odor, dust, or flies	Generally does not require a permit, but subject to air quality standards	DEQ or local air control agency
	Burning	Agricultural burning generally does not require permit, but subject to requirements	DEQ

Regulatory Area	Type of Activity	Permit Required	Agency
Solid Waste and Hazardous Waste <i>pp. 8-11</i>	Storage, treatment, or disposal of solid waste	No permit required for disposal of most agricultural wastes	DEQ
	Storage, treatment, or disposal of hazardous waste	Permit required	DEQ & EPA
Pesticides and Chemigation <i>pp. 11-12</i>	Sale, distribution, & transport of pesticides	Registration, license	DOA
	Application of pesticides	License restrictions, special requirements, record keeping	DOA
	Disposal of pesticide containers	Special requirements & licenses	DEQ & DOA
Wildlife Protection <i>pp. 12-13</i>	Taking of wildlife, endangered, threatened species	Permit required or licenses required; some absolute prohibitions	U.S. Fish and Wildlife Service; VA Department of Game & Inland Fisheries, VDACS

ENVIRONMENTAL LAWS AFFECTING VIRGINIA 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. Virginia Water Quality Laws and Regulations

1. Overview

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.

2. Virginia Water Quality - The Chesapeake Bay Preservation Act

Virginia has passed legislation to improve and protect water quality and the overall aquatic environment of the Chesapeake Bay.¹ This legislation complements that passed by Maryland,

¹ Virginia §§ 10.1-2100 *et seq.*, §§10.1-2117 *et seq.*, §§10.1-2125 *et seq.*, §§ 62.1-44.2 *et seq.*, §§62.1-44.15 *et seq.*, §§62.1-44.34:8 *et seq.*, §§ 62.1-254 *et seq.* (2000); and Virginia Admin. Code 9 VAC 25-10-10 *et seq.*

Pennsylvania and the District of Columbia. A primary objective of the Chesapeake Bay Preservation Act (CBPA) is the reduction of nonpoint source pollution flowing into the Bay and particularly the reduction of the quantity of nutrients from nonpoint sources. The CBPA requires local governments in Tidewater Virginia² to adopt land use regulations to protect the Chesapeake Bay.

The majority of Virginia agricultural operations are located within the Chesapeake watersheds. Some operations will be subject to special requirements under the CBPA. These may include local land use controls.

Producer Note: Farmers and Ranchers should consult with DEQ, the Virginia Marine Resources Commission and local government agencies as to any special CBPA requirements that may apply to their operations.

Virginia law also contains a general pollution discharge prohibition.³ It is illegal to discharge waste or any “noxious or deleterious substances” into Virginia waters or to place in waters any substance which may contaminate or impair the lawful use or enjoyment of Virginia waters except as permitted by law.

3. *Virginia Pollution Discharge Elimination System (VPDES) Permits*

EPA has delegated the National Pollutant Discharge Elimination System (NPDES) program under the federal Clean Water Act to Virginia. The Virginia Department of Environmental Quality (DEQ) and the State Water Control Board (SWCB) administer this program for point source discharges and call it the Virginia Pollutant Discharge Elimination System (VPDES).⁴

A VPDES permit is required for any discharge of pollutants into Virginia surface waters from a pipe or ditch. This would include discharges from a concentrated animal feeding operation (CAFO) or other agricultural operation where pollutants are discharged through a pipe or ditch. This would not include return flow from irrigation or runoff from fields, pastures, and orchards.

² Tidewater Virginia is defined as the counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond Spotsylvania, Stafford, Surry, Westmoreland, and York and the cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg. Virginia Code § 10.1-2101(Michie 1998).

³ Virginia Code § 62.1-44.5 and § 62.1-44.19.4 (Michie 1998).

⁴ Virginia Code §§ 62.1-44.15 to 44.30 (Michie 1998); Virginia Admin. Code 9 VAC 25-31-10 *et seq.*

This would also not include proper land application of certain pollutants such as manure, sewage effluent, or sewage sludge when permitted under other state laws and programs.

There are three categories of VPDES permits:

- ! Major - discharges of one million gallons per day or greater;
- ! Minor - discharges of less than one million gallons per day;
- ! General - discharges of small volumes of low potency pollutants (see below).

Other than VPDES permits, Virginia has three additional permits which relate to the prevent pollution of surface waters: no discharge permits, general permits, and permits-by-rule.

a. No Discharge Permits

Virginia law requires a different type of permit for operations that manage pollutants without discharging them to surface waters. This no discharge permit is called a Virginia Pollution Abatement (VPA) permit and is also issued by DEQ.⁵ VPA permits may be required for the land application of manure and sewage sludge and for CAFOs that do not discharge wastes to surface waters through a pipe or ditch. VPA permits are not required, however, for runoff from fields, pastures, and orchards or for land application of pollutants permitted under other state laws and programs.

b. General Permits

General permits are a type of VPDES and VPA permits. General permits are "umbrella" permits that impose uniform requirements for a specific category of facility or operations. They are used in place of individual permits for those facilities or operations.

DEQ has adopted a general permit for concentrated animal feeding operations (CAFO).⁶ CAFO's with 300 or more animal units are covered by the general permit. The 300 animal unit is the equivalent of 300 beef cattle, 200 mature dairy cattle, 750 swine weighing over 55 pounds, 150 horses or 3,000 sheep. To be covered by the general permit, a CAFO operator must file a registration statement with DEQ describing the facility. The operator must also provide a letter from the Virginia Department of Conservation and Recreation approving an animal waste nutrient management plan for the operation.

⁵ Virginia Code § 62.1-44.17 (Michie 1998); Virginia Admin. Code 9 VAC 25-32-10 *et seq.*

⁶ Virginia Code § 2.1-44.17.1(Michie 1998).

The general CAFO permit contains a number of requirements. These include:

- ! Compliance with nutrient management plans;
- ! Setback requirements between (manure) spray fields and dwellings, wells, and surface water;
- ! Certification of lagoon design and construction by a professional engineer;
- ! Annual DEQ inspections;
- ! Animal waste and soil nutrient monitoring by the operator;
- ! Groundwater monitoring in high groundwater areas;

A CAFO that fails to register under the general permit or violates the terms of the general permit may be required to obtain an individual permit for the operation. Not having a permit at all will result in a civil fine or criminal prosecution under Virginia law. All CAFOs with 300 or more animal units were required to be registered by July 1, 2000.

c. Permits-By-Rule

Permits-by-rule are another type of VPDES and VPA permit. DEQ uses permits-by-rule for categories of facilities and operations that have very simple permit requirements and that DEQ determines pose a minimal threat to the environment. With some permits-by-rule, the applicant is deemed to have a permit when certain required information is filed with DEQ. In other cases, the applicant is deemed to have a permit when DEQ acknowledges receipt of the required information. DEQ has recently adopted a permit-by-rule for concentrated aquatic animal production facilities.⁷

4. Virginia Wetlands and Waterways

Any project or activity that requires a federal permit for the discharge of dredged material or fill in a wetland or a waterway also requires a Virginia Water Protection (VWP) permit under Virginia law.⁸ DEQ issues such permits. The federal permit will not be issued if a VWP permit has not been obtained.

⁷ Virginia Admin. Code 9 VAC 25-195-10 *et seq.*

⁸ Virginia Code § 62.1-44.15 and §§ 62.1 - 44.2 *et seq.* (Michie 1998); Virginia Admin. Code 9 VAC 25-210-10 *et seq.*

A separate permit must be obtained from the Virginia Marine Resources Commission (VMRC) for any construction, dredging, dumping, or filling in or of the ocean, bays, rivers, streams, creeks, and tidal wetlands whether a federal permit is required or not.⁹ In some parts of the state, approval by a local wetlands board is also required. There is a joint application process for obtaining all permits.

Producer Note: Agricultural producers are urged to consult with DEQ to determine the specific permit requirements that apply to their operations.

5. *Virginia Nonpoint Source Pollution*

The primary legal mechanism for controlling agricultural nonpoint source pollution in Virginia is found in the Agricultural Stewardship Act (ASA).¹⁰ Nonpoint sources include runoff from fields, pastures, and orchards. The ASA addresses sediment, nutrients, and toxins contained in such runoff. The ASA does not apply to discharges and pollutants that are regulated by a VPDES, VPA, or other permit issued by DEQ. It also does not apply to forestry activities, air pollution, or odors.

Under the ASA, any person may make a complaint to the Commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS) that an agricultural activity is creating or is likely to create pollution. The Commissioner or, upon the Commissioner's request, the directors of the local soil and water conservation district then investigate the validity of the complaint.

If the complaint is determined to be valid, VDACS gives the agricultural owner or operator sixty days in which to submit an agricultural stewardship plan containing measures to prevent or cease the pollution. These stewardship measures must be approved by VDACS. Stewardship measures are defined in the ASA to include:

- ! Best available nonpoint pollution control methods, technologies, processes, siting criteria, operating methods, or other alternatives; and
- ! Agricultural water quality protection best management practices.

The owner or operator must begin implementing the approved agricultural stewardship plan within six months. The ASA provides for enforcement procedures and penalties for owners and operators who fail to submit or implement the stewardship plan.

⁹ Virginia Code §§ 28.2-1200 to 1400 and §§ 62.1-44.2 *et seq.* (Michie 1998).

¹⁰ Virginia Code §§ 10.1-559.1 *et seq.* (Michie 1998).

II. GROUNDWATER

A. Virginia Groundwater Laws and Regulations

The Virginia Groundwater Management Act (GMA)¹¹ addresses both groundwater quantity and quality. The GMA authorizes the State Water Control Board (SWCB) to designate ground water management areas whenever:

- ! Groundwater levels in the area are declining or expected to decline;
- ! Wells of two or more groundwater users substantially interfere with each other;
- ! Available groundwater supply has or may be overdrawn; or
- ! Groundwater in the area has or may become polluted.

The GMA requires that a water user obtain a groundwater withdrawal permit before withdrawing groundwater in a ground water management area. No permit is required, however, for withdrawals of less than 300,000 gallons per month.

The SWCB may deny or revoke a permit or place limitations on the amount of the water to be withdrawn if:

- ! The withdrawal would take more water than needed for the beneficial use;
- ! The proposed uses of groundwater are in conflict;
- ! The available supplies are insufficient for all who desire to use them;
- ! The withdrawal would endanger the maximum safe supply of groundwater; or
- ! The activity for which the permit was issued endangers human health or the environment.

¹¹ Virginia Code §§ 62.1-254 to 270 (Michie 1998).

III. AIR QUALITY

A. Virginia Air Quality Laws and Regulations

1. *Virginia Air Emissions From Agricultural Operations*

Virginia law charges the Department of Environmental Quality (DEQ) and the Virginia Air Pollution Control Board with regulating air quality in the state.¹² In general, stationary sources of air pollution require a permit from DEQ before constructing, operating, replacing, or relocating any equipment or process which may cause air pollution. New sources require both a construction permit and an operating permit while existing sources require just an operating permit. There are special requirements for hazardous and toxic air emissions and for mobile air pollution sources

Currently, few agricultural operations require air quality permits. Possible exceptions may be on-farm incinerators and grain elevators. However, DEQ has adopted air quality standards for fugitive dust¹³ and for odors.¹⁴ In theory, these standards apply to agricultural activities such as land clearing, cultivation, and CAFOs. Enforcement of these standards against agricultural operations has been limited in the past. Producers are likely to see an increase in enforcement in the future.

The fugitive dust standard requires that operators take reasonable precautions to prevent particulate matter from becoming airborne. The odor standard prohibits odorous emissions that are “objectionable to individuals of ordinary sensibility.”

Producer Note: Farmers and ranchers should consult with DEQ if they have any doubt concerning air quality requirements that may apply to their operations.

2. *Open Burning*

As a general rule, Virginia law prohibits open burning.¹⁵ However, there are many exceptions to this rule. One exception is for agricultural practices approved by the Virginia Waste Management Board. Approved agricultural practices include:

¹² Virginia Code §§ 10.1-1300 *et seq.* (Michie 1998).

¹³ Virginia Code §§ 10.1-1307, 1308 (Michie 1998); Virginia Admin. Code 9 VAC 5-40-60 *et seq.*

¹⁴ Virginia Code §§ 10.1-1307, 1308 (Michie 1998); Virginia Admin. Code 9 VAC 5-40-130 *et seq.*

¹⁵ Virginia Code § 10.1-1308 (Michie 1998); Virginia Admin. Code 9 VAC 5-40-5620 *et seq.*

- ! Destruction of undesirable vegetation;
- ! Clearing orchards and orchard prunings;
- ! Destroying fertilizer and chemical containers;
- ! Denaturing seed and grain;
- ! Preventing loss from frost or freeze damage;
- ! Creating a favorable habitat for certain species; and
- ! Destroying strings and plastic ground cover after being used in growing staked tomatoes.

However, open burning may be employed for approved agricultural purposes only “in the absence of other means of disposal.” In addition, the burning must be at least 1000 feet from any occupied building on another property unless the occupants of the building have given prior approval, and the burning must be attended at all times.

Certain materials can never be disposed of by open burning. These include rubber tires, asphaltic materials, crankcase oil, impregnated wood, or other rubber or petroleum based materials.

IV. SOLID WASTE AND HAZARDOUS WASTE

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

A. Virginia 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. Virginia Disposal

Virginia's solid waste management laws impose requirements on solid wastes that do not qualify as hazardous waste (see discussion of hazardous waste below).¹⁶ These laws give the most attention to the regulation of public and private landfills. Solid waste law provisions that apply to agriculture¹⁷ include:

- ! A prohibition against disposing of solid waste in open dumps;
- ! Penalties for littering and for other improper disposal of solid waste on lands belonging to others;
- ! A prohibition against dumping or placing more than 100 waste tires on public or private property without a permit; however, up to 500 tires may be held or stored for bona fide uses related to the growing, harvesting, or processing of agricultural or forest products; and
- ! A prohibition against disposing of a lead acid battery except by delivering it to a battery wholesaler, a secondary lead smelter, or an authorized collection or recycling facility.

Wastes deemed to be hazardous are regulated to a greater extent than solid waste under both Virginia and federal law.¹⁸ Virginia has federal authorization to operate its own hazardous waste program under the federal Resource Conservation and Recovery Act (RCRA).

The Virginia definition of hazardous waste closely follows the federal definition. A hazardous waste is a waste which may:

- ! Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
- ! Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.

Hazardous wastes are more specifically defined in regulations adopted by the DEQ Commission and by EPA. The regulations also list specific substances determined to be hazardous

¹⁶ Virginia Code §§ 10.1-1400 *et seq.* (Michie 1998).

¹⁷ Virginia Code §§ 10.1-1408.1, 1418.1, 1418.2, 1425.1 (Michie 1998).

¹⁸ Virginia Code §§ 10.1-1400 *et seq.* (Michie 1998).

Producer Note: Virginia producers should check with the Department of Environmental Quality (DEQ) to determine whether any chemicals or other substances used in their operations are listed as hazardous and as to the regulatory requirements for any such substances.

Agricultural producers who generate or transport hazardous wastes are subject to extensive regulatory requirements under Virginia law. These include recordkeeping requirements, storage requirements, equipment, container and building standards, disposal restrictions, permit requirements, emergency planning, and personnel training. The extent of the regulation is determined by the degree of the hazard and the quantity of waste generated.

Certain substances used in agriculture have been excluded from the definition of hazardous waste. Irrigation return flows and point source discharges regulated under the federal Clean Water Act and Virginia law are specifically excluded as well as solid wastes generated from growing crops, harvesting crops, and raising animals (manure) that are returned to the soil as fertilizer. Pesticides are subject to special rules.

2. Virginia Underground Storage Tanks

Underground storage tanks (UST) are regulated by Virginia as well as federal law.¹⁹ Virginia law closely follows the federal requirements. DEQ is the agency responsible for USTs in Virginia.

A UST is defined as a tank or combination of tanks, used to contain regulated substances, with at least 10% of its volume below the ground. A regulated substance includes petroleum products as well as hazardous substances.

Home heating oil tanks and septic tanks are not covered by the law. Also not covered are tanks located on farms and at residences that are not more than 1100 gallons in size and that are used to store motor fuel for non-commercial purposes.

For tanks that are covered, the law imposes a number of requirements. These include:

- ! Reporting releases and spills from the tanks;
- ! Leak detection systems;
- ! Record keeping;
- ! Design and performance standards;

¹⁹ Virginia Code §§ 3.1-249.56 (Michie 1998).

- ! Remediation requirements;
- ! Closure requirements; and
- ! Financial assurance requirements.

Requirements differ for new versus existing tanks.

Producer Note: Producers should consult with DEQ regarding specific requirements for any of their tanks that are covered by the law.

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. Virginia Pesticide and Chemigation Laws and Regulations

Producer Note: Virginia, 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.

Agricultural producers disposing of hazardous waste pesticides from their own use are not required to comply with most hazardous waste law requirements provided they triple rinse each emptied pesticide container and dispose of the pesticide residues on their own farm in a manner consistent with the disposal instructions on the pesticide label.²⁰ In addition, the producer must comply with regulations concerning the disposal of pesticide containers.

Warning: Certain listed hazardous waste pesticides may be subject to additional requirements. Farmers and ranchers must consult with VDAC's Office of Pesticide Services for the regulatory requirements applicable to specific pesticides.

²⁰ 40 C.F.R. § 262.70.

Virginia also regulates pesticides in other ways. The Virginia Pesticide Control Act²¹ requires that all pesticides distributed, sold, transported or offered for sale within the state be registered with the Virginia Department of Agriculture and Consumer Services (VDACS). It is illegal to sell, distribute, or transport unregistered pesticides. VDACS enforces pesticide labeling requirements as part of the registration process. Other pesticide rules include:

- ! Prohibitions and restrictions on the use of any highly hazardous pesticide which affects the quality of the environment or the health and safety of individual users, non-target species, or a geographic area;
- ! Pesticide distribution and retail sales licenses;
- ! Minimum requirements and certification requirements for pesticide applicators;
- ! Record keeping requirements regarding pesticide use; and
- ! Permitting requirements for the use of experimental pesticides.

Virginia law requires a report to be filed with the appropriate governmental agencies on all significant pesticide accidents or incidents which constitute a threat to humans or the environment. A claims procedure can be followed by any person claiming damages from the application of any restricted use pesticide. Claims must be filed with VDACS within 60 days of the date the damage occurred. In the case of growing crops that have been damaged, a claim must be filed prior to the time that 25% of the crop has been harvested. VDACS will notify the applicator or owner of the property of the claim, inspect the damage, and make its findings available to the parties. However, the failure to file a claim with VDACS shall not prohibit the filing of a criminal action or civil lawsuit related to the pesticide damage.²²

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.

²¹ Virginia Code § 3.1-249.56 (Michie 1998).

²² Virginia Code § 3.1-249.56 (Michie 1998).

A. Virginia 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. Virginia has laws protecting wildlife.

Virginia has enacted a variety of laws to protect wildlife and to regulate their harvesting in the state. These laws may affect agricultural activities. Most of these laws are administered by the Department of Game and Inland Fisheries.²³

Virginia law prohibits the taking, transportation, processing, or sale of any fish or wildlife listed as endangered or threatened under the federal Endangered Species Act and of any endangered or threatened fish or wildlife in Virginia not included on the federal list.²⁴

Virginia has a separate Endangered Plant and Insect Species Act²⁵ administered by VDACS. This law makes it illegal for any person to dig up, take, collect, possess, or sell any plant or insect species that has been listed by VDACS as endangered or threatened, except in accordance with rules and regulations of VDACS. These prohibitions generally do not apply to plants and insects obtained from a person's own land. The act specifically identifies wild ginseng as a threatened species and Virginia birch as an endangered species.

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.

²³ See generally Virginia Code, Title 29.1 (Michie 1998).

²⁴ Virginia Code §§ 29.1-563 *et seq.* (Michie 1998).

²⁵ Virginia Code §§ 3.1-1020 *et seq.* (Michie 1998).

VIII. OTHER VIRGINIA 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 Virginia.

A. Virginia Farmland Preservation

1. Virginia Zoning and Planning

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.

Virginia's zoning legislation²⁶ authorizes counties and municipalities to divide their jurisdictions into zones and to permit or restrict the uses of land and structures within each zone. However, production agriculture or silviculture activities, located in an agricultural district, do not require a special use permit. Production agriculture and silviculture activities include the production or harvesting of agricultural or silviculture products but do not include the processing of the products or the above-ground application or storage of sewage sludge.

Additionally, while local governing bodies can adopt setback requirements, minimum area requirements and other requirements for agricultural operations within an agricultural district, local governments cannot unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district unless the restriction is related to matters involving public health, safety, and general welfare.²⁷

2. Virginia Conservation Easements

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

²⁶ Virginia Code §§ 15.2-2200 *et seq.* (Michie 1998).

²⁷ Virginia Code § 3.1-22.28 (Michie 1998).

The Virginia Conservation Easement Act (VCEA)²⁸ provides for the conveying of nonpossessory interests in land for the purposes of:

- ! Retaining or protecting natural or open-space values of real property;
- ! Assuring the availability of real property for agricultural, forestry, recreational, or open-space use;
- ! Protecting natural resources;
- ! Maintaining or enhancing air or water quality; and
- ! Preserving the historical, architectural, or archaeological aspects of real property.

Under VCEA, a conservation easement can be acquired by a charitable corporation, charitable association, or charitable trust through gift, purchase, devise, or bequest, and unless specified otherwise, the easement is perpetual in duration. Furthermore, once created the easement is valid even though:

- ! It is not appurtenant to an interest in real property;
- ! It can be or has been assigned to another holder;
- ! It is not of a character that has been recognized traditionally by common law;
- ! It imposes a negative burden;
- ! It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- ! The benefit does not touch or concern real property; or
- ! There is no privity of estate or of contract.

²⁸ Virginia Code §§ 10.1-1009 *et seq.* and §§ 10.1-1801 *et seq.* (Michie 1998).

B. Virginia Nuisance and Right-To-Farm

Producer Note: Many producers are confronted with concerns of local residents. These problems may originate from dust, odor, or insects generated by the operation. While not specifically an area where 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.

1. Virginia Nuisance

In Virginia, a nuisance encompasses everything that endangers life or health or obstructs the reasonable and comfortable use of property. The nuisance can be a public nuisance if it is a danger to the public, or it can be a private nuisance if it unreasonably interferes with the use and enjoyment of another's property.²⁹

2. Virginia Right-To-Farm

Virginia's Right-To-Farm statute³⁰ restricts the ability of neighboring land owners to bring a nuisance action against an agricultural operation for noise, dust, odors, or insects. To receive this protection, the operation must use the best existing management practices and comply with existing laws and regulations. However, protection does not exist when:

- ! An agricultural operation operates in a negligent or improper manner; or
- ! An agricultural operation pollutes or changes the conditions of the waters of any stream or causes an overflow to occur on neighboring lands.

C. Virginia Dead Animal Disposal

Generally, Virginia law requires the owner of any dead animal or fowl to immediately bury or cremate the remains.³¹ If the owner fails to properly dispose of the animal or fowl after notice by the district court, the court can designate an officer or other person to handle the disposal. The cost associated with the disposal are recoverable from the owner. Violators are guilty of a Class 4 misdemeanor.

²⁹ Cathryn Hutchinson v. The Richmond Metropolitan Authority, 1996 WL 1065534 (Va. Cir. Ct. 1996) (*citing* Taylor v. City of Charlottesville, 240 Va 367 (1990); Barnes v. Quarries, Inc. 132 S.E. 2d 395 (1963).

³⁰ Virginia Code §§ 3.1-22.29 (Michie 1998).

³¹ Virginia Code § 18.2-510 (Michie 1998).

D. Virginia Noxious Weeds

Virginia controls noxious weeds through its Noxious Weed Law (NWL).³² Under the NWL, the Board of Agriculture and Consumer Services is empowered by regulation to designate which weeds will be deemed noxious weeds. A noxious weed is any living plant declared to be injurious to public health or the economy or detrimental to other desirable plants, crops, surface waters, livestock, land, or property. Once the Board makes a designation, the Commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS) becomes responsible for the eradication, suppression, and prevention of noxious weed dissemination.

Furthermore, for any noxious weed, the Commissioner is authorized to treat, seize, destroy, stop sale, stop delivery, or order its return to the point of origin. The owner of the noxious weed or the premises on which any noxious weed is located is responsible for the expenses involved in disposing of the weed. Violators can be punished as a Class 1 misdemeanor.

³² Virginia Code §§ 3.1-296.11 *et seq.* (Michie 1998).

Appendix - 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.

State Agencies:

Virginia Cooperative Extension Service

College of Agriculture and Life Sciences
Virginia Polytechnic Institute and State University
101 Hutcheson Hall
Blacksburg, VA 24061-0402
(703) 231-9892

Virginia Department of Agriculture and Consumer Services

P.O. Box 1863
1100 Bank Street
Richmond, VA 23218
(804) 786-2373
<http://www.vdacs.state.va.us>

Divisions (4):

Commissioner's Office

(804) 786-3501
(804) 371-2945 fax

Division of Marketing

(804) 786-3951

Division of Animal Industry Services

(804) 786.2483
(804) 371-2380 fax

Division of Consumer Protection

(804) 786-3523
(804) 371-7479 fax
(800) 552-9963 toll free

Program Offices:

Office of Consumer Affairs

(804) 786-2042
(804) 371-7479 fax

Office of Dairy & Foods

(804) 786-8899
(804) 371-7792 fax

Office of Meat & Poultry

(804) 786-4569
(804) 371-2380 fax

Office of Pesticide Services

P. O. Box 1163

Richmond, VA 23218

(804) 786-3515

(804) 371-8589 fax

Pesticide Emergencies:

Spills

(800) 424-9300 toll free

Incidents

(804) 371-6560

Office of Plant & Pest Services

(804) 786-3515

(804) 371-7793 fax

Office of Product & Industry Services

(804) 786-2476

(804) 786-1571 fax

Virginia Department of Conservation & Recreation

203 Governor Street, Suite, 213
Richmond, VA 23219-2094

Virginia Department of Emergency Management

10501 Trade Court
Richmond, VA 23236
(804) 897-6510

Virginia Department of Environmental Quality

P. O. Box 10009
Richmond, VA 23240

or

629 East Main St.
Richmond, VA 23219

(804) 698-4000

(800) 592-5482 toll free

Emergency (800) 468-8892

<http://www.deq.state.va.us>

Programs (5):

Air Program

(804) 698-4311

Environmental Enhancement

(804) 698-4003

Pollution Prevention

(804) 698-4374
Waste Program
(804) 698-4421
Water Program
(804) 698-4108

Virginia Department of Game and Inland Fisheries

4010 West Broad St.
Richmond, VA 23230
Phone: (804) 367-1000
<http://www.dgif.state.va.us>

Virginia Department of Forestry

Fontaine Research Park
900 Natural Resources Drive, Suite 800
Charlottesville, VA 22903-0758
(804) 977-6555
(804) 296-2369 fax

Virginia Marine Resources Commission

P.O. Box 756
2600 Washington Ave.
Newport News, VA 23607-0756
(757) 247-2200
<http://www.state.va.us/mrc/homepage.htm>

Virginia Office of Pesticide Services

(Virginia Department of Agriculture & Consumer Services)
P.O. Box 1163
Richmond, VA 23218
(804) 371-6558
(804) 371-8598 fax

Pesticide Emergencies:

Spills
(800) 424-9300
Incidents
(804) 371-6560