

VIII. OTHER STATE 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 Utah.

A. Farmland Preservation

1. *Planning and Zoning*

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.

Utah does not specifically protect agricultural land from development, but one of the purposes of Utah's zoning law is to foster the state's agriculture.⁴⁸ Zoning is accomplished by a county-wide commission who adopt a plan for zoning all land within the county. The plan may include a land use element that designates the land into several uses such as industrial, business, residential, agricultural, or recreational. Some flexibility in the zoning plan is possible. Individuals are given the opportunity to appeal adverse zoning decisions and variances from the zoning ordinance if the ordinance causes an unreasonable hardship or if special circumstances apply.

2. *Agricultural Districting*

Utah also allows the formation of Agricultural Protection Areas.⁴⁹ These are defined as geographic areas where agricultural activities are given special protections. The county in which the area is located may not change the zoning designation of the land within the area unless all landowners give written approval for the change. In addition, as long as the agricultural activities within the area are conducted according to sound agricultural practices and do not violate federal or state laws, the activities are protected from nuisance suits.

3. *Conservation Easements*

Producer Note: Many states have passed 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.

⁴⁸ UTAH CODE ANN. § 17-27-102 *et seq.* (1995).

⁴⁹ UTAH CODE ANN. § 17-41-101 *et seq.* (1995).

A conservation easement⁵⁰ is a tool used by state and local governments to place restrictions upon the types of activities and uses to which land may be put, with conservation, or more appropriately, preservation, the primary purpose. A conservation easement is a nonpossessory interest of a holder in real property imposing limitations of affirmative obligations, with purposes that include:

- Retaining or protecting natural scenic, or open-space values of real property;
- Assuring its availability for agricultural, forest, recreational, or open-space use;
- Protecting natural resources;
- Maintaining or enhancing air or water quality; or
- Preserving the historical, architectural, archeological, or cultural aspects of real property.

The granting of the easement is most often accompanied by the granting of some sort of compensation for the easement. Utah requires that the easement be in writing and recorded in the office of the county recorder where the property is located.

B. Nuisance and Right-to-Farm

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.

1. Nuisance

A nuisance is defined in Utah as anything which is so injurious to health, offensive to the senses, or such an obstruction to the free use of property that it interferes with the comfortable enjoyment of life or property.⁵¹ Any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, can bring a lawsuit to stop the nuisance and may

⁵⁰ UTAH CODE ANN. § 57-18-1 *et seq.* (1994).

⁵¹ UTAH CODE ANN. § 78-38-1 *et seq.* (1995).

also recover money damages for the effect of the nuisance. Generally, an object or activity will not be considered a nuisance if the act or activity is reasonable under the circumstances.

2. *Right-to-Farm Laws*

Utah has enacted a right-to-farm⁵² statute which says that agricultural operations that are consistent with sound agricultural practices are presumed to be reasonable and do not constitute a nuisance unless the agricultural operation has a substantial adverse effect on the public health and safety. In addition, agricultural operations undertaken in conformity with federal, state, and local laws and regulations, including zoning ordinances, are presumed to be operating within sound agricultural principles. The importance of the presumption that agricultural operations are reasonable lies in the fact that nuisance liability generally is based on an examination of what is reasonable under the circumstances for a given use of property.

C. **Livestock Waste Management**

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

1. *Lagoons*

Utah requires that all animal operations have a permit if they are using anaerobic lagoons to control wastes.⁵³ A construction permit for building the wastewater lagoon facilities must be obtained from the Utah Division of Water Quality (DWQ) within the Department of Environmental Quality (DEQ). DWQ has prepared an informational pamphlet on construction of Utah animal waste lagoons which all livestock operators are strongly urged to consult.⁵⁴ The informational pamphlet contains a summary of all pertinent regulations applicable to the use of lagoons for livestock waste management.

2. *Land Application of Waste*

Animal waste may be applied to farmland in Utah. DWQ recommends that the applicator consult with NRCS and follow their guidelines for land application of animal waste. DWQ recommends soil tests and tests of manure samples be conducted so that nutrient levels

⁵² UTAH CODE ANN. § 78-38-7 *et seq.* (1995).

⁵³ UTAH ADMIN. R. R317-3.

⁵⁴ UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY ET AL., UTAH ANAEROBIC ANIMAL WASTE LAGOONS (1993).

can be ascertained. The wastes may then be applied in a manner which will not lead to the over-application of nutrients like nitrogen and phosphorous.

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 producer's potential defenses in nuisance actions or to aid the producer when defending against alleged permit violations. While these recommendations do not have the force of law that agency regulations have, compliance with them will generally aid the producer.

D. Noxious Weeds

Utah has enacted the Utah Noxious Weed Act to control noxious weeds.⁵⁵ Noxious weeds are any plants that the Commissioner of the Department of Agriculture determines to be especially injurious to public health, crops, livestock, land, or other property. The Commissioner of Agriculture has the authority to promulgate and enforce rules and regulations necessary to control noxious weeds. Those rules and regulations include maintaining a noxious weeds list.

Counties are authorized to set up local Weed Control Boards. The Boards are responsible for developing and implementing a county wide noxious weed control program designed to control noxious weeds within the county.

E. Soil and Water Conservation Districts

1. Water Conservation Districts

Utah allows the formation of Water Conservation Districts.⁵⁶ The purpose of the districts is to help conserve, develop, and stabilize water supplies for domestic, irrigation, power, and other beneficial uses. The districts may be organized within a single county or may overlap into more than one county. The districts have a number of powers relating to water usage, including the right to sell water and to construct and operate water delivery or water storage systems. Generally, the districts are created by filing a petition supported by a specific percentage of the residents within the area of the district with the local clerk's office of the court where the district will be located.

⁵⁵ UTAH CODE ANN. § 4-17-1 *et seq.* (1996).

⁵⁶ UTAH CODE ANN. § 17A-2-1401 *et seq.* (1996).

2. *Soil Conservation Districts*

Utah also allows the formation of Soil Conservation Districts.⁵⁷ Districts have broad powers, which include those relating to implementation of measures for controlling erosion. Generally, the districts are organized by 25 or more land occupiers signing a petition and filing the petition with the Utah Soil Conservation Commission. The Soil Districts are given the same power as a political subdivision and may enter into contracts in the name of the district.

F. Aquaculture

Utah has enacted an Aquaculture Act⁵⁸ which regulates the cultivation of aquatic animals. A certificate of registration issued by the Utah Department of Agriculture is required to operate an aquaculture facility. An aquaculture facility means any tank, canal, raceway, pond, off-stream reservoir, or other structure used for cultivating any aquatic animal. The Wildlife Board and Division of Wildlife Resources have enacted regulations determining which aquatic animals can be imported into the state, as well as regulations designed to prevent the outbreak of disease among aquatic animals.

Unless authorized by permit, a person may not import aquatic animals or transport aquatic animals within the state. In addition, a person may not harvest, transfer, or sell aquatic animals without a permit.

G. Dead Animal Disposal

If an animal dies on a person's premises from contagious, infectious, or communicable diseases, it must be disposed of by burning or burying the carcass within 24 hours.⁵⁹ Animals that die from other causes must be disposed of within two days.

H. Environmental Audits

Producer Note: Several states have passed environmental audit protection laws which give businesses an immunity from the use of environmental audit findings in administrative, civil, or criminal actions against the business for environmental problems found and corrected. In other words, businesses cannot be prosecuted, civilly or criminally, for environmental problems they found and corrected in a self-audit process. Fewer than half of the states have this type of law. Utah has granted this type of protection.

⁵⁷ UTAH CODE ANN. § 17A-3-800 *et seq.* (1991 & Supp. 1996).

⁵⁸ UTAH CODE ANN. § 4-37-101 *et seq.* (1995).

⁵⁹ UTAH CODE ANN. § 4-31-12 *et seq.* (1995).

In an effort to ensure voluntary compliance with Utah's environmental laws, the state has enacted a law which encourages compliance through an audit process. At the same time, the law ensures that those efforts will not be used against the person who prepares the audit.⁶⁰ The act allows an environmental self-evaluation to be made. An environmental self-evaluation means a self-initiated assessment that is performed to determine if the person is in compliance with environmental laws. Information learned in the self-evaluation is privileged and cannot be disclosed in an administrative or judicial proceeding unless the person who requested the self-evaluation authorizes the disclosure.

Caution: Some federal courts have concluded that state environmental audit protection laws do not bind the federal government, particularly in criminal actions. All producers should confer with an attorney, consultant, or advisor before engaging in an environmental audit.

⁶⁰ UTAH CODE ANN. § 19-7-101 *et seq.* (1995).