

Environmental Protection Programs Applicable to Modern Agriculture

Prepared by:

*Anthony D. Kanagy
Legal Research Assistant
The Agricultural Law Research and Education Center*

September 1, 1999

The purpose of this publication is to provide a very general overview of the environmental regulatory laws and incentive programs that apply to agriculture. The publication is not intended to provide an in depth analysis of each statutory program but rather to notify readers that these Acts exist and to provide a basic overview of the purpose of each one so that readers may be able to determine if the law applies to their situations. The material is general and educational in nature and is not intended to be legal advice. If you need legal advice, you are encouraged to seek the aid of a competent professional in your area.

FEDERAL REGULATORY PROGRAMS

1. The Clean Water Act. 33 U.S.C. §§ 1251 et. seq.

The Clean Water Act serves to restore and maintain the purity of the waters of the United States by regulating the discharge of pollutants into these waters. The Act provides that the Administrator of the EPA shall establish national programs for the prevention, reduction, and elimination of pollution. The Administrator is also responsible for setting standards, enforcement, and issuing permits and licenses under the Act; however, the Act allows the Administrator to approve State regulation of permits.

Under the Clean Water Act, before a person may discharge a pollutant into the waters of the United States from a point source, they are required to obtain NPDES permits. Point sources of pollution are direct sources of pollution and include pipes, ditches, channels, tunnels, conduits, and containers. Nonpoint sources of pollution are less direct forms of pollution and include land run-off after a storm and percolation into water sources. Most forms of agricultural pollution can be classified as coming from nonpoint sources.

One other major point source is a concentrated animal feeding operation. By definition a concentrated animal feeding operation is an animal feeding operation that: 1. Has 300 or more animal units and discharges pollutants into the waters of the United States; or 2. Has 1,000 or more animal units.

In order to understand this definition, one must know what is meant by the terms "animal feeding operation" and "animal unit." An animal feeding operation is a facility that houses animals for 45 days or more in a 12 month period and does not grow crops in the area where the animals are housed. (Farmers that pasture their animals for more than 320 days a year would not be considered an animal feeding operation.) An animal unit consists of what normally is the weight of one slaughter or feeder cow. Specific procedures for calculating how many animal units are on a farm are included in 40 C.F.R. Part 122.

For the purposes of the Act, among other things, pollutants include dredged soil, solid waste, sewage, garbage, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste.

2. Federal Clean Air Act. 42 U.S.C. §§ 7401 et. seq.

The Clean Air Act protects and enhances the quality of the Nation's air by regulating air emissions from many different sources. The Act provides funding for research and development in addition to providing assistance to State and local governments for the purpose of developing their own air pollution programs.

The Act regulates particulate matter from grain terminal elevators that are larger than 2.5 million bushels and grain storage elevators that are larger than one million bushels, but has no special provision, at this time, for regulating agricultural odors from farming operations.

3. The Resource Conservation and Recovery Act (RCRA). 42 U.S.C. §§ 6901 et. seq.

The Resource Conservation and Recovery Act controls the generation, transportation, treatment, storage, and disposal of hazardous waste. Among other things the Act provides technical and financial assistance to State and local governments to improve solid waste management and provides grants for the design, operation, and maintenance of solid waste disposal systems.

The primary agricultural aspect of the Act is the regulation of farm or residential underground storage tanks that have a storage capacity greater than 1,100 gallons. (42 U.S.C. § 6991.)

4. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). 42 U.S.C. §§ 9601 et. seq. and, Superfund Amendments and Reauthorization Act (SARA). 42 U.S.C. §§ 9601 et. seq. and, The Emergency Planning & Community Right to Know Act (EPCRA). 42 U.S.C. §§ 11001 et. seq.

CERCLA serves to regulate the clean-up of closed and abandoned hazardous waste sites. Funding for the CERCLA program is provided by a tax on chemical and petroleum industries.

CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act (SARA). Among other things, SARA encourages that clean-up plans should focus on permanent remedies, requires that State and Federal laws be considered during clean-up, and increases State involvement in the CERCLA program.

CERCLA and SARA may apply to agricultural operations that are releasing or have released hazardous substances, to agricultural operations that are located on contaminated soil, and to those who improperly dispose of hazardous waste.

Title 3 of SARA is known as the Emergency Planning and Community Right to Know Act (EPCRA). EPCRA acts to encourage local communities to protect the public health and environment from dangerous chemicals. EPCRA directs each state to appoint, at the state level, a State Emergency Response Commission and, at the local levels, district planning committees to plan for and address potential chemical hazard problems.

5. EPA Worker Protection Standard. 40 C.F.R. §§ 170 et. seq.

The Worker Protection Standard for agricultural pesticides addresses the safety of the work environment for employees. The Worker Protection Standard includes warning requirements for pesticide application, entry restrictions for treated areas, decontamination procedures, and pesticide safety handling procedures. (40 C.F.R. § 170 et. seq.)

6. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). 7 U.S.C. §§ 135 et. seq., and Federal Food, Drug, and Cosmetic Act (FFDCA). 21 U.S.C. §§ 301 et. seq., and Food Quality Protection Act (FQPA). Public Law 104-170; 7 U.S.C. §§ 136 et. seq.

The Environmental Protection Agency regulates pesticides under both the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Under the FIFRA statute, the EPA registers pesticide use and provides labeling requirements. Under the FFDCA statute, the EPA sets maximum pesticide levels for foods. Up until the passage of the Food Quality Protection Act (FQPA), major inconsistencies existed between FIFRA and FQPA.

The FQPA remedies the inconsistencies by establishing a single health-based safety standard for pesticide residue levels in food. The FQPA amends FFDCA by adding special safety requirements for infants and children and requiring that tolerance levels be reviewed every ten years.

The FQPA amends FIFRA by requiring that pesticide registrations be reviewed on a fifteen year cycle and includes a special provision that speeds the review of safer pesticides in order to place them on the market faster. The FQPA also provides that the EPA may exempt state or federal agencies from FIFRA requirements in the event that emergency pest conditions exist.

STATE REGULATORY PROGRAMS

1. Pennsylvania Clean Streams Law. 35 P.S. 691.1 et. seq.

The Clean Streams Law authorizes the Department of Environmental Resources (DER) to adopt rules and regulations, establish policy and priorities, and issue orders and permits to prevent and stop the pollution of the waters of the Commonwealth. The Clean Streams Law prohibits sewage discharges, controls the discharge of industrial waste, and prohibits the discharge of other pollutants. The discharge of any substance causing pollution is defined as a nuisance.

Agricultural producers must be careful about what substances are placed in the waters of the Commonwealth because there is no exemption for agricultural activities under the Clean Streams Law. Furthermore, civil penalties may be assessed if the Law is violated.

2. Dam Safety and Encroachment Act. 32 P.S. §§ 693.1 et. seq.

The Dam Safety and Encroachment Act regulates dams and reservoirs located in the Commonwealth. This Act applies to many agricultural producers because dams are defined as any artificial barrier constructed for the purpose of storing water or any other fluid or semifluid. Because manure is often stored in a semifluid state, this Act applies to many manure storage structures.

Agricultural producers should contact the Department of Environmental Resources to determine if they need a permit for their manure storage structures.

3. Nutrient Management Act. 3 P.S. §§ 1701 et. seq.

The Nutrient Management Act serves to protect the environment by establishing nutrient management requirements. Under the Act, nutrients are defined as including: livestock and poultry manures, chemical fertilizers, and/or sewage sludge.

The Act requires that all Concentrated Animal Operations implement nutrient management plans in order to prevent and reduce environmental contamination. Under state law a Concentrated Animal Operation is one where the animal density exceeds two animal equivalent units per acre. An animal equivalent unit is 1,000 pounds of live weight of livestock or poultry animals.

Nutrient management plans are designed to protect surface and groundwater by managing: conservation tillage, crop rotation, soil testing, manure testing, diversions, manure storage facilities, storm water management practices, and nutrient applications.

4. Domestic Animal Law. 3 Pa.C.S.A. §§ 2301 et. seq.

The Domestic Animal Law was enacted in order to assure the health and welfare of animals kept in captivity and to address the waste disposal problems created by dead

animals. Under the Act a domestic animal is defined as any animal that is kept in captivity.

The Act requires that all owners of dead animal disposal businesses must get a license in order to operate their business. Licensing requirements are controlled by the Pennsylvania Department of Agriculture.

Further, the Act requires that farmers must dispose of dead domestic animals within 48 hours and must take measures to prevent the spread of possible diseases.

5. Flood Plain Management Act. 32 P.S. §§ 679.101 et. seq.

The Flood Plain Management Act was enacted in order to encourage planning and development in flood plains, protect people and property in flood plains, and to prevent and eliminate urban and rural blight.

Agricultural producers may be affected by the Act if they intend to build a manure storage structure in a flood plain. Again, agricultural producers should consult the Department of Environmental Resources before building any manure storage structure, especially if it is in a flood plain.

6. Solid Waste Management Act. 35 P.S. §§ 6018.101 et. seq.

The Solid Waste Management Act was enacted to control solid waste management. The Act requires permits for the operation of municipal and residual waste processing, commercial composting, and for hazardous waste storage, treatment, and disposal.

Permits are not required by the Act for normal farming operations as long as the farming operation does not pollute the air, water, or other natural resources of the State. However, the Act requires that any person who transports residual waste, which includes agricultural waste, must use methods that do not adversely affect or endanger the environment or the public health. The Act also requires that spills and accidental discharges be cleaned up.

7. Pennsylvania Air Pollution Control Act. 35 P.S. §§ 4001 et. seq.

The Pennsylvania Air Pollution Control Act allows the Department of Environmental Protection to regulate air pollution in the state. People may not construct or modify stationary air pollution sources without DEP approval.

At the present time the Act does not apply to air pollution arising from the production of agricultural commodities. The definition of the production of agricultural commodities is very expansive including: field crops, fruits, vegetables, livestock and livestock production, and the commercial production of compost to name a few.

8. Pennsylvania Pesticide Control Act of 1973. 3 P.S. §§ 111.21 et. seq.

The Pennsylvania Pesticide Control Act was enacted to regulate pesticides in the state. The Act imposes licensing and registration requirements in addition to providing application and disposal procedures for pesticides.

The Act has different requirements depending upon whether an applicator is classified as a certified applicator, a private applicator, or a commercial applicator. Farmers are able to apply pesticides on their own property if they undergo certification requirements set forth by the Department of Agriculture.

The Act provides that commercial applicators must undergo special training and must give notice to the public before applying pesticides. The Act also imposes potential fines and prison sentences for applicators who violate its provisions.

9. Municipal Planning Code.

Each municipality may have different regulations affecting the environment including: building permit requirements, land development or land use planning requirements, nutrient management ordinances, flood plain ordinances, and/or zoning ordinances.

53 P.S. § 10604 lists the zoning purposes that the state has set forth for local communities. This section states that zoning ordinance should be designed, among other things, to promote, protect, and facilitate the public health, safety, morals, and the general welfare. One specific function of zoning laws is to preserve prime agriculture and farmland considering topography, soil type and classification, and present use.

10. Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law. 3 P.S. §§ 68.1 et. seq.

The Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law provides labeling and registration requirements for fertilizers, soil conditioners, and plant growth substances. These substances must be registered with the Department of Agriculture before being offered for sale, before being sold, or before being distributed in the Commonwealth.

11. Noxious Weed Control Law. 3 P.S. §§ 255.1 et. seq.

The Noxious Weed Control Law was enacted to control the spread of noxious weeds in the Commonwealth. The list of noxious weeds currently includes marijuana, purple loosestrife, Canadian thistle, multiflora rose, Johnson grass, musk thistle, bull thistle, jimson weed, mile-a-minute, kudzu vine, and shattercane. Under the Noxious Weed Control Law it is illegal to sell, transport, plant, or otherwise propagate any noxious weeds. If a landowner has severe problems with noxious weeds, the Secretary of Agriculture may order the landowner to take control measures to solve the problem.

12. Storage Tank and Spill Prevention Act. 35 P.S. §§ 6021.101 et. seq.

The Storage Tank and Spill Prevention Act regulates aboveground and underground storage tanks in the Commonwealth. Regulations for aboveground tanks include: registration fees, tank inspection procedures, and inventory control measures. Regulations for underground tanks include: registration fees, leak detection procedures, minimum standards for construction, testing, corrosion, etc., and permit requirements.

Farm or residential tanks of less than 1,100 gallons are not covered by the Act if the tanks are used to store motor oil or fuel. Also, aboveground tanks that have less than an 1,100 gallon capacity are not regulated if they are used to store products for farm related uses.

The Act also provides money for cleaning up environmental problems that have resulted from underground storage tanks.

FEDERAL INCENTIVE PROGRAMS

1. Pollution Prevention Act. 42 U.S.C. §§ 13101 et. seq.

The primary goal of the Pollution Prevention Act is to prevent and reduce pollution at the source. In order to accomplish this goal, the Administrator of the EPA is ordered to develop and implement a source reduction strategy. Part of this strategy includes developing standard ways to measure source reduction and developing methods to improve public access to data.

The Act also authorizes the Administrator of the EPA to provide matching grants to states that develop programs which promote the use of source reduction techniques by businesses.

2. Environmental Conservation Acreage Reserve Program (ECARP). 16 U.S.C. §§ 3830 et. seq. Conservation Reserve Program (CRP). 16 U.S.C. §§ 3831 et. seq. Wetlands Reserve Program (WRP). 16 U.S.C. §§ 3837 et. seq. Environmental Quality Incentives Program (EQIP). 16 U.S.C. §§ 3839aa. et. seq.

The Environmental Conservation Acreage Reserve Program is designed to help owners of farms and ranches conserve and enhance soil, water, and other natural resources by providing technical and financial assistance to farmers. ECARP consists of the Conservation Reserve Program, the Wetlands Reserve Program, and the Environmental Quality Incentives Program.

The Conservation Reserve Program authorizes the Secretary of Agriculture to enter into 10 to 15 year contracts with landowners to conserve and improve the soil and water resources of the land. Only certain lands are eligible for the CRP program, and the owner of the land must meet specific requirements for the program. Some of these requirements include placing land in less intensive uses, not using land for agricultural purposes without approval from the Secretary, and establishing vegetative cover. Total payments to a farmer under this program may not exceed \$50,000 a year. The Wetlands Reserve Program is designed to help restore and protect the nation's wetlands. In order to preserve

and restore wetlands, the Secretary of Agriculture either buys permanent easements, buys 30-year easements, or enters into restoration cost-share agreements with farmers. Priority is given to wetlands that have a high capacity for protecting and enhancing habitat for migratory birds and other wildlife.

The Environmental Quality Incentives Program combines the functions of several federal incentive programs to provide conservation planning assistance to farmers. Under EQIP the Secretary is authorized to offer incentive payments to farmers who are willing to perform site-specific land management practices in order to protect water, soil, and other related resources from degradation. Payments to farmers under EQIP may not exceed \$10,000 per year or \$50,000 for any multi-year contract.

3. Wetland Conservation (Swampbuster). 16 U.S.C. §§ 3821 et. seq.

The Wetland Conservation provisions are designed to prevent wetlands from being converted into crop land. If any person produces an agricultural commodity on converted wetlands that person may be ineligible for payments under government contracts, government loans, and payments under government incentive programs. These provisions do not apply to wetlands that were converted prior to December 23, 1985.

4. Highly Erodible Land Conservation (Sodbuster). 16 U.S.C. §§ 3811 et. seq.

The Highly Erodible Land Conservation provisions are designed to prevent excess land erosion. The provisions apply to certain farmers who produce crops on highly erodible land by making these farmers ineligible for production flexibility contract payments, certain government loans, and federal disaster payments.

In order to be eligible to receive these benefits, farmers who are farming highly erodible land may need to develop conservation plans to address erosion problems.

5. Conservation Farm Option. 16 U.S.C. § 3839bb.

Under the Conservation Farm Option provision, the Secretary of Agriculture is authorized to enter into pilot programs with wheat, feed grain, cotton, or rice producers. Producers who want to enroll in the program are required to prepare a conservation farm plan. Producers then enter into a contract with the Department of Agriculture to follow the conservation plan in return for payments under the program. The purposes of the program are to conserve soil, water and related resources; to protect and improve water quality; to restore, protect and create wetlands; and to protect and develop wildlife habitat.

In order to be eligible for payments under this program, farmers must give up the right to any payments under the Conservation Reserve Program, the Wetlands Reserve Program, or the Environmental Quality Incentives Program.

6. Flood Risk Reduction. 7 U.S.C. § 7334.

The Flood Risk Reduction program allows farmers who farm on land that is frequently flooded and who have that land in contract acreage programs with the Department of Agriculture under the Agriculture Market Transition Act to withdraw their land from these programs and instead receive payments from the Department of Agriculture under the Flood Risk Reduction program.

In order to qualify for this program, farmers must agree not to apply for certain loans from the government, crop insurance from the Department of Agriculture, or for any disaster program benefits. Farmers must also comply with highly erodible land and wetland conservation compliance requirements.

7. Wildlife Habitat Incentives Program. 16 U.S.C. § 3836a.

Under the Wildlife Habitat Incentives Program, the Secretary of Agriculture is authorized to make cost-share payments to farmers in order to develop: upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife habitat. Funds are available for fiscal year 1996 through fiscal year 2002 for this program.

8. Conservation of Private Grazing Land. 16 U.S.C. § 2005b.

The purpose of the Conservation of Private Grazing Land provision is to help Federal, State and local governments combine their efforts to better manage private grazing lands. Under this provision, the Secretary of Agriculture is authorized to establish voluntary programs to assist farmers in implementing grazing land management technologies. The Secretary is also directed to provide technical assistance and education to owners of private grazing lands.

STATE INCENTIVE PROGRAMS

1. Sustainable Agriculture Act. 3 P.S. §§ 2101 et. seq.

The goal of the Sustainable Agriculture Act is to promote the use of sustainable agriculture practices. Sustainable agriculture is defined as an integrated system of plant and animal production practices that: satisfy human food and fiber needs, enhance environmental quality and natural resources, sustain the economic viability of farm operations, and enhance the quality of life for farmers and society as a whole.

The Act establishes loan and grant programs to assist farmers in adopting sustainable agricultural practices.

2. Agricultural Area Security Law. 3 P.S. §§ 901 et. seq.

The Agricultural Area Security Law is designed to: conserve and protect agricultural lands, encourage long term commitment to agriculture, protect farming operations from incompatible non-farm uses, and provide compensation to farmers in exchange for development rights.

The Law provides for both the establishment of agricultural security areas and for the purchase of agricultural conservation easements. If farmers apply for and receive agricultural security area status, they receive certain protections from the condemnation power of the state. Under the agricultural conservation easement program, a farmer sells a perpetual easement to the state where the farmer gives up development rights to his property in exchange for cash payments.

3. Clean and Green. 72 P.S. §§ 5490.2 et. seq.

The Clean and Green program allows landowners to receive lower property tax rates for their land if they agree to use land in an agricultural use, agricultural reserve use, or forest reserve use. Landowners are able to develop limited portions of their property as long as the special requirements of the program are met concerning how much land is developed and how the developed land is used.

If a landowner enrolls in Clean and Green and violates the program's requirements, the landowner is required to pay roll-back taxes on part or all of the enrolled land. Roll-back taxes may be due for up to seven years or the for the number of years that the landowner has been in the Clean and Green program, whichever is less.

The primary purpose of the Clean and Green program is to encourage farmers to preserve farmland through tax savings.

*The Agricultural Law Resource and Reference Center
The Dickinson School of Law
The Pennsylvania State University
150 South College Street Carlisle, PA 17013-2899
Phone: (717) 241-3517 Fax: (717) 240-5131*