



B.1 ENVIRONMENTAL REGULATION OF AGRICULTURE

PURPOSE OF THIS FACT SHEET

This fact sheet is to make you aware of important environmental laws that may affect you on your farm. It is your duty to be aware of, and in compliance with any laws that apply to you. The penalty for failure to comply with the law is usually an order to come into compliance, and a fine. This area of law is called “regulatory law.” Unlike criminal law, a government official does not necessarily need a search warrant or an arrest warrant to come on your property to see if you are in compliance with an environmental regulation, however just like with criminal law you always have what are called “due process rights.” This means that you are always entitled to a hearing in which a government official explains their case against you and you have an opportunity to show evidence against their case.

CONCEPTS

Environmental Regulations: The most important environmental regulations affecting farmers and ranchers are protections for clean air, clean water, proper use of pesticides and other dangerous substances, and protections for threatened and endangered species of plants and animals.

Government Agencies: Often the laws are enacted at the Federal level, and then delegated to the State to implement. Your county government is a branch of the State government and is probably where you will start to get the required permits. County government officials may also be the first ones to notice if you are not in compliance with a law.

Permitting: Many activities, such as driving a car or applying pesticides, are regulated through a permit process. The permit states that you are authorized to do certain activities in accordance with certain restrictions, for example you are probably licensed to drive a car, but in order to get your license you had to take a test to show you understood the laws about how fast to drive and what different traffic signals mean. Permits you get as a farmer are a similar process. If you do not have a permit for an activity that requires a permit you are in violation of the law, just like driving without a driver’s license.

Enforcement: If you have a permit, then the government agency that granted the permit has the right to enter your property to inspect to see if you are in compliance with the terms of the permit. This is a little bit like being pulled over for having a light out - but different because the regulators can actually come on to your property to look for a violation. If you are operating without a permit, or not in accordance with your permit, you may be subject to fines, and in some cases, you may also be subject to criminal penalties. Again this is similar to driving a car. If you are speeding a little or have a headlight out you will get a ticket - a fine. Usually if you pay it that is the end of it. But if you drive recklessly and endanger other people’s lives then you may lose your driver’s license or even go to jail.

Administrative Appeals and Hearings: Usually an appeal begins with the local agency that imposed the fine, refused the permit, or issued an order. A complex case may proceed through various levels of appeal to an Administrative Law Judge. Usually an attorney assists in navigating the different stages of the appeal.

ENVIRONMENTAL REGULATIONS

Air: In California, the State Air Resources Board oversees Local Air Pollution Control Districts (usually at the county level, but some are regional) which issue permits for local emissions.¹ The degree of regulation varies by county and by activity. Contact your County Ag Commissioner’s office and County Farm Bureau for information about regulations in your county.

Water: In California, the State Water Resources Control Board oversees nine Regional Water Quality Control Boards that are responsible for local planning, permitting, and enforcement.² The degree of regulation varies by county and by activity. Contact your County Ag Commissioner’s office and County Farm Bureau for information about regulations in your county.

Keeping Hazardous Materials: In California, the CalEPA oversees 83 local government agencies to implement the hazardous waste and materials standards set by five different state agencies. At the local level the program is usually enforced through the environmental health department or the fire department. One of the primary goals of the program is to ensure the safety of fire fighters if there is a fire or earthquake at a property where chemicals or fuel is stored. Find your local Certified Unified Program Agency (CUPA) at <http://cersapps.calepa.ca.gov/Public/Directory/>. In general, a business that uses commercial quantities of hazardous materials (this includes chemicals and vehicle fuel) must inform local officials of the chemical or fuels inventory, create an emergency response plan, and ensure that employees have proper safety training.

Waste Disposal: The disposal of hazardous materials, including empty containers, is also regulated through local CUPAs. The deposit of a hazardous substance onto public or private property or into the waters of the state is punishable by a maximum fine of \$10,000 and/or a defined prison term. It also is unlawful to deposit, permit to pass into, or place where it can pass into waters of the state, or abandon, dispose of, or throw away within 150 feet of the high water mark of the waters of the state, any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, or the viscera or carcass of any dead mammal or the carcass of any dead bird.^{3,4}

Pesticides: Pesticides are regulated through the California Department of Pesticide Regulation (DPR) through County Departments of Agriculture. Farmers must obtain a permit to own or apply pesticides.⁵ Further, for each crop grown, there is a limit on how much pesticide residue can remain on the crop.⁶

Endangered Species: It is forbidden to import, export, hunt, pursue, catch, capture, or kill, purchase, or sell any part of any endangered or threatened species, or try to do any of these things.⁷ This includes destroying the habitat where threatened or endangered species live.⁸

Unlawful Diversion: It is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake or use any material from the stream beds without first notifying Cal EPA of such activity.⁹

WHAT TO DO IF A GOVERNMENT INSPECTOR COMES TO YOUR PROPERTY

Understand that government inspectors may have the right to inspect your property to determine if you are in compliance with environmental regulations. The best way to prepare is to actually be in compliance. Inquire with your County government any time you think you might need a permit. When you get the permit you will receive information about what the permit allows and requires. If you need help understanding this information work with the County office in charge of permitting to receive technical assistance. You may also want to ask for help from an Extension Agent working through the County Department of Agriculture.

If you have a permit, be sure to keep it in a place where it is easily found if a government agent asks to see it. If your permit requires to keep records to show you are in compliance with the terms of the permit keep those records current.

If an inspector comes on your property remember that whatever decision they make is subject to appeal, and that if you cannot find the records you need at the time, if you find them later you may be able to reduce your fines.

If an inspector documents some violation, take a picture of what they were looking at. If an inspector takes a soil or chemical test, take a picture and try to take the same or a similar sample at the same time, or immediately after so you can have the test results independently verified.

If you are issued a notice of violation you should consult an attorney who can help you to navigate the process of appealing the decision and making your case for why the penalties should be reduced.

WHERE TO GET HELP

An licensed attorney is someone who is licensed by the state where they practice law. The license authorizes the attorney to represent clients in a court of law, or in an administrative appeal with a state or federal agency. The requirement for licensing in most states is a four-year degree, an additional degree from an accredited law school, a passing score on a difficult multi-day examination, and a background check. Some attorneys specialize in land use and environmental issues including zoning and environmental compliance and regulatory appeals.

ADDITIONAL RESOURCES

The Environmental Protection Agency

Your state department of agriculture and your county agricultural commissioner

Your state environmental protection agency, department of natural resources, or department of fish, game and wildlife

County agencies in charge of waste disposal

¹ Health & Safety Code § 40001

² Water Code § 13241

³ Fish and Game Code § 5652

⁴ Penal Code Section 374.8—Deposit of Hazardous Substances

⁵ Food & Agric. Code § 14006.5

⁶ Cal. Code Regs. tit. 3, §§ 6490; 6492

⁷ Fish and Game Code § 2080, Department of Fish & Game v. Cottonwood Irrigation Dist. (1992), 8 Cal.App.4th 1554

⁹ *Palila v. Hawaii Dep't of Land and Natural Resources* (1988) 852 F.2d 1106; *Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon* (1995) 515 U.S. 687.

¹⁰ Fish and Game Code Section 1602

FARM AND RANCH BUSINESS HEALTH ASSESSMENT

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The Business Health Assessment and all related fact sheets are available on the Resources section of the California FarmLink website www.CaliforniaFarmLink.org

