



# Environmental Laws Affecting Farmers and Ranchers

## Curriculum Guide

---

### I. Goals and Objectives

- A. Understand the history behind environmental laws and regulations.
- B. Become familiar with some key federal regulations and acts.

### II. Descriptions/Highlights

#### General Approach

- A. The primary reason the legal system is involved with handling environmental problems is because of the economic concept of externalities. An externality is an event that has an effect outside of a consuming or producing unit. A polluter may be acting rationally, since from an economic point of view, it may be profitable to pollute because the polluter is not bearing the full and complete costs of the economic activity, but is receiving the benefits from that activity. Thus, the legal system attempts to place the total costs to society on a polluter such that the polluter acts rationally from an society's perspective.
- B. Much of environmental law is based on federal and state statutes with administrative agencies at both the federal and state level given the authority to promulgate regulations interpreting the laws and enforcing their provisions. In many instances, a particular farmer or rancher who is found to be in violation of an environmental law will initially be dealing with the governmental agency responsible for administering the statute alleged to have been violated. Typically, only after all applicable administrative remedies have been undertaken can an affected farmer or rancher obtain recourse in a court.
- C. At the founding of the United States, the common law was a basic element of freedom and property and was assumed to be a natural part of life. Common law rules are designed to protect property owners from trespass and nuisance that diminish the value of their property. For example, under the common law rule of riparian rights as the doctrine relates to water pollution, downstream property owners have a right to undiminished water quality. If an upstream party pollutes and damages downstream property values, then the party downstream may bring a private nuisance action against the polluter. The remedy is payment of damages and/or an injunction. Today, the common law is not utilized much to address environmental legal problems. The basic approach is to handle environmental problems through regulation.

## Supplemental Information

- D. **Federal regulatory approach - air.** *Clean Air Act.* The Clean Air Act has little impact on agricultural (primarily livestock) operations. Thus, at least for the immediate future, it appears that the only available relief against harmful feedlot odors is limited to nuisance suits and specific state legislation.
- E. **Common law approach - air.** *Nuisance law.* A nuisance is an invasion of an individual's interest in the use and enjoyment of land. While a person is at liberty to do what they desire on their own land, everyone else likewise enjoys the same right. Thus, landowners must use property so as not to injure adjacent landowners. The two primary issues at stake in any agricultural nuisance dispute are whether the use alleged to be a nuisance is reasonable for the area and whether the use alleged to be a nuisance substantially interferes with the use and enjoyment of neighboring land. Courts have much discretion to fashion a remedy to fit the particular situation such as entering an injunction and/or awarding monetary damages.
- F. Every state has a right-to-farm law. These laws attempt to prevent persons from moving to agricultural areas and then declaring that the neighboring agricultural activity constitutes a nuisance. Right-to-farm laws can be an important protection for agricultural operations, but to be protected, an agricultural operation must satisfy the law's requirements.
- G. **Federal regulatory approach - water.** *Conservation Reserve Program.* Under the 1985 version of the CRP, eligible land was highly erodible land that had been planted to produce any agricultural commodity other than orchards, vineyards, or ornamental plantings in two of the crop years 1981-1985 and which was still available for crop production. The 1996 Farm Bill reauthorized the CRP for another ten years, but with different rules. The new rules evidenced an intent to improve the environmental performance and cost effectiveness of the CRP by targeting the most environmentally sensitive croplands as lands eligible for the CRP.
- H. *Clean Water Act.* The CWA recognizes two sources of pollution. Point source pollution is pollution which comes from a clearly discernable discharge point, such as a pipe, a ditch, or a concentrated animal feeding operation (CAFO). Nonpoint source pollution, while not specifically defined under the CWA, is pollution that comes from a diffused point of discharge, such as fertilizer runoff from an open field. Control of nonpoint source pollution is to be handled by the states through enforcement of state water quality standards and area-wide waste management plans.
- I. *Wetlands.* An exemption from the CWA § 404 permit requirement exists for "normal farming activities" such as plowing, seeding, cultivating, minor drainage, harvesting, upland soil and water conservation projects, construction or maintenance of farm ponds, irrigation ditches, maintenance of drainage ditches and construction or maintenance of farm roads not otherwise impairing navigable waters. In general, the courts have narrowly construed the exemption to those situations where the agricultural activity is extremely minimal and no additional areas of "navigable waters" are brought into use.

- J. **Federal regulatory approach - land.** *Comprehensive Environmental Response Compensation & Liability Act.* There are four basic components to CERCLA. First, the statute sets up an information gathering and analysis system to allow state and federal governments to determine more accurately the danger level at various disposal sites and to develop cleanup priorities accordingly. Second, CERCLA establishes two funds: (1) the hazardous substance response trust fund (more commonly known as “Superfund”) which is funded by taxes on crude oil and chemicals and finances the government’s response costs and damage claims for injury to or obstruction or loss of natural resources; and (2) the post-closure liability trust fund which is financed by taxes on hazardous wastes and out of which payments are made to cover the costs of response damages or other compensation of injury or loss to natural resources. Third, CERCLA provides the federal government with authority to respond to emergencies involving hazardous substances and to clean up leaking disposal sites. Fourth, CERCLA holds “potentially responsible parties” liable for cleanup of releases of hazardous material and for restitution costs.

### III. Potential Speakers

- A. Extension tax and law specialists
- B. Local attorney

### IV. Review Questions

- A. What is the purpose of the right-to-farm law?

Answer: These laws (every state has one) attempt to prevent persons from moving to agricultural areas and then declaring that the neighboring agricultural activity constitutes a nuisance.

### V. For More Details

None available at this time.

---

# Environmental Laws Impacting Farmers and Ranchers

---



## ! **Background of Environmental Laws**

- ☞ Externalities
- ☞ Federal & State statutes with administrative agencies
- ☞ Basic approach is to handle environmental problems through regulation

## ! **Federal Regulatory approach – air**

- ☞ Clean Air Act
  - ✓ Has very little impact on agricultural (primarily livestock) operations
  - ✓ Only relief is in the form of Nuisance lawsuits and specific state legislation

## ! **Common Law Approach – air**

- ☞ Nuisance is an invasion of an individual's interest in the use and enjoyment of land
- ☞ Two primary issues at stake in any agricultural nuisance dispute are if the alleged nuisance
  - ✓ Is reasonable for the area
  - ✓ Substantially interferes with use and enjoyment of neighboring land

---

# Environmental Laws Impacting Farmers and Ranchers

---



## ! **Common Law Approach – air (Continued)**

- ☞ Courts have much discretion in determining punishment
  - ✓ Entering and injunction and/or
  - ✓ Awarding monetary damages
- ☞ Right-to-Farm Law
  - ✓ Prevents persons from moving into an agricultural area and then declaring the neighboring agricultural activity a nuisance
  - ✓ Important protection for agricultural operations
  - ✓ To qualify operation must meet the law's requirements

## ! **Federal Regulatory Approach - water**

- ☞ Conservation Reserve Program
  - ✓ 1985 version – eligible land was highly erodible land used to produce any agricultural commodity except orchards, vineyards, or ornamental plantings in 2 of the crop years 1981-1985 and that were still available for crop production

---

# Environmental Laws Impacting Farmers and Ranchers

---



## ! Federal Regulatory Approach - water (Continued)

- ☞ 1996 Farm Bill extended the CRP for ten more years but with different rules
  - ✓ Only crop lands that are the most environmentally sensitive are eligible for the CRP

## ! Clean Water Act

- ☞ Recognizes two sources of pollution
  - ✓ Point source pollution – definite trace to pollution discharge (pipe, ditch, concentrated animal feeding operation)
  - ✓ Non-point source – pollution comes from a diffused point of discharge (fertilizer run-off)
- ☞ Control of non-point pollution
  - ✓ Handled by states through enforcement of state quality standards and area-wide waste management plans

## ! Wetlands

- ☞ An exemption from the CWA § 404 permit requirement exists for “normal farming activities”
- ☞ Courts have narrowly construed the exemption to those situations where agricultural activity is minimal and no additional area of “navigable



waters” are brought into use

## ! Federal Regulatory Approach – land

- ☞ Comprehensive Environmental Response  
Comprehension and Liability Act (CERCLA)  
has four basic components:
  - ✓ Sets up an information gathering and  
analysis system to allow state and federal  
regulation to determine the danger level at  
various sites and develop clean up  
priorities
  - ✓ Establish two funds – 1. Hazardous  
substance response trust fund (“the  
Superfund”) and 2. Post-closure liability  
trust fund
  - ✓ CERCLA provides the federal government  
with the authority to respond to  
emergencies involving hazardous  
substances and clean up leaking disposal  
sites
  - ✓ CERCLA holds “potentially responsible  
parties” liable for clean up of releases of  
hazardous material and for restitution  
costs