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Natural Resources Conservation Laws A Report on 17 States and Their Selected Counties and Townships

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Natural Resources Conservation Laws

A Report on 17 States and Their Selected Counties and Townships

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U.S. Department of Agriculture

July 1999

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Preface

Laws are social institutions that guide social functions, declare social programs, and even project the visions of a governed society. In a democracy like the United States of America, laws exist at every level of government. Federal, state, and local agencies that have related missions work together as partners, and their staffs need to understand the legal requirements and limitations to better serve the constituents. Private citizens can also benefit from being aware of the laws of other jurisdictions that might serve as models for improving their laws and regulations. With this awareness the public spirit can be enhanced and the quality of life improved.

The basic research for this report was completed in 1996. The criteria for selecting counties within each of the 12 study regions are based on each individual region's representation in resource problems, data availability, geographical balance, levels of use of USDA conservation programs, and similarity in major economic activities of counties within a region. Direct requests were made to all NRCS state offices within the selected region for information concerning state and county conservation laws and regulations, and also to a limited number of district offices in the counties located in the selected state and region. Because of budget constraints the report is restricted to 17 states, and within those states to a limited number of counties and townships.

The Natural Resources Conservation Service (NRCS, formerly the Soil Conservation Service) enjoys a long-standing productive relationship with an array of partners, ranging from Federal, state, and local entities to private concerns. This publication is a compilation and analysis of state and local laws, regulations, and rules in natural resource conservation to help all the partners gain a better understanding of legal authorities.

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Liu-hsiung Chuang, program analyst, NRCS, led a Resources Conservation Act (RCA) assessment team to study the effects of conservation on rural America. This publication is one of the reports of that study.

Great thanks are due Huong N. Tran, who gave her creative, effective, and tireless effort to research, organize, and compile the early draft reports of this study during her tenure with NRCS. She was a part-time research assistant from 1994 to 1996.

Carolyne L. Guss provided editorial, organizational, and update support for the completion of this report.

Deep appreciation is particularly to Larry C. Frarey, formerly a policy analyst for the Texas Institute for Applied Environmental Research at the Tarleton State University, Stephenville, Texas, who provided a copy of the Soil and Water Conservation Laws of the 50 states. The material was organized into the RCA III working paper No. 3, *State Conservation District Laws—Development and Variations*. The information served as the foundation for the ensuing legal research of this study.

Appreciation is also to Richard Duesterhaus, retired; Fee Busbee, Tom Weber, Lawrence Clark, and Peter Smith, NRCS, for providing continuous support and advice to the project; to Anne Henderson and Lovell Glasscock for editing the manuscript; Suzi Self for providing editorial assistance; Patsy Hocker for designing the cover; and John Massey for providing the map. Special thanks are also to Peter Machare, director of the USDA law library, and David Esenbergh, law librarian, for their constant efforts to help research information for this study.

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General Overview of the State and Local Statutory Relations

The genesis of state and local resources conservation laws came after the U.S. Soil Conservation Act of 1935 and the 1937 Standard Soil Conservation District Law that served as a model or foundation for many State and local legislation on resources conservation.

The statutory requirements and limitations may vary, but almost all the 17 states covering the 12 selected regions of this study have established laws on soil and erosion control, water quality and management, ground water protection, wetlands protection, prime farmland protection, wildlife habitat protection, requirements and limitations on the use of pesticides, fertilizer, and other farm inputs, requirements and limitations on mining, and organic waste.

The state resources conservation laws declare state conservation policies and serve as foundations for states to set up conservation programs, allocate funds, and provide technical, financial, and educational assistance to citizens in the states. State laws confer power to state governments or their agents to cooperate with Federal entities or with agencies of other states. In addition, they generally serve as legal bases on resources policies for local governments.

In general, most local governments (of counties) are authorized by state governments to enact laws, regulations, rules, and ordinances concerning most natural resource areas except issues related to nutrients, pesticides, and seeds. The county or local laws on resources conservation are consistent with states' statutory requirements and limitations, though some may allow for more flexibility in implementations.

The state soil and water conservation district laws are enabling acts that provide a mechanism for creating soil conservation districts (SCD's) to conserve soil, water, and related resources. As a state governmental subdivision and public body corporate and politic, (or as an agency of a state, like Georgia and Maine), the SCD helps Federal and State Governments deliver much of the conservation assistance to farmers and land users in the local districts; thus, SCD's become the building blocks of a nationwide, locally led, community-targeted service delivery system for resources conservation.

However, as President Jefferson once said, "human institutions shall face the challenges of the time and adopt them to meet the needs of the society." The number of U.S. farms and farmers has been declining along with the expansion of farm size since the 1930's. The stakeholders of the environmental effects of farm operations have not been limited to agriculture, but have involved the entire community. Therefore, how SCD's adjust their management direction, focus, and resources to better serve the interests of a more diverse community has become an important issue.

Wide divergences exist among the laws, regulations, rules, and ordinances of the 17 states and the subset of selected counties surveyed in this study. Some states and counties are much more progressive in enacting laws and ordinances, but some are not. This report might provide a fruitful ground for people from different states, or counties within a state, to compare their legal requirements for various resources conservation issues and to learn from each other.

Executive Summary of the State Resources Conservation Laws

Applications of the Standard Soil Conservation Districts Laws—In 1937, President Roosevelt sent a model law to all state governors encouraging them to grant authority to farmers and ranchers to organize soil conservation districts. These districts provide a structured system to ensure effective resources conservation activities at the community level. The model law makes a declaration of the condition of the land, its necessary corrective measures, and a declaration of policy to conserve the natural resources on land. Most states follow the basic principles of the model law with slight variations according to their state constitutions and interpretation of the law.

The soil conservation districts are responsible for developing and implementing district-wide conservation plans, adopting land-use regulations, reviewing subdivision land disturbance plans, providing assistance, distributing funds received from the state and Federal Government, conducting research, and cooperating with other districts.

State Erosion and Sediment Controls—In 1973 the Council of State Governments issued a Model State Act for Soil Erosion and Sediment Control (called the Model Act) designed to provide the basic requirements for an effective state soil erosion and sediment control law and amend state soil and water conservation districts' laws to strengthen and extend their existing programs.

Among the 17 states, 4 states—Delaware, Maryland, Georgia, and Nebraska—control erosion and sediment problems through enactment of separate Erosion and Sediment Control Laws; 11 states—Alabama, Arkansas, Mississippi, Wisconsin, Iowa, Texas, Idaho, Oregon, California, Utah, and Tennessee—authorize erosion and sediment control practices under the original conservation districts laws, and 2 states—Pennsylvania and New Mexico—regulate their soil erosion and sediment problems under water quality and watershed district type laws.

Although these acts take different forms, they have the following common features:

All 17 states require their conservation districts to adopt district-level erosion and sediment control programs based on their states programs and district conservation standards for various kinds of soil and land uses. As a method of control, states generally choose one or more among the following three methods: approved erosion and sediment control plans required for land disturbances, establishment of soil loss limits, and permits on the basis of an approved plan.

Most states require state conservation agencies to prepare a comprehensive program to control soil erosion and sedimentation resulting from land disturbances, to identify critical erosion and sedimentation areas, and to provide guidelines for conservation districts to follow in developing regulatory programs.

All 17 states provide some flexibility in exemption from the state laws, though they are different from state to state because exemptions are designed to fit the different geographic traits and conservation needs of each state.

For the enforcement of state soil erosion and sedimentation control programs, all 17 states authorize the responsible conservation districts to inspect land-disturbing activities for violation of required plans or conservation standards and to issue administrative orders for remedial measures.

Most states allow some sort of cost-sharing and loan programs for farmers and land user to cover the cost of resources conservation activities.

Violations of administrative orders are subject to injunctions and criminal penalties.

Ground water laws—All 17 surveyed states give priority to reasonable and beneficial use of ground water and authorize the responsible agency to adopt rules and regulations to implement the ground water acts so that states can remedy water misuse and contamination problems. Most states' legislatures enacted the ground water laws to preserve water and ground water in general. Arkansas is unique because its Ground Water Protection and Management Act deals with "critical ground water area." Unlike other states, the Maryland laws specifically prohibit any municipality, county, or other political subdivision from the right to adopt and enforce any additional rules or regulations that relate to the construction of wells.

The laws of all states surveyed require the responsible state agencies to provide some sort of regulatory programs and plans to preserve ground water. For example, Mississippi Legislature requires the Commission on Natural Resources to study existing water resources and formulate a state water management plan. Moreover, Wisconsin is unique because it—one of the few states—controls its underground water through systematic numeral standard regulatory programs and sets forth a specific provision regarding the participation of American Indian tribes and bands. Similarly unique, New Mexico created an early response team that is responsible for requests from municipalities or counties for advice and technical assistance concerning alleged releases from underground storage tanks owned or operated by the municipalities or counties.

All the 17 states provide some sort of exemption mechanism, whether by allowing exemptions from the general ground water laws or from the specific permit requirements for activities in connection to well constructions.

All the states surveyed require permits, which generally last for 10 years or less, before engaging in any activities involving ground water. However, Georgia is unique in that its act provides separate provisions for withdrawal or use of ground water for farm uses.

All states set forth regulations concerning wells. The common features of all 17 states laws concerning wells include: licenses are required for all well drillers and well bumpers; an abandoned well or test hole must be sealed and filled; and a record of drilling must be kept.

All states impose civil penalties on violations of the ground water laws. However, the following states impose civil or criminal penalties or both: Delaware, Maryland, Pennsylvania, and Georgia.

All 17 states also allow the authorities to seek temporary restraining orders or permanent injunctions on any individuals who apply for variance from any rules or regulations.

Water quality laws—Seventeen states surveyed—Alabama, Arkansas, California, Delaware, Georgia, Idaho, Iowa, Maryland, Mississippi, Nebraska, New Mexico, Oregon, Pennsylvania, Tennessee, Texas, Utah, and Wisconsin—enacted the water quality control laws requiring the state water resources to be used cautiously for the maximum benefit of the people, to restore and maintain a reasonable degree of purity in state water, and adequate supply of such water. To effectuate this policy, these state laws require the state government to establish the water quality control program. These state laws designate an agency to implement and enforce these laws. For example, Georgia law designates the Environmental Protection Division of the Department of Natural Resources; Oregon names its Department of Agriculture to be the authoritative agency. Moreover, under these 17 states laws, the director (or commissioner) of the authoritative agency is granted both mandatory and nonmandatory duties and powers.

All 17 states require permits for regulated activities. For example, Georgia requires permits for construction of facilities that discharge pollutants into water and discharge dredged or fill materials; and it requires permits for withdrawal, diversion, or impoundment of surface water. Moreover, the laws of these states also provide exemptions from the permit requirement.

Before adopting or amending water quality standards, the authoritative agencies of all states are required to hold public hearings and consult with appropriate agencies. Furthermore, to effectuate the state policy, all 17 states impose both monetary and prison term penalties on those who violate any provision of the Water Quality Acts or any promulgated regulations pursuant to such acts.

Although the laws of the 17 states require the director (or commissioner) of the agency to establish water quality standards, each state law is unique in that the type of establishment of such standards is different. For example, Maryland law provides that the department must adopt water quality standards that specify the maximum permissible short-term and long-term concentration of pollutants in the water, the minimum permissible concentrations of dissolved oxygen and other desirable matters in the water, and the temperature range for the water. In addition, the department must develop a water quality standard for the concentration of tributyltin in the water that is sufficient for the protection of aquatic life, and regulate point sources of release of tributyltin according to the developed water quality standard.

California water quality law provides for a two-tier control of water quality on state and regional levels. At the state level, the law creates the State Water Resources Control Board. In adopting state policy for water quality control, the State Board must consider—

- ◊ water quality principles and guidelines for long range resource planning,

- ◊ water quality objectives at key locations for planning and operations of water resource development projects and for water quality control activities, and
- ◊ other principles and guidelines considered necessary by the state board for water quality control.

At the regional level, in establishing its water quality objectives, each of the nine regional boards must consider a number of factors, including future beneficial uses of water, environmental characteristics of the hydrographic unit, particularly its quality of water, overall water quality conditions in the area, economic considerations, the need for housing development, and the need for recycled water.

Of the 17 states surveyed, only Oregon has a specific Removal Fill law, which protects, conserves, and best uses the state water resources. As a way to implement this concern, it regulates removal of material from beds and banks of the state water that may create hazards to the health, safety, and welfare of the people of Oregon. It requires individuals or a government body to acquire a permit from the director of State lands before removing materials from beds or banks or filling any state water.

Flood plain and stormwater control—Of the 17 states surveyed, 15 states have laws concerning flood plain and stormwater control. These states specifically designate authoritative agencies to implement and enforce their state laws and any rules or regulations adopted pursuant to these laws. For example, Wisconsin designates the Department of Natural Resources; Pennsylvania designates the Department of Environmental Resources; and Utah names its Division of State Land and Forestry to be the authoritative agency. Furthermore, under all of these 15 states' laws, the director (or commission, council, or board) of the authoritative agency is granted both mandatory and nonmandatory duties and powers.

Moreover, all 15 states laws authorize the counties, with their right of eminent domain, to acquire public or private property for the purpose of providing flood control and water outlets.

Although all of these laws authorize the municipalities or counties to adopt municipal or local flood plain management regulations or ordinances and require the authoritative agencies to review and approve all municipal flood plain management regulations, each state law is unique in this authorization. For example, Pennsylvania law requires each municipality, which has been identified as having an area(s) subject to flooding, to participate in the National Flood Insurance Program. The authoritative agency must promulgate regulations prohibiting the construction or substantial improvements of structures in an area that has been designated as a flood hazard area. Each municipality having an area subject to flooding must adopt flood plain management regulations. Flood plain management regulations will be considered minimum standards for the management of flood plains. However, these laws do not limit the municipality's power to adopt more restrictive ordinances, codes, or regulations for the management of flood plains.

Alabama controls flood plains through a land-use management plan. Its law authorizes the county commission to adopt zoning ordinances and building codes for flood-prone areas. Moreover, the county commission is granted zoning powers that allow it to divide the portion of the county within the county flood prone area into districts to control flood plains more effectively.

Wetlands conservation—Of the 17 states surveyed, 10 states have laws specifically to conserve wetlands. These 10 states' legislatures enacted the wetlands conservation laws that have the primary state policy of preserving and protecting the wetlands and preventing their degradation and destruction. To effectuate this policy, these state laws offer certain mechanisms to protect wetlands. However, each state law is unique in describing these mechanisms.

For example, Delaware and Mississippi protect their wetlands through a permit system. The laws require that before engaging in any activity involving wetlands, each person must obtain a permit from their authoritative agencies. Maryland legislature enacted separate provisions protecting state wetlands and private wetlands. However, similar to Delaware and Mississippi, Maryland conserves its wetlands through a permit and license system. All of these states allow some exemptions from the permit requirement.

Georgia law authorizes its Department of Natural Resources to develop minimum standards and procedures to protect wetlands. The minimum standards and procedures must include, but are not limited to, land use activities, land development densities, and activities that involve alteration of wetlands. However, the department can adopt different minimum standards and procedures for wetlands protection based on the size or type of wetlands, the need to protect endangered or protected species or other unusual resources, and the need for a particular land use activity that will affect a wetland. Similarly, Wisconsin requires its Department of Natural Resources to prepare maps identifying the individual wetlands that have an area of 5 acres or more. Each city must zone by ordinance all unfilled wetlands of 5 acres or more that are shown on the final wetland inventory maps prepared by the department.

Iowa requires its Department of Natural Resources to develop and implement a program for the acquisition of wetlands and conservation easements on and around wetlands that result from the closure or change in the use of agricultural drainage wells. It must inventory the wetland and marshes of each county and make a preliminary designation as to which constitute protected wetlands. In addition, it also requires each person to obtain a permit before draining a protected wetland.

Farmland preservation—Of the 17 states surveyed, 6 states have laws specifically to preserve farmland. These legislatures enacted the farmland preservation laws with the primary policy of preserving and protecting the farmland to serve the long-term needs of the agricultural community and the citizens of the respective state. To effectuate this policy, these state laws offer different mechanisms to protect farmland.

However, each state law is unique in describing these mechanisms. For example, the Delaware Farmland Preservation Act provides for the establishment of agricultural preservation districts. All farmland or forest lands, or both, included in the district are subject to a number of restrictions, including prohibiting rezoning or major subdivisions and limiting activities on the real property to agricultural and related uses. The act also creates the Agricultural Land Preservation Foundation. Among other important duties and powers, it must adopt criteria for establishing and maintaining the Agricultural Preservation Districts, set forth criteria of agricultural lands preservation easement, and administer and supervise the Delaware Farmland Preservation Fund. The Foundation can use the Fund to acquire,

maintain and enforce agricultural lands preservation easements for lands that are located in the districts.

Pennsylvania establishes similar agricultural security areas. The authoritative agency is required to administer a program for the purchase of agricultural conservation easements. Under Tennessee law, owners of farmland can voluntarily enroll land in an agricultural district.

To assist the local governing bodies to preserve agricultural land, Wisconsin law requires the Department of Agriculture to prepare maps locating lands that are considered for preservation because of their agricultural significance. Counties can establish agricultural preservation plans and exclusive agricultural use zoning ordinances that are subject to review and certification by the Land Conservation Board to determine whether the county plans and ordinances meet the applicable standards. Under the current law, any owner can apply for a farmland preservation easement if the county in which the land is located has a certified agricultural preservation plan in effect, or the land is in an area zoned for exclusive agricultural use under an ordinance.

In California, the authoritative agency is required to acquire fee title, development right, easements, or other interests in the land located in the coastal zone to prevent loss of agricultural land and to assemble such agricultural lands into parcels of adequate size for continued agricultural production. In acquiring interest in agricultural land, the agency must give the highest priority to urban fringe areas where the impact of urbanization on agricultural lands is greatest.

Rangeland protection—Of the 17 states surveyed, New Mexico and Utah have laws specifically to protect rangeland, and each state has unique features. New Mexico protects its rangeland by assigning to its Department of Agriculture a series of broad powers and duties. For example, among other duties and powers, the department must establish a contract with ranchers, Indian tribes and pueblos, local soil and water conservation district boards, and appropriate State and Federal agencies to determine interest for participation in brush and weed control management programs. The department must also prepare and implement a plan for each of these projects under the guidelines established by the Rangeland Protection Advisory Committee. Under the New Mexico Rangeland Protection Act, this committee is responsible for developing mutually acceptable general guidelines to be followed for all rangeland protection projects conducted by the Department of Agriculture. On the contrary, the Utah Management of Range Resources Law bases the success of rangeland management on sound conservation principles, which include practices to improve range conditions.

Surface mining—Of the 17 states surveyed, 14 states—Alabama, Arkansas, Georgia, Idaho, Iowa, Maryland, Mississippi, New Mexico, Oregon, Pennsylvania, Tennessee, Texas, Utah, and Wisconsin—have surface mining laws.

The common features of these laws are:

- Surface mining laws enacted with the state policy of protecting and conserving the state natural resources and the reclamation of areas of land affected by surface mining.

- Each person required to obtain a surface mining license, unless being statutorily exempted, before engaging in any surface mining operations.
- All licensees must obtain a permit; application must be accompanied by a mining and reclamation plan and map.
- Applicant after receiving approval must file with the agency before commencing mining a performance bond for each mining operation.
- Permitee is required to file an annual mining and reclamation operations and progress report with the agency.

Furthermore, these state laws create the Surface Mining Land Reclamation Fund to protect and conserve natural resources and reclaim areas affected by surface mining operations.

The state surface mining laws have several unique features. Maryland has two additional provisions in its Surface Mining Law to remedy the dewatering in karst terrain. These provisions protect the affected property owners in Baltimore, Carroll, Frederick, and Washington Counties where karst terrain is located. The law requires the agency to establish zones of dewatering influence around surface mines in karst terrain and to administer programs requiring permitees to mitigate or compensate affected property owners in those counties.

Pennsylvania law is unique in that it specifically prohibits surface operations in certain areas, such as national parks and wildlife refuge and preservation area. The Pennsylvania law requires its authoritative agency to establish a Remining Operator's Assistance Program that will assist and pay for the preparation of applications for licensed mine operators otherwise eligible to obtain a permit for remining abandoned mine land, including remining of land subject to bond forfeitures and coal refuse piles. Furthermore, the Pennsylvania law requires that the Commonwealth of Pennsylvania be arranged into mine land and water conservation districts, each of which will have a mine conservation inspector.

Wisconsin law allows the governing body of a county, city, village, or town to adopt, by ordinance, regulations for the reclamation of nonmetallic mining sites. A county nonmetallic mining reclamation ordinance applies to each town area and does not require approval of the town board. However, the county ordinance does not apply to a town where there is a town nonmetallic ordinance, which is at least as restrictive as the county ordinance.

Confined animal feeding operations laws—Of the 17 states surveyed, only Iowa and Oregon have laws dealing with confined animal feeding operations specifically.

Iowa law is broad in its requirement of all persons who operate feedlots to comply with the applicable departmental rules and zoning requirements.

Oregon law is more detailed and comprehensive in regulating confined animal feeding operation (CAFO) and water quality. Under this law, all CAFO operations with a waste water disposal system having no direct discharge of pollutants to water of the State must be covered under a water pollution control facility permit (WPCF). The Oregon Department of Environmental Quality also issues a general permit to all CAFO facilities that comply with the rules. Those that do not must obtain the more costly and restrict WPCF permit. This permit is also necessary for

anyone interested in establishing a new CAFO facility. To obtain this permit, a person must submit plans and specifications for the facility and operations along with other information necessary to give a complete and descriptive proposal to the Department for approval. Furthermore, Oregon CAFO law specifies that any CAFO facility, which has a direct discharge of wastewater to surface water of the state is not eligible for coverage by a WPCF permit. Anyone engaging in this type of operation must obtain an individual National Pollutant Discharge Elimination System permit.

Nutrient, pesticide, and seed control laws—All of the 17 states surveyed have detailed nutrient, pesticide, and seed control laws with several notable similarities. They mandate that any person engaging in the sale, offering for sale, or distributing any of these materials require a license and permit. All containers or bags of such material must comply with the labeling requirements. Furthermore, a violation of the rules or regulations concerning nutrient, pesticide, or seed distribution is cause for seizure of the specified material.

Nutrient control—In addition to the fertilizer permit and license requirement, all those interested in selling or distributing commercial fertilizer must pay an inspection fee. Each brand and grade of commercial fertilizer must be registered before distribution. All licensees must furnish to the authority an official report showing the number of tons of each grade of fertilizer sold in each county of the state. The authority official has the mandatory duty to sample, inspect, and test commercial fertilizer or soil condition distributed within the states. To carry out the duty, the official is allowed to enter upon public or private premises or carriers to determine compliance with the laws. If the analysis shows that the commercial fertilizer is deficient in one or more of its guaranteed primary plant nutrients beyond the *investigational allowances* as established by regulation, a penalty will be imposed. In the event of violation of the law or promulgated rule or regulation pursuant to such laws, the official can issue and enforce a *stop sale, use, or removal* order. However, persons aggrieved or adversely affected by the authoritative person's decision can appeal such decision to the court of competent jurisdiction.

Despite these similarities, all states laws are slightly different in their allowed percentage of *primary plant nutrients guaranteed analysis.* For example, for Georgia, the super phosphate cannot contain less than 18 percent of available phosphoric acid. Mixed fertilizer cannot contain less than a total of 20 percent of nitrogen, available phosphoric acid, and potash whereas, for Wisconsin, the mixed fertilizer must have the sum of the guarantees for nitrogen, available phosphoric acid, and soluble potash totals of 24 percent or more.

*Pesticide control***—**All of the 17 states' pesticide control laws are quite similar to each other. Their common characteristics are as follows:

All of these laws were enacted with the primary purpose of regulating in the public interest, the labeling, distribution, storage, transportation, use, and application of pesticides. In general, these laws require that every pesticide must be registered before distribution. Licenses will not be issued unless the license applicant is certified or has a certified applicator in his employment at all times. The license applicant must also furnish to the authoritative agency evidence of financial responsibility consisting either of a surety bond or a liability insurance policy or certification.

All of these state pesticide control laws provide that any pesticide or device, which is unlawfully distributed, will be liable for seizure and forfeiture by the agency upon application to the court of competent jurisdiction. Both monetary and imprisonment term penalties will be imposed for violation of any provision of the Pesticide Laws or any rules or regulations adopted pursuant to such laws.

However, these laws provide for a number of exemptions from the penalties, including—

- ◊ any carrier while lawfully engaged in transporting a pesticide or device, if upon request, must allow the agency to copy all records showing the transaction in and movement of the pesticide or device;
- ◊ any person who prepares or packs any pesticide or device intended solely for export to a foreign county according to the specifications or directions of the purchaser; and
- ◊ any manufacturer or shipper of pesticides for experimental use.

Any county, municipal, corporation, or other political subdivision is prohibited from adopting or continuing in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacturing, or application of pesticides.

Seed control laws—All of the 17 states surveyed have seed control laws. These laws are similar to each other in many ways. They require each person engaging in the business of a wholesale seed seller to obtain an annual permit. Each container of seed sold or distributed must comply with the labeling requirement. Each person whose name appears on the label as handling agricultural or vegetable seed (*labeler*) must secure a seed labeler's license and keep complete records of each lot handled for 2 years, and keep a file sample of each lot of seed after final disposition of the lot for 1 year.

Noncompliant lots of seed will be subject to seizure on complaint of the authority official to a court of competent jurisdiction. If the court finds the seed to be in violation of the law and orders condemnation of the seed, such seed will be denatured, processed, destroyed, relabeled, or otherwise disposed. However, before disposition of noncompliant seeds, the court must give the claimant an opportunity to apply to the court for the release of the seed or permission to condition or relabel it to bring it into compliance with the laws.

However, the laws provide for exemptions from the application of these pesticide control laws, including—

- ◊ seed or grain not intended for sowing purposes;
- ◊ seed in storage, or being transported, or consigned to a cleaning or processing establishment;
- ◊ any carrier in respect to any seed transported or delivered in the ordinary course of its business as a carrier;
- ◊ seed sold by one farmer to another if the seed has neither been advertised for sale nor delivered through a carrier; and
- ◊ grain sold by farmers for cover crop purposes and not delivered through a common carrier.

Interestingly, only the laws of Alabama, Idaho, and Texas provide for arbitration to assist farmers and other seed purchaser, and seed dealers to determine the validity of complaints of the seed purchasers against seed dealers relating to the quality of the seeds.

Wildlife and wildlife habitat protection laws—To preserve wildlife, most States' legislatures enacted Wildlife Preservation laws, mirroring the Federal Endangered Species Act. Under the Wildlife Preservation provisions, it is unlawful to import, transport, possess, sell, or offer for sale any species or subspecies of wildlife appearing on two particular lists. The first is the list of wildlife indigenous to a particular state and considered endangered within that state as set forth by the authoritative agency. The second is the U.S. list of endangered species as set forth in the Federal Endangered Species Act of 1973 as endangered or threatened species, when the latter is adopted by regulations of the agency. Individuals who violate the statutory prohibition or any regulations promulgated pursuant to the statute will be guilty of a misdemeanor and upon conviction will be fined or imprisoned, or both. Different states impose different amounts of fine and periods of imprisonment.

Recognizing that maintenance of wildlife habitat is essential to the survival of wildlife species, state legislatures also enacted laws and appropriated funds to preserve and restore wildlife habitat. Under these provisions, states' authoritative agencies are required to establish wildlife management areas and promulgate rules and regulations for the protection and management of such areas.

These wildlife management areas vary in their rules and functions among the states. For example, Alabama law requires anyone who wishes to hunt game in these areas during designated hunting seasons to obtain a permit and pay a fee for this privilege. The law also gives the Commissioner of the Department of Conservation and Natural Resources the right to search without a warrant any vehicle or person to ensure that they have not seized or killed any protected animal in these designated wildlife management areas.

In Arkansas, upon petition to the State Game and Fish Commission, owners of suitable land can have the area set apart as a refuge for game and wildlife animals. The landowner must indicate that he or she will strictly enforce the prohibition of hunting in these areas. The Commission, after proper investigation of the land, enters into agreement with the landowner and declares the land a state game refuge. The Commission is then responsible for public notification of the land as a wildlife refuge.

State agencies are also authorized to acquire lands, water or interests to conserve, manage and restore wildlife habitat. However, agencies' designation is not the only way to establish wildlife habitat. Owners of agricultural lands can apply to the applicable agency to designate an area, not exceeding the specified acres of land, as wildlife habitat. As an incentive to encourage private landowners to designate their lands as wildlife habitat, some states, such as Oregon, offers tax exemptions for certified wildlife habitat.

Individuals who violate the provisions regarding the management of wildlife areas or any rule or regulations promulgated by the agency will be guilty of a misdemeanor and upon conviction, will be fined or imprisoned, or both. Different states impose different amounts of fine and periods of imprisonment.

Most states, by statute, agree to cooperate with Federal wildlife restoration projects, fishery restoration and management projects, and the establishment of migratory bird reservations. They also place certain restrictions on state lands and state, county, or municipal parks. Delaware prohibits the hunting of game on such lands and Arkansas designates these lands as bird sanctuaries. Mississippi declares states lands as forest reserves and wildlife refuges and prohibits the capture or hunting of wildlife on these lands.

Executive Summary of Local Laws Concerning Resources Conservation

Erosion and sediment control—Fourteen counties in 6 states responded to the study team's request for information on county laws and regulations on resources conservation. These include Anne Arundel, Baltimore, and Carroll Counties, Maryland; Lee and Worth Counties, Georgia; Polk, Nebraska; Chicot, Arkansas; Fresno and San Joaquin Counties, California; and Haywood, Greene, Shelby, Tipton, and Washington Counties, Tennessee.

Of these counties, Haywood, Shelby, and Chicot Counties do not have soil erosion and sediment control ordinances. Washington County's soil erosion and sediment control ordinance only applies to the construction of new roads. In Greene County, Tennessee, a soil erosion and sediment control ordinance exists, but it only applies to land developers, not individual landowners or operators.

The soil erosion and sediment control ordinances of the remaining counties—Anne Arundel, Baltimore, Carroll, Lee, Worth, Polk, Fresno, San Joaquin, and Tipton—have the following common features:

- The ordinances' primary purpose is to establish minimum requirements for clearing, grading, and the control of soil erosion and sediment.
- Persons cannot perform grading of land or create burrow pits, soil areas, quarries, material processing plants, or related facilities without obtaining a permit from the appropriate authority.
- Permit applicants must meet a number of requirements, one of which is the submission of a soil erosion and sedimentation control plan.

However, there are a number of exemptions from the permit requirement:

- Ordinances allow a number of mechanisms to be used as structured erosion and sediment control measures. Some examples include diversions, bench terraces, sediment basins, or sediment traps.
- Upon issuance of a permit, the authority has the power to enter periodically for inspection to determine compliance.
- Variance may be sought from and approved by the appropriate authority.

Despite these similarities, these counties' ordinances have unique features, which set them apart. For example, the Anne Arundel County (Maryland) Ordinance specifically prohibits all persons from performing grading on land that lies within the 100-year flood plain of a nontidal stream or watercourse, unless the ordinance provides otherwise. Because Polk County's (Nebraska) erosion and sediment control activities are covered under the Central Platte Natural Resource District, the county board adopts soil loss limits for various kinds of soils in the district. Permitted soil loss for particular lands cannot exceed the T-value set forth by the standard. Cost-

share assistance is also available. Although these counties provide for exemptions from the permit requirement, the exemptions differ slightly from county to county.

Ground water protection—The counties that provided information—Armstrong, Hutchinson, and Palmer Counties, Texas; and Polk, Nebraska—all belong to different ground water conservation districts, in which all water well drilling and ground water irrigation are subject to rules and regulations as set forth by these districts. For example, Palmer County belongs to the High Plains Underground Water District, which regulates runoff from furrow irrigation or privately owned cropland. The district has an aggressive water conservation program.

Because Polk County belongs to the Central Platte Natural Resources District, it is subject to the Groundwater Management and Protection Act adopted by the Board of Directors of the Central Platte RC&D in 1992. This act allows the district to designate a Groundwater Supply Management Area, which can manage the ground water supply within the area in a number of ways, including—

- ◊ allocating the total permissible withdrawal of ground water,
- ◊ rotating the use of ground water,
- ◊ instituting well-spacing requirements, or
- ◊ requiring the use of flow meters on wells.

In addition, the district can manage the activities that affect the ground water quality by requiring—

- ◊ the use of best management practices,
- ◊ the attendance at educational programs designed to protect water quality, and
- ◊ the submittal of reports or forms.

Moreover, the act prohibits a number of activities, including—

- ◊ operation of an irrigation system in a manner that allows for improper ground water irrigation runoff, and
- ◊ construction or operation of an illegal well.

Flood plain control—Lee County, Georgia, prevents flood hazard through its Land Development Ordinance, which sets forth a number of provisions applicable to all county's areas of special flood hazard. Before beginning of any development activities, a flood damage prevention permit is required. All areas of special flood hazards in Lee County are subject to a set of *general* and *specific* standards.

Clark and Adams Counties, Wisconsin, have identical flood plain zoning ordinances. These ordinances regulate all areas within the unincorporated limits of the counties covered by the *regional flood* and *flood plain islands* as designated on the official map. All cities, villages, and towns must comply with the ordinances. These ordinances provide that in all flood plain districts (including floodway districts, floodfringe districts, and general flood plain districts), no development is allowed in flood plain areas that can cause an obstruction to flow or an increase in regional flood height equal to or exceeding 0.01 feet because of loss of flood plain storage area.

Stormwater management—The Anne Arundel (Maryland) Stormwater Management Ordinance requires each person who wants to develop land for residential, commercial, recreational, industrial, or any other purpose to provide appropriate stormwater management measures that control or manage runoff. The ordinance requires a stormwater management plan to be submitted to the Department of Planning and Code Enforcement for review and approval. Land development activities can begin only pursuant to a proper building permit or grading permit. However, there are a number of exemptions from the ordinance for land development. Moreover, the applicant can also seek a waiver from the Department of Planning and Code Enforcement (the waiver provision does not apply to the critical area).

Wetlands conservation—Geographically allocated around the Chesapeake Bay Area, Anne Arundel, Baltimore, and Harford Counties, Maryland, enacted Chesapeake Bay Critical Area and Wetlands Ordinances to protect the estuarine system. Within the Chesapeake Bay area, there are provisions for grading and sediment control, stormwater management, and zoning.

All persons, who want to perform clearing, stripping, excavating, or grading on land or create burrow pits, spoil areas, quarries, material processing plants, or related facilities must obtain permits. In addition to other requirements, the ordinances provide that there must be a minimum 100-foot buffer landward from the mean high-water line of tidal water, tributary streams, and tidal wetlands. The ordinances also require the permit applicants to install or construct storm management facilities for a proposed development for managing increased runoff. Furthermore, the purpose of the zoning provisions is to divide the counties into zoning districts to minimize adverse impacts on water quality, conserve land, fish, and wildlife habitat, and foster more sensitive development activity for shoreline areas. These districts include critical area district, industrial, and maritime group district.

Animal waste management—Geographically located in Wisconsin, both Clark and Adams Counties have similar ordinances concerning animal waste management. All individuals who design or construct, install, reconstruct, enlarge, or substantially alter any animal waste facility on land, or who employ others to do the same, are subject to these ordinances. Before commencing any of these described activities, these individuals must procure permits from the zoning administrators. Permit application must include an animal waste storage facility plan, the sketch of the facility and its location, and the location of any wells within 300 feet. However, exemption from the permit requirement is available when one performs emergency repairs affecting the structural integrity of the equipment.

Pesticide control—All state pesticide control laws prohibit counties from adopting or continuing in existence any ordinances regarding pesticides.

Agricultural land preservation—Local governments, which are responsible for land use planning and zoning use planning as a process to make decisions. For the purpose of regulating private land use, they use zoning ordinances to guide the division of a municipality, county or town into districts. The principal elements of a zoning ordinance consist of a map and a zoning text. The zoning text outlines the land use activities and structures allowed in each zone, the standards governing the uses in each zone, and the procedures citizens and officials must follow.

The soil and water conservation standards are land management standards that must be met in both ongoing land uses (agriculture and forestry) and in construction. Although these districts are independent entities (not agencies of local governments), in most states, they are not allowed to enact any regulatory ordinances. The special-purpose local conservation district is the main institution that ensures the compliance of the land management related to soil and water conservation in a county.

The ordinances and laws of the surveyed counties, those of Baltimore, Maryland; Adams, Decatur, Lee, and Mitchell Counties, Georgia; De Baca, New Mexico; Lancaster and York Counties, Pennsylvania; and Adams, Wisconsin, illustrate features of these legal mechanisms.

The Baltimore County, Maryland, law permits county council to create agricultural land preservation districts within which only primary agricultural activities are permitted, such as—

- ◊ farm use of the land,
- ◊ operation of machinery used in farm production or the primary processing of agricultural products,
- ◊ normal agricultural activities and operations conducted in compliance with good husbandry practices, and
- ◊ sale of farm products on farm where the sales are made.

The council must approve sales of any development rights easement over any land included in the district. Moreover, farm owners within the district can apply for tax credit if qualified.

To preserve farmlands, Adams County, Pennsylvania, enacted the Interchange Zoning Ordinance, which establishes eight districts—Employment Center District, Highway Commercial District, Agricultural Preservation I District, Agricultural Preservation II District, Rural Residential District, Mixed Density Residential District, and Land Conservation District. Within a district, various types of activities are permitted. For example, in Agricultural Preservation District I, the permitted principal uses include farm buildings and agricultural uses, forestry uses, horticultural activities, and single family detached dwellings.

To regulate certain poultry related agricultural operations, the Decatur County (Georgia) Ordinance requires all individuals interested in erecting, constructing, or enlarging any agricultural structure for poultry operation to obtain a building permit from the county building department. Permit application must include a site plan indicating the proposed location for the poultry operation structure, and how it is related to adjacent property lines and residential, commercial, and industrial properties. However, waiver is obtainable. Adams County, Wisconsin, has one of the most extensive zoning ordinances, which creates 16 types of zoning districts.

Districts concerned with agricultural and natural resources conservation include:

A-1 Exclusive Agricultural District,

A-2 Agricultural Transition District,

A-3 Secondary Agricultural District,

R-5 Rural Single-Family Residential District,

C-1 Uplands Conservancy,

C-2 Shoreland Protection Overlay, and

C-3 Landfill Conservancy.

The De Baca County, New Mexico, Subdivision Regulations provide that all applications for approval of a subdivision plan must submit to the De Baca County Board a water quality plan, a water supply plan, a liquid waste management plan, a solid waste management plan, and a terrain management plan. However, the regulations exempt the subdivisions containing parcels of land, where the smallest of which is less than 50 acres. Moreover, variance from the regulations may be sought and approved by the commission.

Shoreland protection—Belonging to Clark and Adams Counties, Wisconsin, are similar Shoreland/Wetland Zoning Ordinances regarding shoreland protection. The regulated areas include all shorelands that are within 1,000 feet of the ordinary high water mark (OHWM) of navigable lakes, ponds or flowages; and within 300 feet of OHWM of navigable rivers or streams, or to the land-ward site of the flood plain, whichever distance is greater.

All cities, villages, towns, and counties must comply with these ordinances and secure the necessary permits. Permits are specifically required before any new development, or any change in the use of an existing building or structure is initiated, or before any land use is substantially altered. To protect shoreline/wetland, these ordinances contain a number of provisions concerning the dimensions of building sites, setbacks, removal of shore cover, and filling, grading, lagooning, dredging, ditching, and excavating. In addition, the counties' shorelands are divided into three particular districts: shoreland-wetland districts, recreational-residential districts, and general-purpose districts.

Forest conservation—Baltimore County, Maryland, forest conservation law applies mainly to individuals requesting development, subdivision, project plan, building, grading, or erosion and sediment control approval on units of land 40,000 square feet or greater. Individuals seeking permit approval must submit to the department a forest land delineation and a forest conservation plan for the land on which the project is located, and use methods approved by the department to protect retained forest and trees.

However, a number of activities are exempted from these requirements. Unless exempt, applicants must conduct afforestation and retention on the land. All land use categories (unless being exempted) are subject to a forest conservation threshold. The forest conservation law also sets up priorities and time requirements for afforestation and reforestation. Furthermore, a forest conservation fund is also established to fund costs related to reforestation, afforestation, permanent preservation of priority forests, and implementation of the forest conservation laws.

Executive Summary of Township Laws Concerning Conservation

Erosion and sediment control—West Hempfield Township, Lancaster County, Pennsylvania, controls soil erosion and manages stormwater through its Stormwater Management and Erosion Control Ordinance of 1980. The ordinance requires municipal approval before any person, partnership, business, or corporation undertakes any of the regulated activities, including—

- ◊ earth disturbing activity involving 1 acre or more (except agricultural activity);
- ◊ diversion or piping of any natural or constructed stream channel;
- ◊ installation of stormwater system or appurtenances;
- ◊ placement of fill, structures, or pipes in the flood plain or natural drainage ways; and
- ◊ installation of impervious cover, 10,000 square feet or more in an area.

This ordinance also requires an erosion and sedimentation control plan for any of the described activities (unless the exception applies). All erosion control facilities must be designed at a minimum to meet the design standards and specifications.

Animal waste control—Geographically located within Lancaster County, Pennsylvania, the surveyed townships include Bart Township, Brecknock Township, Caernarvon Township, East Lampeter Township, Eden Township, Ephrata Township, Little Britain Township, Pequea Township, Salisbury Township, and Warwick Township.

These townships' ordinances concerning animal waste control have a number of common features:

- First, waste storage facilities are permitted as an accessory use on a farm.
- Second, manure storage cannot be established closer than a number of feet to any property line.
- Third, all inground manure pits are required to have fence enclosing them.
- Fourth, all persons who erect or construct animal waste storage facilities must obtain permits from the appropriate authority.
- Fifth, all persons who wish to install, erect, or construct animal waste storage facilities and the owners of the land where such facilities are placed must comply with a set of regulations.

However, there are a number of unique features among these ordinances. For example, the East Lampeter Township ordinance requires the waste storage facilities to be located no closer than 300 feet of any property and right-of-way lines, the Caernarvon Township ordinance requires 200 feet from any property line or rights-of-way, and the Eden Township ordinance only requires that such facilities be located no closer than 150 feet from all property lines and street right-of-way lines.

Although the Brecknock Township ordinance requires all inground manure pits to have a 6-foot fence enclosing them, the Caernarvon Township ordinance only specifies that such barriers must not be less than 4 feet high.

Agricultural and open space zoning—Because most of the township zoning ordinances of all townships within Lancaster County, Pennsylvania, mirror the county's, they have a number of common features:

- First, each township is divided into a number of districts, such as Agricultural District and Floodplain Conservation District, within which different categories of uses are allowed.
- Second, the ordinances prescribe area, height, and yard regulations for all buildings or structures constructed for any permitted uses in the agricultural district.
- Third, applicants may seek variance from the provisions of the ordinances. In variance proceeding, the burden of proof is always placed on the applicant.

However, there are a number of unique features among these townships. For example, although the Conestoga Township ordinance categories family daycare facilities for not more than six children per permit use, the East Cocalico ordinance categorizes the similar use as a special exception use that may be allowed only after the authorization by the zoning hearing board. The Conestoga ordinance allows double-family dwellings as a permit use, while the East Cocalico ordinance does not categorize these dwellings as such. Moreover, each township ordinance imposes different area, height, and yard regulations for all buildings and structures within any prescribed districts