I. OVERVIEW

In a well-researched critique of agriculture and environmental law published in 2000, Professor J.B. Ruhl noted agriculture’s “dramatic impact on our planet’s landscape and environmental systems.” Ruhl coined the term “anti-law” to characterize the lack of agricultural law and regulation to address the environmental consequences of agricultural production.¹ In *The Unsettling of America: Culture and Agriculture*, Wendell Berry notes the importance of agriculture in society:

> The soil is the great connector of lives, the source and destination of all. It is the healer and restorer and resurrector, by which disease passes into health, age into youth, death into life. Without proper care for it we can have no community, because without proper care for it we can have no life.²

This chapter of the EENR Manual contains the major federal and North Carolina environmental statutes, regulations, agency listings, seminal cases, law review articles, websites and policy considerations that practitioners will find useful when managing an environmental issue that intersects with the broad categories of agriculture and/or agribusiness. To provide proper context, this chapter starts with a definition of the words “agriculture” and “agribusiness” and ends with a list of continuing concerns that should also be considered along with agriculture’s environmental impact.

II. DEFINITIONS

A. Agriculture/Agricultural

North Carolina law (N.C.G.S. § 106.581.1 (2013)) defines the terms “agriculture” and “agricultural” very broadly.

For purposes of this chapter, the terms “agriculture,” “agricultural” and “farming” refer to all of the following:

1. The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
2. The planting and production of trees and timber.

(3) Dairying and the raising, management, care and training of livestock — including horses, bees, poultry and other animals — for individual and public use, consumption and marketing.

(4) Aquaculture as defined in N.C.G.S. § 106-758 (2013).

(5) The operation, management, conservation, improvement and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion and construction incident to the farming operation.

(6) When performed on the farm, “agriculture,” “agricultural” and “farming” also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage and other activities performed to add value to crops, livestock and agricultural items produced on the farm and similar activities incident to the operation of a farm.

(7) A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry and store grain (N.C.G.S. § 106-581.1 (2013)).

No profit motive is required for an activity to fall within this definition of agriculture. Activities purely for pleasure including individual equestrian activities as well as activities that are ancillary to supporting agriculture fall within this definition of agriculture. County of Durham v. Roberts, 145 N.C. App. 665; 551 S.E. 2d 494; 2001 N.C. App. LEXIS 747 (2001).

III. ENVIRONMENTAL/AGRICULTURAL STATUTES AND REGULATIONS

A. Major Federal Laws

There is not one cohesive set of federal environmental laws codified in one code book or in a volume of books. Rather, the complex labyrinth of federal environmental laws must be woven together from a variety of federal statutes and regulations. Additionally, the major federal environmental statutes and regulations should be read carefully because many carve out exceptions and/or exemptions for agricultural practices, or do not address agriculture at all.

1. Administrative Procedures Act

5 U.S.C.A. §§ 551-559, 701-706, 1305, 3105, 3344, 4301, 5335, 5372, 7521

Environmental law is governed by administrative law; therefore, it is necessary to understand and master administrative law concepts. Administrative law applies to government agencies and to parties affected by agency actions. The Federal Administrative Procedures Act (APA) was enacted to designate general procedures to
be used by federal agencies, boards and commissions when exercising their rulemaking, adjudicatory and enforcement powers. This expanding area of the law defines how governmental entities develop and implement the regulatory programs they are legislatively authorized to construct.\(^3\)

2. **National Environmental Policy Act**


The National Environmental Policy Act (NEPA) is a short general statute designed to institutionalize within the federal government a concern for the “quality of the environment.” NEPA mandates environmental awareness among all federal agencies (excluding Congress, the judiciary and the president). The agencies are required to consider the environmental consequences of their actions before carrying out a proposal or recommendation. Additionally, NEPA is designed to advise the President on the state of the nation’s environment and to create an advisory council called the Council on Environmental Quality (CEQ).\(^4\)

3. **Federal Resource Conservation and Recovery Act**

42 U.S.C. §§ 6901-6991(i)

The Resource Conservation and Recovery Act (RCRA) is the primary federal statute dealing with the disposal of solid and hazardous wastes. The statute regulates five types of disposal activities: hazardous waste, solid waste, underground storage tanks, oil waste and medical waste. Under Subtitle C (hazardous waste), RCRA regulates both newly-generated solid waste that is hazardous and, under certain circumstances, the cleanup of abandoned hazardous waste sites. For newly-generated hazardous solid waste, RCRA sets up safety standards — commonly referred to as a “cradle-to-grave” system — that regulate hazardous waste from its generation point through its transportation and ultimately to its final disposal.\(^5\)

   a. **Section 6903 – Definitions**

Solid waste is defined as any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and *agricultural operations* and from community activities; solid waste does not include solid or dissolved materials in irrigation return flows or industrial discharges — which are point sources subject to permits under section


\(^4\) *Id.* at 52-53.

\(^5\) *Id.* at 93, 157.
1342 of Title 33 — or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [emphasis added].

Hazardous waste is defined as a solid waste — or combination of solid wastes — which, because of its quantity, concentration or physical, chemical or infectious characteristic(s) may: (a) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed.

RCRA has implications for animal feeding operations and pesticide use.

4. Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

42 U.S.C. §§ 9601-9675

The Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) is the primary federal statute dealing with the cleanup of hazardous waste sites. CERCLA is sometimes referred to as the “Superfund Act” because part of the statute establishes a trust fund, known as the “Superfund,” to be used by the government to finance cleanups of hazardous substances. Additionally, the statute imposes stringent standards of liability for the costs of responding to releases of hazardous substances on the parties associated with such releases.

CERCLA is a very controversial law because it forces those who caused environmental contamination in the past (before regulations and pollution prevention laws were enacted) to pay for today’s cleanups of polluted sites. CERCLA’s retroactive provision has withstood constitutional challenge and review.\(^6\)

CERCLA has implications for animal feeding operations and pesticide use.

5. Federal Clean Air Act (CAA)

42 U.S.C. §§ 7401-7642 [7671]

Congress designed the Clean Air Act (CAA) to protect public health and welfare from different types of air pollution caused by a diverse array of pollution sources. Congress established much of the basic structure of the Clean Air Act in 1970, and made major revisions in 1977 and 1990.

The Act contains key provisions to control common pollutants which, at the time of the 1970 amendments, formed dense, visible smog in many of the nation’s cities and

\(^6\) Id. at 234-35.
industrial centers. To protect public health and welfare nationwide, the law requires the EPA to establish national ambient air quality standards based on the latest science, and requires states to adopt enforceable plans to achieve the standards. State plans also must control emissions that drift across state lines and harm air quality in downwind states. Congress designed the law to minimize pollution increases from growing numbers of motor vehicles and from new or expanded stationary sources (i.e., power plants, industrial plants and other facilities that are not mobile). The law calls for new stationary sources to be built with the best technology and allows less stringent standards for existing stationary sources. The Act also contains specific provisions to address:

- “Hazardous” or “toxic” air pollutants that pose health risks such as cancer or environmental threats such as bioaccumulation of heavy metals;
- Acid rain that damages aquatic life and ecosystems, acidifies forest soils, damages property and forms from pollution that degrades visibility and harms public health;
- Chemical emissions that deplete the stratospheric ozone layer which protects us from skin cancer and eye damage; and
- Regional haze that impairs visibility in national parks and other recreational areas.

In addition, Congress drafted the Act with general authorities that can be used to address pollution problems that emerge over time, such as greenhouse gases that cause climate change.

The CAA has implications for Concentrated Animal Feeding Operations (CAFOs) and landowner liability.

The Plain English Guide to the Clean Air Act can be found online at [http://www.epa.gov/airquality/peg_caa/index.html](http://www.epa.gov/airquality/peg_caa/index.html).

The Clean Air Act in a Nutshell can be found online at [http://www.epa.gov/air/CAA/nutshell/Clean_Air_Act_in_a_Nutshell.pdf](http://www.epa.gov/air/CAA/nutshell/Clean_Air_Act_in_a_Nutshell.pdf).

6. **Federal Clean Water Act (CWA)**

33 U.S.C. §§ 1251-1387

While several statutes regulate pollutants that may affect water quality, the Federal Water Pollution Contract Act, known as the Clean Water Act (CWA), is the most comprehensive suite of federal regulations for controlling direct and indirect discharges to the nation’s navigable waters. The CWA bans all discharges of pollutants from point sources unless a permit has been obtained. Pollutant discharges are specifically regulated under the CWA by implementing two concepts: setting water quality standards for surface water and limiting effluent discharges into such waters.