

Ten Points to Understand about Environmental Law

1. First question to ask is what is the resource or activity involved – is it related to water quality, pesticide use, soil conservation, wildlife habitat or some other topic? The law will provide different rules and protections depending on the resource involved.
2. The second question to consider is – what type of duty or action is required or imposed on a landowner by the law? For example, does it require you to get a license or permit before doing something – like construction a confinement facility, or require a license – such as to use certain pesticides – or does it require you to refrain from taking certain actions – such as a draining a wetland?
3. The third issue concerns who is responsible for enforcing the law in question – is the state DNR, the federal government such as the USDA or EPA –or is it a local issue. This answer will help identify who you can contact to learn more about what is required.
4. The fourth issue concerns what are the risks of failing to comply with the law – what can happen if you are in violation? Most environmental laws will have some form of sanction or penalty – for example you may lose eligibility for farm program payments, or face a possible fine – or in some situations such as illegal stream straightening possibly be ordered to restore the resource to its previous condition.
5. A fifth question concerns who has an interest in seeing the law is enforced? In most situations rules are enforced by government agencies, but many environmental laws include “citizen suit” provisions which allow individuals and interested groups to bring enforcement actions. For example the water quality suit involving several Iowa drainage districts was brought by the Des Moines Waterworks. This means you can take it for granted if an agency doesn’t take action that your conduct was legal.
6. A sixth question concerns whether there might be public funding available to help you comply with the law – especially if it might require you take some action to help protect natural resources. This type of public “cost-sharing” is very common for soil conservation and water quality efforts.
7. A seventh idea to remember is the environmental law may set just the minimum of what is required to protect different natural resources – but that doesn’t mean you as a landowner can do more. For example, it may be legal to plow up a pasture or cut down part of a timber – but that doesn’t mean a landowner should do so.

8. The eighth idea to recognize is a landowners possible environmental duties can arise from sources other than state and federal statutes – they can also be found in legal agreements you might enter. For example a typical farm lease will include language about complying with environmental laws – and may establish duties not even covered by the law. When you sign up for a USDA program the contract will require certain actions on your part – so the key is to think about what might be the source of other environmental duties.
9. A ninth point to recognize is potential environmental liability may exist for a landowner even when you are not the one who acted illegally. As a landowner you can be ultimately responsible for what happens on your land – so if your tenant drains a wetland, or the chemical applicator pollutes a creek or the manure being spread causes a fish kill you might also be on the hook. This is why you need to be aware of what others are doing on your land and be sure they follow the land too.
10. A tenth and final point to consider is to know there are organizations who can help you comply with environmental laws and carryout your stewardship wishes. Most of the commodity groups have people who specialize in helping farmers meet environmental rules and private conservation organization like the Iowa Natural Heritage Foundation have staff and resources available to assist landowners interested in protecting the land.