

WASHINGTON

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Washington's water pollution control law includes provisions that may be used to take enforcement action against nonpoint source discharges that pollute the waters or that consist of unpermitted disposal of waste, except for forest practices conducted in compliance with the state forest practices law.

- Washington's water pollution control statute prohibits the discharge of "any organic or inorganic matter that shall cause or tend to cause" water pollution¹ and requires a permit for the disposal of solid or liquid waste material into waters of the state.² The statute does not authorize the adoption of a permit system for nonpoint source pollution from forest practices, nor the imposition of penalties for nonpoint source pollution arising from forest practices conducted in compliance with the state's forest practices law.³ The Department of Ecology ("DOE") enforces the law by bringing an action, issuing orders or directives, or imposing penalties. The attorney general, upon the request of DOE, may also bring an action.⁴ With respect to bringing an enforcement action for discharges arising from agricultural activity on agricultural land, prior to issuing a notice of violation, the statute directs DOE to consider whether such an action would contribute to conversion of agricultural land to nonagricultural uses and to attempt to minimize the possibility of such conversion.⁵ Willful violations are crimes punishable by a fine of up to \$10,000 and/or imprisonment for not more than one year. Civil violations incur penalties of up to \$10,000 per day per violation.⁶

Other Discharge Limitations

- The state's Public Health and Safety Code ("Code") regulates discharges into public water supplies. Under the Code, it is a gross misdemeanor to deposit "any matter or thing which may or could pollute" into waters that are used for drinking purposes.⁷ It is also a misdemeanor for any person to place or cause to be placed "within any watershed from which a city or municipal corporation of any adjoining state obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute or impair the quality of said water supply..." Violation of this provision is punishable by a fine of up to \$500.⁸

- State law also protects public water supplies. It provides that a person who does "any of the things which have the effect of polluting any such sources of water supply, or water," and any person who conducts a business or occupation, or allows any condition upon or sufficiently near the water supply or sources for the water supply, or "the property through which the same may be conveyed or conducted so that such water would be polluted..." is guilty of nuisance and may be fined up to \$500.⁹ Non-tidewater cities with a population of 100,000 or more are prohibited from "discharging, draining or depositing...any...substance, offensive, injurious or dangerous to health" into waters used for "human or animal consumption or for domestic

purposes." Violation of this provision is a public nuisance, and abatement may be sought by secretary of social and health services or by any person whose water supply is affected.¹⁰ If a violator fails to abate pollution of a water supply, then the sheriff abates the nuisance and assesses the cost against the violator.¹¹ Cities and towns are authorized to prescribe what acts constitute offenses against the purity of the water supply and the resulting punishment and penalties and enforce them.¹²

- Nuisance law may apply to some instances of nonpoint source pollution. Nuisance is generally defined as unlawfully committing or omitting an act that "endangers the comfort, repose, health of safety of others...or [that] unlawfully interferes with, obstructs or tends to obstruct...any lake or navigable..." water.¹³ Any person whose property is affected may bring an action in court and get an order to abate the nuisance.¹⁴

- It is a public nuisance to "throw...offensive matter" into any waterway" or in any way to corrupt or render unwholesome or impure the water...to the injury or prejudice of others."¹⁵ Any public body or authorized officer may abate a public nuisance,¹⁶ or a private person may bring a civil action or remove and/or destroy the nuisance, if it is "specially injurious."¹⁷ Abatement does not preclude action for private damages.¹⁸ Fines for public nuisances of up to \$1000 may be imposed.¹⁹

- A public nuisance is a crime where an act or omission "unlawfully interfere[s] with, befoul[s]...a lake, navigable river, bay, stream, canal or basin..."²⁰ The court or magistrate shall order the nuisance abated, in addition to any other fine or punishment.²¹ Under this statute, a person who commits or maintains a public nuisance is guilty of a misdemeanor,²² and a person who deposits an "unwholesome substance" on or near a highway on land or water is guilty of a gross misdemeanor, including maintenance of a business that is "noisome or detrimental to the public health."²³

- Also see *supra* regarding nuisance actions for pollution of public water supplies.

Agricultural activities and forest practices are not a nuisance if conducted in a manner consistent with good practices and established prior to surrounding nonagricultural and nonforestry activities, unless they have a "substantial adverse effect on the public health and safety."²⁴ Also, nothing done or maintained under the express authority of a statute is a nuisance.²⁵

Fish/Fisheries Laws

- State law declares that any person who acts illegally or otherwise reduces water quality below state standards or causes significant degradation of water quality, "thereby damaging the same; and...causes the death of, or injury to fish, animals, vegetation, or other resources of the state" shall be liable for damages to the state and affected counties and cities.²⁶ Operations undertaken in compliance with a waste discharge permit are not actionable under this provision.²⁷ See *supra* for general enforcement provisions under the Water Pollution Control statute.

OPERATIONAL REQUIREMENTS

Forestry Requirements

- Washington law requires the forest practices board (the "board") to promulgate regulations that establish minimum forest practices standards.²⁸ Regulations determine which forest practices fall within which of four classes, ranging from Class I, requiring no notification, through Classes II-IV requiring notification on submission of an application for approval. In particular, Class IV forest practices that have "a potential for substantial impact on the environment and therefore require an evaluation," require an application.²⁹ If an approved application authorizes "a forest practice which, because of...proximity to a water course...has a potential for causing material damage to a public resource," then the Department of Natural Resources ("DNR") may require notification two days before actual operations begin.³⁰ Additionally, the board and DOE are required to promulgate forest practices regulations relating to water quality from the minimum forest practices standards regulations.³¹ The DNR enforces this statute by issuing a stop work order for any violation and taking immediate action if the operator fails to obey such an order; or the DNR may issue a notice setting forth the nature of the violation or damage, the operator's right to a hearing and the specific course of action.³² Specifically, with respect to a violation relating to water quality, where DNA fails to act, DOE notifies DNR and, failing DNR action, petitions the appeals board chair who must deny the petition or direct DNR to act.³³ The attorney general also may enforce the statute, and a county may bring actions in superior court against the DNR, landowner, timber owner, or operator.³⁴ Sanctions include civil penalties, collect costs, or disapproval, for up to one year, of a forest practices application.³⁵

Agriculture Requirements

- New state legislation requires dairy farms to establish waste management plans and directs the DOE to inspect all dairy operations at least every two years. All dairy farms are required to develop dairy nutrient management plans by July 1, 2002 and obtain approval from the local conservation districts and be implemented by the farmers by December 31, 2003. The sanctions for noncompliance by dairy farmers are fines of \$100 per month up to maximum of \$5000 for failing to develop the management plan.³⁶

- A license is required from the Department of Agriculture (DOA) to operate a certified feed lot.³⁷ Denial, suspension, or revocation of feed lot licenses may result where violations occur.³⁸ Violators are guilty of a misdemeanor, and subsequent offenses are a gross misdemeanor.³⁹

- The state's Pesticide Application Act requires licenses for commercial pesticide application⁴⁰ (with some exceptions including forest owners applying pesticides on their own lands and farmers occasionally applying pesticide themselves),⁴¹ private commercial pesticide application,⁴² and private pesticide application.⁴³ A person damaged by pesticide application may sue agencies, municipal corporation and public utilities, or the DOA director may seek to enjoin a violation.⁴⁴ Sanctions include revocation or suspension of licenses, permits or certifications.⁴⁵ A maximum of \$7500

in civil penalties are available for each violation.⁴⁶ First offense is a misdemeanor; subsequent offenses are gross misdemeanors (except an offense committed more than five years after a previous conviction is a first offense).⁴⁷

- The state's Pesticide Control Act regulates labeling and registration requirements, including required registration of all pesticides that are distributed within the state or are transported in or through the state, with some minor exceptions,⁴⁸ and licensing of pesticide dealers and consultants.⁴⁹ The DOA director and/or the county prosecuting attorney may bring an action,⁵⁰ and relevant sanctions include refusal to register pesticide or suspension of registration⁵¹ and denial, suspension, revocation of licenses.⁵² Civil penalties (\$7500 per violation) are authorized.⁵³

Development and Other Earth-Disturbing Activities

Apart from any programs for the control of urban stormwater under the federal Clean Water Act, state law provides the following authorities.

- Comprehensive plans required of counties and cities under the state's Growth Management Act ("GMA") must provide for "drainage, flooding, and storm water runoff...and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state."⁵⁴ Entities covered under the GMA are to adopt development regulations that assure protection of designated "critical areas,"⁵⁵ which include wetlands, "areas with a critical recharging effort on aquifers used for portable water," and fish and wildlife habitat conservation areas.⁵⁶ Shore Management Act, see *infra*, rather than plans under the GMA.) A noncomplying entity shall have up to 180 days to comply.⁵⁷ The Governor may modify state appropriation allotments, withhold revenue-sharing or temporarily rescind tax collection authority for counties or cities that fail to comply with GMA provisions.⁵⁸

- The Shoreline Management Act prohibits shoreline development unless consistent with statutory policy and the applicable guidelines, rules or master program and requires a permit for "substantial development."⁵⁹ Substantial development, with some exceptions, is development whose total cost exceeds \$2500 or "materially interferes with the normal public use of the water or shorelines."⁶⁰ If DOE believes permittee is not in compliance with permit, it notifies local government and permittee and, then, may petition shoreline hearings board ("board") for rescission of permit.⁶¹ Appeals regarding permitting decisions or DOE rules may be made to the board.⁶² Attorney general or local government attorney may bring injunctive, declaratory or other relief, and civil penalties (up to \$1000 per violation) are authorized.⁶³ A willful violation is a gross misdemeanor punishable by fines and/or imprisonment.⁶⁴

Endnotes

¹ Wash. Rev. Code 90.48.080.

² Wash. Rev. Code 90.48.160

³ Wash. Rev. Code 90.48.420.

⁴ Wash. Rev. Code 90.48.037,90.48.120.

⁵ Wash. Rev. Code 90.48.450.

- ⁶ Wash. Rev. Code 90.48.140,90.48.144.
- ⁷ Wash. Rev. Code 70.54.010.
- ⁸ Wash. Rev. Code 70.54.030.
- ⁹ Wash. Rev. Code 35.88.030, 35.88.040.
- ¹⁰ Wash. Rev. Code 35.88.080.
- ¹¹ Wash. Rev. Code 35.88.050.
- ¹² Wash. Rev. Code 35.88.020.
- ¹³ Wash. Rev. Code 7.48.120.
- ¹⁴ Wash. Rev. Code 7.48.010.
- ¹⁵ Wash. Rev. Code 7.48.140(2).
- ¹⁶ Wash. Rev. Code 7.48.220.
- ¹⁷ Wash. Rev. Code 7.48.210, 7.48.230.
- ¹⁸ Wash. Rev. Code 7.48.160.
- ¹⁹ Wash. Rev. Code 7.48.250.
- ²⁰ Wash. Rev. Code 9.66.010.
- ²¹ Wash. Rev. Code 9.66.040.
- ²² Wash. Rev. Code 9.66.030.
- ²³ Wash. Rev. Code 9.66.050.
- ²⁴ Wash. Rev. Code 7.48.305.
- ²⁵ Wash. Rev. Code 7.48.160.
- ²⁶ Wash. Rev. Code 90.48.142(1)(b).
- ²⁷ Wash. Rev. Code 90.48.142(2).
- ²⁸ Wash. Rev. Code 76.09.040.
- ²⁹ Wash. Rev. Code 76.09.050.
- ³⁰ Wash. Rev. Code 76.09.060(4)
- ³¹ Wash. Rev. Code 76.09.040.
- ³² Wash. Rev. Code 76.09.080, 76.09.090.
- ³³ Wash. Rev. Code 76.09.100.
- ³⁴ Wash. Rev. Code 76.09.140.
- ³⁵ Wash. Rev. Code 76.09.120-190.
- ³⁶ SB 6161.
- ³⁷ Wash. Rev. Code 16.58.040.
- ³⁸ Wash. Rev. Code 16.58.070.
- ³⁹ Wash. Rev. Code 16.58.170.
- ⁴⁰ Wash. Rev. Code 17.21.070, 17.21.110.
- ⁴¹ Wash. Rev. Code 17.21.200.
- ⁴² Wash. Rev. Code 17.21.122.
- ⁴³ Wash. Rev. Code 17.21.126.
- ⁴⁴ Wash. Rev. Code 17.21.220, 17.21.320.
- ⁴⁵ Wash. Rev. Code 17.21.130.
- ⁴⁶ Wash. Rev. Code 17.21.315.
- ⁴⁷ Wash. Rev. Code 17.21.310.
- ⁴⁸ Wash. Rev. Code 15.58.050.
- ⁴⁹ Wash. Rev. Code 15.58.180, 15.58.210.
- ⁵⁰ Wash. Rev. Code 15.58.280, 15.58.340.
- ⁵¹ Wash. Rev. Code 15.58.110, 15.58.120.
- ⁵² Wash. Rev. Code 15.58.260.
- ⁵³ Wash. Rev. Code 15.58.260.
- ⁵⁴ Wash. Rev. Code 36.70A.070.
- ⁵⁵ Wash. Rev. Code 36.70A.060.
- ⁵⁶ Wash. Rev. Code 36.70A.030(5).
- ⁵⁷ Wash. Rev. Code 36.70A.300(1).

⁵⁸ Wash. Rev. Code 36.70A.340, 36.70A.345.

⁵⁹ Wash. Rev. Code 90.58.140(2).

⁶⁰ Wash. Rev. Code 90.58.030(3)(e).

⁶¹ Wash. Rev. Code 90.58.140(8).

⁶² Wash. Rev. Code 90.58.180.

⁶³ Wash. Rev. Code 90.58.210.

⁶⁴ Wash. Rev. Code 90.58.220.